



CITY OF HOUSTON INVITATION TO BID

Issued: November 20, 2009

BID OPENING

Sealed bids, in duplicate, will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002, until **10:30 AM Thursday, December 17, 2009** and all bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby at 11:00 AM on that date for the purchase of:

**GRAFFITI ERADICATION and PROTECTIVE COATING SERVICES
FOR
VARIOUS DEPARTMENTS
BID INVITATION NO.: S11-L23489
NIGP CODE: 485-16**

BUYER

Questions regarding this solicitation document should be addressed to **Gloria Jordan-King** at **832-393-8750** or e-mail to **gloria.king@cityofhouston.net**.

ELECTRONIC BIDDING

In order to submit a bid for the items associated with this procurement, you must fill in the pricing information on the "**PLACE BID**" page.

PRE-BID CONFERENCE

A Pre-Bid Conference will be held for all Prospective Bidders at the City Hall, Strategic Purchasing Division, 900 Bagby, Conference Rm. 2 (Basement), Houston, Texas 77002 at **1:30 PM on Wednesday, December 02, 2009**.

All Prospective Bidders are urged to be present. It is the bidder's responsibility to ensure that they have secured and thoroughly reviewed the solicitation documents prior to the Pre-Bid Conference. Any revisions to be incorporated into this solicitation document arising from discussions before, during and subsequent to the Pre-Bid Conference will be confirmed in writing by Letter(s) of Clarification prior to the bid due date. Verbal responses will not otherwise alter the specifications, terms and conditions as stated herein.

Bidding forms, specifications, and all necessary information should be downloaded from the Internet at <https://purchasing.houstontx.gov/>. By registering and downloading this solicitation document, all updates to this solicitation document will be automatically forwarded via e-mail to all registered bidders. This information may also be obtained from the Supplier Assistance Desk, Strategic Purchasing Division, 901 Bagby, Concourse Level, Houston, Texas 77002.

The place of the bid opening may be transferred in accordance with Paragraph (b), (5) of Section 15-3 of The Code of Ordinances, Houston, Texas. The bid opening meeting may be rescheduled in accordance with Paragraph (b), (6) of said Section 15-3.

The City reserves the right to reject any or all bids or to accept any bid or combination of bids deemed advantageous to it.

City Employees are prohibited from bidding on this solicitation in accordance with the Code of Ordinances, Section 15-1.

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***NOTE 1: Actual page numbers for each Section may change when the solicitation document is downloaded from the Internet or because of Letters of Clarification. Therefore, Bidders must read the bid document in its entirety and comply with all the requirements set forth therein.**

***NOTE 2: To be considered for award, please submit the electronic bid form and the forms listed in Section A, including the Official Signature Page, which must be signed by a company official authorized to bind the company.**

SECTION A



**GRAFFITI ERADICATION and PROTECTIVE COATING SERVICES
FOR VARIOUS DEPARTMENTS
BID INVITATION NO.: L11-L23489
NIGP CODE: 968-71**

To The Honorable Mayor
and Members of the City Council
of the City of Houston (the "City"), Texas:

The undersigned Bidder hereby offers to contract with the City upon the terms and conditions stated in that certain "**Contract for Graffiti Eradication and Protective Coating Services for a one (1) year term with up to four (4) one-year option periods for Various Departments**", which was distributed by the City together with the "Notice to Bidders" and is hereby incorporated herein by this reference (the "Contract"). This offer is made at the prices stated on the electronic Bid Form. When issued by the City of Houston, Letters of Clarification shall automatically become part of this bid document and shall supersede any previous specifications or provisions in conflict with the Letters of Clarification. It is the responsibility of the bidder to ensure that it has obtained all such letters. By submitting a bid on this project, bidder shall be deemed to have received all Letters of Clarification and to have incorporated them into its bid.

The City may accept this bid offer by issuance of a Contract covering award of said bid to this Bidder at any time on or before the 180th day following the day this Official Bid Form is opened by the City. This offer shall be irrevocable for 180 days, but shall expire on the 181st day unless the parties mutually agree to an extension of time in writing.

The City of Houston reserves the option, after bids are opened, to increase or decrease the quantities listed, subject to the availability of funds, and/or make award by line item.

If the City accepts the foregoing offer, this Bidder promises to deliver to the City Purchasing Agent of the City, five (5) original counterparts of said Contract duly executed by this Bidder (as "Contractor") in accordance with this paragraph, proof of insurance as outlined in Article II of the Contract, all on or before the tenth (10th) day following the day this Bidder receives from the City the unsigned counterparts shall be executed so as to make it binding upon the Bidder, and all of the applicable requirements stated in the document entitled "Instructions for Execution of Contract Documents," (which was distributed by the City) shall be complied with.

The City reserves the right to accept or reject, in whole or in part, any or all bids received and to make award on the basis of individual items or combination of items, as it is deemed in the best interest of the City.

If the City accepts the foregoing offer, this bidder shall furnish all labor, supervision, materials, supplies, equipment and tools necessary to provide Graffiti Eradication & Protective Coating Application Services for Various Departments for the City in accordance with attached Specifications.

Additional Required Forms to be included with this Bid:

In addition to the Electronic Bid Form and the Official Signature Page, the Forms listed in Table 1 **must be completed and submitted to the Office of the City Secretary on or before the date and time the bid is due.** When submitting bids via UPS/FedEx, etc. please label it with the name: Office of the City Secretary, City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002, along with the bid/proposal number:

TABLE 1 - REQUIRED FORMS
Affidavit of Ownership.doc
Fair Campaign Ordinance.doc
Statement of Residency.doc
Conflict of Interest Questionnaire.doc
Pay or Play Program Acknowledgement Form
Contractor's Reference Questionnaire

Table 2 lists other documents and forms that should be viewed/downloaded from the City's website, but are not required to be submitted with the bid. The City will request these forms, as applicable, to be completed and submitted to the City by the recommended/successful bidder:

TABLE 2 - DOCUMENTS & FORMS
EEOC.doc
Formal Instructions for Bid Terms.doc
Drug Forms.doc
M/WBE.doc
Sample Insurance Over \$50,000.pdf
Pay or Play Affirmative Action & Contract Compliance Q & A
Pay or Play Affirmative Action & Contract Compliance Requirements
Pay or Play Contractor/Subcontractor Payment Reporting Form
Pay or Play Contractor/Subcontractor Waiver Request
Pay or Play List of Participating Subcontractors
Pay or Play Certification of Agreement to Comply w' the Program
Performance Bond

Questions concerning the Bid should be submitted in writing to: City of Houston, Strategic Purchasing Division, 901 Bagby, Room B506, Houston, TX 77002, Attn: Gloria Jordan-King at **832-393-8750** or e-mail (preferred method) to **gloria.king@cityofhouston.net** no later than **3:00 PM, Friday, December 11, 2009.**

CONTRACTOR'S QUESTIONNAIRE

In order to receive bid award consideration, the bidder must be able to demonstrate that they are currently providing or have had at least one contract, as a prime contractor, for **GRAFFITI ERADICATION and PROTECTIVE COATING SERVICES** that is similar in size and scope to this contract. **Bidder must have references documenting that it has performed Graffiti Services.** The reference(s) should be included in the space provided below. Please attach another piece of paper if necessary. If references are not included with the bid, the bidder shall be required to provide such references to the City of Houston within five working days from receipt of a written request from the City of Houston to do so. **Bidder's capability and experience shall be a factor in determining the Contractor's responsibility.**

1. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Services: _____
2. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Services: _____
3. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Services: _____

A. The Contractor must be able to demonstrate that it has provided graffiti eradication and protective coating services on a single minimum 5,000² and up to 500,000² ft buildings exterior as a prime contractor.

1. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Services: _____

Contractor's Questionnaire (Continued):

2. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Services: _____

B. The Contractor must be able to demonstrate that it can and has performed graffiti eradication and protective coating services on buildings, etc. that are over 40 feet high.

1. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Services: _____

2. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Services: _____

C. The Contractor must be able to demonstrate that it can and has provided graffiti eradication services on a minimum of 3 to 15 facilities simultaneously on a daily basis as a prime contractor.

1. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Services: _____

2. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Services: _____

The following list is a minimum of type equipment and requirements that will be needed to perform effective and efficient graffiti eradication services. Do you and can you show you have this equipment readily available and show that you meet the requirements for this service?

D. Equipment List:

1. Trailer/truck mounted water tank @ minimum of 225 gallons Y____ N____
2. Motorized sump pump to feed portable pressure washer or equivalent/alternative to the stated specification Y____ N____
3. Portable pressure washer that outputs 2000 PSI and 200 degree F Hot Wash Y____ N____
4. 3/4-ton minimum truck or van with Trailer Hitch or equivalent/alternative to the stated specification Y____ N____
5. Trailer open or enclosed with 10,000 – 12,000 GVW minimum or equivalent/alternative to the stated specification Y____ N____
6. Portable electrical generator 3500 watt 110/120/240 volt Y____ N____
7. Hand electric orbital sander Y____ N____
8. Hand belt sander Y____ N____
9. Miscellaneous general tool set consisting of wrenches/pliers/socket sets. Y____ N____
10. Portable airless pain sprayer – standup roll around – outputs .58 gpm/ holds up to 23,000 TIP/O – 3200 psi Y____ N____
11. Miscellaneous paint brushes and rollers for interior and exterior Y____ N____
12. Folding and extension ladder Y____ N____
13. Portable dust enclosures and tarps Y____ N____
14. Business Store Front Operations with adequate office staff and field staff to support this contract along with its other business operations. Home business operations will not be accepted for Business Store Front Operations. Y____ N____
15. All laborers performing services are a minimum of 18 years of age, licensed to drive in the State of Texas, and are not listed on any County in the State of Texas and/or not on the State of Texas Sex Offenders database. Y____ N____
16. Safe storage facility for chemicals used in the performance of the contract. Y____ N____

PERFORMANCE BOND:

The successful Contractor shall be required to provide a Performance Bond or a Clean Irrevocable Letter of Credit in the amount of **100%** of the total recommended award amount for the initial term of the contract. The Contract term is one-year with four one-year options to renew for a total five-year term.

The bond will be renewed for each one-year term upon extension of the Contract. Further, subsequent to Contract award extension and upon the City's written notification, to the Contractor, of its intent to exercise a one-extension year contract option year, the Contractor shall provide to the City, within ten (10) calendar days of receipt of such notification, a Performance Bond or Clean Irrevocable Letter of Credit in the amount of 100% of the total estimated cost of the affected option year.

The Performance Bond shall be in the same form as that distributed by the City, and attached hereto, all duly executed by the contractor (as "Principal") and by a Corporate Surety Company licensed to do business in the State of Texas, and shown in the most recent edition of United States Treasury Circular 570 as having an "underwriting limitation" at least as great as that amount of the Performance Bond.

The Clean Irrevocable Letter of Credit must be submitted on the form provided herein and signed by an officer of the institution with the appropriate authority to issue said document.

The Contractor must deliver the Performance Bond or Clean Irrevocable Letter of Credit to the City Purchasing Agent of the City on or before the tenth (10th) day following the day the Bidder receives notification from the City of that it is the recommended for the contract award.

SITE INSPECTION

The City of Houston reserves the right to inspect the bidder's current place of business to evaluate equipment condition and capabilities, staff experience, training and capabilities, and storage capabilities as they relate to the performance of this contract.

QUALITY AND WORKMANSHIP

The bidder must be able to demonstrate upon request that it has satisfactorily performed services similar to the services specified herein. The bidder will provide records of warranty and repair services upon request by City. The City of Houston shall be the sole judge as to whether the services performed are similar to the scope of services contained herein and whether the bidder is capable of performing such services.

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SECTION B
SCOPE OF WORK/SPECIFICATIONS
FOR
GRAFFITI ERADICATION and PROTECTIVE COATING SERVICES

1.0 INTRODUCTION:

The City of Houston is seeking bids from qualified firms for graffiti eradication and protective coating services for Various Departments.

Graffiti removal methods may include painting, abrasive removal techniques and other methods proposed by the Contractor and approved by the City. Graffiti removal methods shall not harm, deface or mark the surface.

1.1 SCOPE OF WORK:

1.1.1 The Contractor shall provide all permits, labor, traffic control by a certified peace officer, material, equipment, warranties, surface preparation, application, products, repainting, inspection, safety, tools and parts necessary to perform and execute graffiti eradication and also provide protective coating applications to facilities and amenities for various City Departments.

1.1.2 This specification covers mandatory requirements governing the supervision, warranties, surface preparation, application, products, repainting, inspection, performance/execution, safety, and immediate response for eradication and protective coating services.

2.0 SUPERVISION, EQUIPMENT, AND MATERIAL:

2.1 The methods of eradication shall vary depending upon the type of damage inflicted by graffiti paint, conditions, and type of substrate surfacing. The contractor shall determine the most efficient and effective means/methods current in the trade to eradicate graffiti and apply protective coating at various locations throughout the City of Houston. The contractor must receive approval from the appropriate City department designee before beginning any work.

2.2 The contractor agrees to furnish, but not limited to, all labor, traffic control by a certified peace officer, equipment, supervision, materials and supplies, and transportation necessary to provide graffiti eradication and protective coating application services for the City of Houston. The methods of eradication shall vary depending upon the type of damage imposed by graffiti paint, conditions and type of substrate surfacing. At various locations throughout the City of Houston, the contractor shall determine the most efficient and effective means/methods current in the trade to eradicate graffiti and apply protective coating. All means and methods shall be submitted to appropriate Department Administrator/Designee of the contract for approval and prior to performing eradication services.

3.0 WARRANTY:

3.1 Protective Coating Warranty shall include but not limited to all serviced areas performed under this contract for a term not less than one (1) year on workmanship and on products used, commencing at the completion date of each work order performed by the Contractor under normal circumstances. Also, the contractor shall be required to provide to City's representative any and all product warranties from the manufacturer(s) prior to beginning work on this contract.

4.0 AREAS TO BE COVERED w/GRAFFITI ERADICATION SERVICES

4.1 Areas that require graffiti eradication and/or protective coating application include the following, but are not limited to:

4.1.1 Community Center building walls, ceilings, overhangs, doors, etc. Exterior/interior face of tile, wood, brick, concrete block, stucco, metals, etc.

4.1.2 Swimming pool building walls, ceilings, overhangs, doors, etc. Exterior/interior face of tile, wood, brick, concrete block, stucco, metals, etc.

4.1.3 Restroom modular building walls, ceilings, overhangs, doors, partitions, etc. exterior/interior face of tile, wood, brick, concrete block, stucco, metals, etc..

4.1.4 Statues monuments, and sculptures - metals, stone, granite, limestone, etc.

4.1.5 Concrete/asphalt flatwork driveways, sidewalks, plaza areas, basketball/tennis courts, City right of ways and City owned property.

4.1.6 Park bench/picnic table - colored/white concrete, metal, wood, polyvinyl chloride (PVC) coated material etc.

4.1.7 All types of trees.

4.1.8 Barbecue pits and trash can barrels - galvanized/painted metal.

4.1.9 Ball field bleachers - wood, galvanized/painted steel and metal.

4.1.10 Basketball backboards - galvanized/painted steel and metal and plastics.

4.1.11 Fences - wood, galvanized/painted steel and metal, chain link.

4.1.12 Playground equipment - wood, metal, plastics, and lexans.

4.1.13 Windows - glass, lexans, and plastics.

4.1.14 Light and/or poles - galvanized/painted steel and metal.

4.1.15 Identification signs - wood, metals, lexans galvanized/painted, vinyl and ink lettered sheeting.

4.0 AREAS TO BE COVERED w/GRAFFITI ERADICATION SERVICES

4.1.16 Water/drinking fountains - decorative stone, stainless steel, concrete.

4.1.17 Granite, marble & concrete aggregate, concrete & brick walls

- 4.1.18 Bridges, Cement Walkways
- 4.1.19 Community Centers interior graffiti
- 4.1.20 Sheetrock
- 4.1.21 Storage Tanks (steel, galvanized or concrete), and equipment such as generators, wells, booster pumps, etc.

5.0 **REMOVAL/PAINT OVER OF GRAFFITI:**

5.1 Part 1 - General:

It is the intent of this contract to have all graffiti eradicated. There shall be no evidence of the encountered graffiti damage upon completion of eradication and with no further damage invented by means of the eradication. The Contractor shall use the most current eradication method(s) best known used in trade, including, but are not limited to:

- 5.1.1 Product(s) that has expeditious response and success to breakup and dissolve paints markings, etc.
- 5.1.2 Equipment/machinery that has expeditious response and success to breakup and dissolve paints markings, etc.
- 5.1.3 Use only Bio-Degradable and Environmentally Safe graffiti cleaners and solvents.
- 5.1.4 Submit and maintain at all times during the contract period any manufacturer's product data, application instructions, application equipment, and material safety data sheets. For verification purposes, submittal of representative samples may be required.
- 5.1.5 Perform quality assurance/field applied mock-ups with manufacturers to determine the best product(s) for services to be rendered. When quality assurance/field mock-ups are performed and approval of acceptability by the City of Houston is issued, mock-ups may be included as part of the work. Unacceptable field mock-ups shall be the sole responsibility of the contractor.

5.2 Part II. - Execution:

- 5.2.1 Clean hot water pressure rinse system (**special care should be taken to ensure that damage is not caused** to the **substrate surface areas** and/or **existing protective coated surface areas**). Prior to abatement, existing damages shall be brought to the attention of the Contract Manager(s) for comprehensive documentation. Not adhering to this procedure will prompt the inspections by the City to document damages not brought to the attention prior and all damages shall become the sole responsibility of the Contractor to promptly correct before the Contractor, submits its invoice to the City for acceptance of work and payment.
- 5.2.2 All cleaners, degreasers, solvents, etc. used for abatement that fall under City, State, and/or Federal Codes for containment, shall be contained at all times and disposed of in the manner as required by the applicable Federal, State and City laws and regulations.
- 5.2.3 All excess and waste materials are the sole responsibility of the Contractor, and **must be removed daily** and at the end of any and all

work performed under this contract.

- 5.2.4 Wood surfaces may be cleaned under water pressures but so not to damage, splinter, or alter configurations and conditions prior to removal. All wood surfaces cleaned under water pressures shall be treated with a non-toxic quick dry wood sealant, as to maintain the life expectancy of the wood. The contractor shall not paint any wood surface without the prior approval from the City's designated representative.
- 5.2.5 All eradication of identifiable graffiti shall be uniformly squared immediately around the outer boundaries. There shall be no identifiable markings, legible readings, ghosting, bleed through and/or shadowing of the graffiti. Failure to perform acceptably will result in non-payment until acceptable performance is achieved.
- 5.2.6 Graffiti eradication services will not be required above forty (40) feet. Above forty (40) feet will be considered special circumstances and will require prior approval by the City's designated representative.
- 5.2.7 All graffiti eradication products and materials shall be applied in strict accordance with the manufacturer's recommendations and specifications.
- 5.2.8 Wet or dry blasting will be applied only where City, State, and/or Federal applicable laws and statues allowing such blasting but shall not be permitted in populated areas or in areas occupied by City employees.
- 5.2.9 Water needed by the Contractor to perform graffiti eradication services shall be the sole responsibility of the Contractor throughout the term of the contract. Although the majority of the City of Houston sites are equipped with water supply, it is the sole responsibility of the Contractor to confirm. The City of Houston will assist with any secured area on the site that may have water supply for the Contractor's use. **The City of Houston does not endorse or encourage any verbal and/or written agreements use of services and utilities of private and/or non-private individuals who are not affiliated with the contract.**
- 5.2.10 The Contractor shall supply all color-matched paint for all departments. When available, paint numbers will be supplied by appropriate Department representatives. The City may supply, when available, recycle paint for paint over on certain facilities amenities.

6.0 **PROTECTIVE COATING APPLICATION:**

6.1 **Part I. – General:**

Protective coating application includes surface preparation to remove dirt, dust, corrosion, existing loose and scaling protective coatings and similar contamination that would prevent bonding and cure of durable protective coating systems specified; primers, fillers barrier coats; intermediate and top coats on pool equipment, room walls, overhead structure, equipment and similar devices and sensing devices, motor shafts, parts of pumps and appurtenances are acceptable, but does not include operating parts, of pumps, chemical control equipment, and similar devices and sensing devices motor shafts, code required labels and nomenclature plates. Protective coating applications are defined as those types of materials and applications requiring more than normal skills and techniques for mixing, handling and application. Protective coating application includes but is not limited to the following:

- 6.1.1 Various metals.
- 6.1.2 Concrete masonry units.
- 6.1.3 Exterior concrete.
- 6.1.4 All exposed conduit, outlet boxes and electrical cabinets.
- 6.1.5 Prime coated hardware and other factory primed metal items, shop-fabricated or factory-built electrical equipment and accessories.
- 6.1.6 All exposed pipe, plumbing, and exhaust fans.
- 6.1.7 Where an item is not specifically mentioned, paint the same as similar adjacent materials or surfaces.
- 6.1.8 Make test patches to verify coating compatibility and adhesion over existing coatings and surfaces

6.2 DO NOT SUPPLY APPLICATION OF PROTECTIVE COATING ON:

- 6.2.1 Operating parts of mechanical, electrical, and plumbing equipment, including sensing devices, motor and fan shafts, and similar equipment.
- 6.2.2 Code required labels and nomenclature plates.

6.3 SUBMITTALS:

- 6.3.1 Submit protective coating manufacturer's product data, application instructions, application equipment, material safety sheets, and all warranties for application methods scheduled. For verification purposes, submittal of representative samples approximately 12" x 12" in size on brick or concrete block is required. On the back of each sample, identify surface preparation, fillers, primers, intermediate and finish coat used as well as total dry film thickness of coating system. The contractor shall be required to resubmit samples as requested until the color, sheen, and/or texture are achieved.

6.4 QUALITY ASSURANCE:

- 6.4.1 Manufacturers: Provide primary products, including each type of protective coating material and solvent required for each coating system, produced by a single manufacturer, which has produced that type of product successfully for not less than three (3) years. Provide secondary products which are acceptable to manufacturers of primary products.
- 6.4.2 Test Patches: Use test patches for each type of coating system and each substrate upon which coatings will be applied to confirm that substrates are properly prepared and that coatings will adhere and cure in accordance with the manufacturer's application instructions.

6.5 FIELD APPLIED MOCK-UPS:

- 6.5.1 Prior to application of protective coating, apply test patches not less than one square meter in area over each different substrate and sample areas representative of each type of protective coating system to demonstrate compatibility, adhesion, appearance, and workmanship. When acceptable, mock-ups may be included as part of the work. Unacceptable mock-ups shall be removed and reapplied until acceptable.

6.6 PRE-PROTECTIVE COATING APPLICATION CONFERENCE:

- 6.6.1 Prior to application of the protective coating, the City of Houston graffiti removal representative shall meet at the Project Site with the Contractor, installers of other work adjoining the protective coating work, representatives of other entities directly concerned with performance of protective coating work including product manufacturers, and the Department representative(s) of the contract. When requested, the Department

representative(s)/contractor/product supplier will tour areas, and discuss substrate condition, review test patches for adhesion, lifting, reaction with existing coatings, cure, sheen, reversion into components, etc.

6.7 **PRODUCTS:**

6.7.1 Acceptable protective coating material manufacturers are: Benjamin Moore Co., Aliphatic Acrylic Clear Coat Urethane #M7400 (or approved equal). Equivalent products shall be submitted for approval to department within five (5) days from the date of the request.

Benjamin Moore Co., Mesquite, TX., represented locally by Southwestern Paint Co., (Phone No.) (713) 522-1685.

6.8 **PROTECTIVE COATING SYSTEMS:**

6.8.1 The following specified products produced by Benjamin Moore Co., Mesquite, TX. are the quality and performance products that have been thoroughly researched for use on this project. Materials not displaying manufacturer's identification will not be acceptable.

6.8.1.1 Surface Preparation: Remove latency and mortar dropping; surfaces must be clean and dry. Cure all mortar and concrete. Test substrates for water transmission in accordance with accepted industry standards.

6.8.2 Protective Coating System SPC-1 (Concrete and Masonry Walls):

6.8.2.1 Block Filler and Concrete Sealer (When required) Benjamin Moore #160 "Super Spec" "Block Filler" and/or #066 "Masonry Sealer" (or approved equal) sprayed or rolled on the rate to achieve 8.0 mils. minimum dry film thickness. Allow twenty-four (24) hours curing period before top coating, or in accordance the manufacturer's recommendations.

6.8.2.2 Top Coats: Benjamin Moore #P74/#P75 "Super Spec Acrylic Aliphatic Urethane" (or approved equal), sprayed on at the rate minimum 8.0 mils dry film thickness in strict accordance with the manufacturer's recommendation time for curing prior to recoating.

6.8.3 Protective Coating System SPC-2 (Various Metals/Excluding Galvanized):

6.8.3.1 Surface Preparation: Prepare ferrous metal surfaces to comply with SSPC-SP6 "Commercial Blast Cleaning" and SSPC-SP1 "Solvent Cleaning" to remove rust, previously applied coatings, oil, grease, dust and similar contaminants from all items prior to application of primer.

6.8.3.2 Prime Coat: Benjamin Moore #P07-70 "Universal Metal Primer-Gray" (or approved equal) sprayed, rolled, or brushed on at the rate of 4.0 mils. minimum dry film thickness with manufacturer's recommendation during before top coating.

6.8.3.3 Topcoats: Benjamin Moore #P74/#P75 "Super Spec Acrylic Aliphatic Urethane" (or approved equal), sprayed on at the rate 8.0 mils minimum dry film thickness in strict accordance with the manufacturer's recommendation time for curing prior to recoating.

6.8.3.4 Color: Color selections of underlay and/or tinted base coated if required, will be determined by appropriate contract manager(s) as warranted.

6.8.4 Protective Coating System SPC-1 (Galvanized Items):

6.8.4.1 Surface Preparation: Solvent cleaning in accordance with SSPC-SP1. All faces must be clean and dry. Prepare rusted areas as specified or metals.

6.8.4.2 Prime Coat: Benjamin Moore P07-70 "Universal Metal Primer-Gray" (or approved equal) sprayed, rolled, or brushed on at the rate of 4.0 mils. minimum dry film thickness with the manufacturer's recommendation time for curing prior to recoating.

6.8.4.3 Topcoats: Benjamin Moore #P74/#P75 "Super Spec Acrylic Aliphatic Acrylic Urethane" (or approved equal), sprayed on at the rate to achieve 8.0 mils minimum dry film thickness, in strict accordance with the manufacturer's recommendation time for curing prior to recoating.

6.8.4.5 Color: Selections of underlay and/or tinted base coated, if required, will be determined by Appropriate Contract Manager(s) as warranted.

6.9 **PART III EXECUTIONS:**

6.9.1 Inspections: Applicator(s) will not commence work until the applicator deemed all conditions are ok to proceed with coating and/or sealants. Do not apply coatings over dirt, rust, scale, grease, moisture, scuffed surfaces, incompatible coatings, loose, wrinkled, or lifting coatings; or other conditions otherwise detrimental to formation of a durable coating film.

6.9.2. Standard Response Time: The Contractor shall be required to mobilize within three (3) working days after receipt of notice to proceed/work order for protective coating application services.

6.10 **SURFACE PREPARATION:**

6.10.1 Perform surface preparation and cleaning procedures in compliance with coating manufacturer's instructions for each particular substrate conditions and as specified:

6.10.1.1 Provide barrier coats over incompatible coatings (walls and structure) equivalent to Benjamin Moore #P07-70 Universal Metal Primer

6.10.1.2 Primer (or approved equal) applied at the rate 4.0 mils dry film thickness with manufacturer's recommendation time for curing prior to applications or completely remove incompatible coating and reapply primer as required. Notify the user department's designated representative in writing of any anticipated problems in using the specified coating systems with substrates.

6.10.1.4 Remove, mask, and protect hardware, hardware accessories, machined surfaces, plates, lighting fixtures, and similar items which are not to be coated, or provide surface-applied protection prior to surface preparation and coating operations. Following coating completion in each space or area, reinstall removed items, using workers skilled in the trades involved.

6.10.1.5 Clean surfaces to be coated before applying coatings or

surface treatments; solvents prior to mechanical cleaning. Schedule cleaning and application so that dust and other contaminants from the cleaning process will not fall on wet, newly coated surfaces.

6.10.1.6 Mask surfaces not scheduled to receive protective coating paint materials.

6.10.1.7 Protect adjacent surfaces at Owner's and adjacent properties from overspray.

6.11 CEMENTITIOUS SURFACE PREPARATION:

6.11.1 Prepare cementitious surfaces of concrete and cement plaster to receive protective coatings by removing efflorescence, chalk, dust, grease, oils, and by roughening, if required to remove glaze.

6.11.1.1 Use abrasive blast cleaning methods if recommended by coating system manufacturer.

6.11.1.2 Determine alkalinity and moisture content of surfaces to be coated by performing appropriate tests. Do not apply coatings over surfaces where moisture content exceeds that permitted in manufacturer's printed directions.

6.12 METAL SURFACE PREPARATION:

6.12.1 Clean non-galvanized, metal surfaces which have not been shop-coated, of oil, grease, dirt, loose mill scale and other foreign substances by solvent or mechanical cleaning, complying with Steel Structures Painting Council (SSPC) recommendations. Comply with other surface preparation requirements specified.

6.13 MIXING AND PREPARATION:

6.13.1 Mix and prepare coating system materials in accordance with manufacturer's directions. Maintain containers used in mixing and application of coating in a clean condition, free of foreign materials and residue. Stir materials before application to produce a mixture of uniform density, and stir as required during application. Do not stir surface film into material. Remove film and, if necessary, strain material before using.

6.14 APPLICATION:

6.14.1 Apply coatings by airless spray, brush or roller as best suited to substrate and application conditions, and in accordance with the manufacturer's recommendation. Brushes best suited for type of material being applied may be used only for minor touch-up of primers and barrier coats in inconspicuous areas. Use rollers made of carpet, velvet black or high-pile sheep's wool as recommended by manufacturer for material and texture required.

6.14.1.1 Provide finish coats which are compatible with prime paints used.

6.14.1.2 The number of coats and coating film thickness required is

the same regardless of the application method. Each coat must be applied and cured in accordance with the manufacturer's printed application instructions. Do not apply coats until previous coat has cured as recommended by coating manufacturer. Sand between coat applications where required to produce an even, smooth surface in accordance with the coating manufacturer's recommendation.

6.14.1.3 Apply additional coats when undercoats or other conditions show through final coat until cured film is of uniform finish, color and appearance.

6.15 COMPLETED WORK:

6.15.1 Match approved samples for color, texture and coverage. Remove, refinish, or recoat work not in compliance with specified requirements.

6.16 CLEAN-UP:

6.16.1 During progress of work on a daily basis, remove from project site discarded materials, rubbish, cans, and rags resulting from work. Upon completion of work, clean all coating-spattered surfaces. Remove spattered materials by proper methods of washing and scraping, using care not to damage finished surfaces.

6.17 PROTECTION:

6.17.1 Protect work at all times, barricade area of work at distances so not to allow persons not directly affiliated with the application process to enter the work area. Immediately correct damages by cleaning, repairing or replacing, and recoating as directed by the user departments designated representative. Leave work in undamaged condition. Provide "WET PAINT" signs as required to protect the finishes and the public. After coating application and cure, remove temporary masking and other protective wrappings and disposal of the material in strict accordance local, state and federal regulation.

7.0 CONTRACTOR FUNDING:

7.1 "A portion of the services described in this contract will be paid from the City's Community Development Block Grant (CDBG) funds received from the U. S. Department of Housing and Urban Development (HUD), therefore the Contractor shall be required to comply with all applicable CDBG requirements set forth at 24 CFR Part 570, which includes, but is not limited to, the program requirements listed in Appendices one (1) and two (2)."

8.0 SUBMITTING OF INVOICES FOR PAYMENT:

8.1 Invoices submitted for payment for the contract shall be precise, and without error. Failure to follow the outline for submittal will result in lengthy delay for payment. Also, see "Article III, Payment and Compensation for invoicing/ payment schedule. Invoices shall include, but not limited to the following:

8.1.1 All invoices for the work performed under this contract shall be submitted in triplicate and on Contractors company stationary, one (1) signed original by the authorized agent of the company and (2) two copies included.

8.1.2 City of Houston contract number, ordinance number, and work order

number supplied by the City of Houston. Contractors company invoice number shall be supplied that cannot be duplicated during the term period of the contract.

8.1.3 City facility name and address supplied by the City of Houston.

8.1.4 Beginning and ending dates for services rendered per site visit.

8.1.5 Total number of square feet for services rendered per site visit.

8.1.6 Unit cost, subtotal cost, and total invoice cost.

8.1.7 Upon request, before and after photographs of services rendered shall accompany invoices for payment and as outlined in 9.0 Performance/Execution of the specifications for Parks & Recreation Department, General Services Department and Public Works & Engineering Department. Services may be requested at a later date by any other departments at no additional cost to the City.

8.2 A single charge shall be bill for all square feet eradicated up to 65 square feet per a single job order. All other single job orders over sixty-five (65) square feet will be charged per square foot pricing.

8.2.1 City of Houston
Parks & Recreation Dept.
2999 South Wayside
Houston, Texas 77023
Contact Person: Wayne Wilson @ 713-742-1417

8.2.2 City of Houston
General Services Department
611 Walker, 3rd Floor Annex Rm 318
Houston, Texas 77002
Contact Person: Tom Edwards @ 713-837-7588

8.2.3 City of Houston
Public Works & Engineering Department
611 Walker
Houston, Texas 77002
Contact Person: Jerry Zahn @ 713-837-0977

9.0 PERFORMANCE/EXECUTION:

9.1 Before and after photos shall be provided for each call out assignment where eradicated and protective coating services was performed.

9.1.1 All photos MUST be electronically labeled with the date when services were rendered. Photographs can be neatly and firmly secured to a hardback surface and neatly/legibly labeled with pertaining information for job and invoicing association, or digitally supplied "via" e-mail or on a supplied disk.

9.1.2 It is the contractor's responsibility to devise a contingency/backup plan in case of initial equipment failure. No invoices will be accepted or processed for payment without the required photos, and furnished as outlined in these specifications.

- 9.1.3 Any photos supplied shall have the equal amount of before photos as after and with same angles, positions, and area where graffiti exist, (NO EXCEPTIONS). Photos must be with clarity where words and letters are legible to the naked eye without the use of magnifying equipment in most cases.
- 9.2 The Contractor shall promptly remove all equipment, machinery, materials, and supplies on a daily basis from the premises of each job, unless prior approval by the user department's designated representative. The City of Houston will not be responsible for storing contractor's equipment, machinery, equipment, and supplies.
 - 9.2.1 Response Time:
The contractor shall respond to requests for graffiti eradication services within twenty-four (24) hours after receipt of a written request for services (notice to proceed letter or work order) from a designated department representatives.
 - 9.2.2 Department designees assigning job mobilizations are as follows:
 - 9.2.2.1 Parks & Recreation Department – Wayne Wilson @713-742-1417
 - 9.2.2.2 General Services Department – Tom Edwards @ 713-837-7588
 - 9.2.2.3 Miller Theater – Shawn Hauptmann @ 713-284-8352 or 713-284-8354
 - 9.2.2.4 Public Works & Engineering – Jerry Zahn @ 713-837-0977
 - 9.2.3 **ALL EMERGENCY RESPONSE TIME:**
 - 9.2.3.1 The contractor shall respond to requests for emergency graffiti eradication services within four (4) hours after receipt of a written request for emergency services (notice to proceed letter or work order) from a designated department representatives
 - 9.2.3.2 Contract services may be required seven (7) days per week, 24 hours per day, including authorized City holidays.
 - 9.2.3.3 It is the responsibility of the Contractor to ensure the safety of City employees, and the general public.
 - 9.2.3.4 The contractor shall ensure at all times that its crews are fully equipped with the needed materials and supplies to execute services promptly, efficiently, and effectively.
 - 9.2.3.5 Upon request, daily schedules shall be fax forwarded/emailed/telephoned to the designated department representative overseeing the contract activity.
 - 9.2.3.1 Depicting crew(s) schedule and in the order of site visit.

- 9.2.3.2 Schedules shall be faxed no later than 8:00 A.M. each day services are rendered.
 - 9.2.3.3 Schedules shall indicate previous day completions.
 - 9.2.3.4 The City reserves the right to change the schedule during the workday.
- 9.2.4 The contractor and its subcontractors' crews shall possess at all times updated legible packets containing:
- 9.2.4.1 Copy of Contract.
 - 9.2.4.2 List of chemicals with MSDS sheets used on each job and while on City of Houston Property. Disregard of this mandate will result in immediate and automatic shutdown of ongoing work where infraction occurred until corrective measures are taken.
 - 9.2.4.3 The City of Houston shall issue a notice to proceed or work order for each job.
 - 9.2.4.4 Each notice to proceed or work order shall indicate the initial assessed square feet amount for the job.
 - 9.2.4.5 Site mobilization/start of a job by the contractor, shall constitute acceptance of the notice to proceed or work order and the square foot amount indicated.
 - 9.2.4.6 Prior to site mobilization/start of the job, any square feet amount disputes/discrepancies issued with each notice to proceed or work order, shall immediately be brought to the attention of department designee managing the contract.
 - 9.2.4.7 The invoice submitted for payment must be the square feet amount that was specified in the notices to proceed letter or work order.
 - 9.2.4.8 In the event turf grounds are water saturated that will not allow vehicles, equipment, and machinery near the proximity of work to be performed, provisions shall be made under the following conditions:
 - 9.2.4.8.1 Adhere to the twenty-four (24) hour stipulation for graffiti eradication response.
 - 9.2.4.8.2 There are no exceptions for the twenty-four (24) hour response, except situations where extreme environmental conditions exist that are life threatening for causing injury and/or death.
 - 9.2.4.9 Care shall be observed at all times when operating upon City grounds, around trees, shrubs, and landscaping. The Contractor will be responsible for all direct damages caused by his or her negligence during operations.

9.2.10 CREW SIZE:

The Contractor shall be responsible for determining the crew sizes to perform the services specified in the notice to proceed letter or work order. For crew size verification, the City Must be contacted upon any initial mobilization and job site arrival for each work order. **Any one-person crew dispatched shall complete eradication of a work order within reasonable time from initial mobilization not to exceed seventy-two (72) hours** Crewmembers added to a jobsite after the contractor accepts a Notice to Proceed or work order shall be at the contractors' expense. Each Notice to Proceed or work order will be faxed back to the city depicting crew size selected prior to mobilizing. All jobs must be performed within time specified in the Notice to Proceed letter or work order.

9.2.11 LIQUIDATED DAMAGES:

Completion of work orders exceeding the specified response time will have a **10% of the total invoice amount per job** liquidated damages charge for each job that it exceeds the turnaround time for service. This amount shall be deducted from the Contractor's invoice for services rendered. In cases were the completion date has exceeded the turnaround time, the contractor may present in writing to the Department Designee, justification for the delay. If the (City of Houston) agrees that the delay is caused by circumstances beyond the control of the contractor, the COH may at the discretion of the department designee, waive or adjust the 10% of the total invoice amount per job.

9.2.12 CERTIFICATION & EXPERIENCE REQUIREMENTS:

Must be Traffic Control experienced and provide the City with equipment list for maintaining traffic control.

10.0 ADDITIONS & DELETIONS:

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

11.0 ESTIMATED QUANTITIES NOT GUARANTEED:

11.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of services outlined in the scope of work during the term of this contract. The quantities may vary depending upon the actual needs of the user Department. The quantities specified herein are good faith estimates of usage during the term of this contract. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into based on the City purchasing requiring all the quantities specified herein.

12.0 WARRANTY OF SERVICES:

12.1 *Definitions:* "Acceptance" as used in this clause, means the act of an authorized representative of the City by which the City assumes for itself, approval of specific services, as partial or complete performance of the contract.

12.2 "Correction" as used in this clause, means the elimination of a defect.

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

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

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

**SECTION C
GENERAL TERMS & CONDITIONS**

THE STATE OF TEXAS

BID # S11 – L23489

COUNTY OF HARRIS

ORDINANCE # _____

CONTRACT # _____

I. PARTIES

1.0 ADDRESS

THIS AGREEMENT for **Graffiti Eradication & Protective Coating Services** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and _____ ("Contractor or Vendor"), a corporation doing business in Texas.

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

City

City Purchasing Agent for Director
of Various Departments
City of Houston
P.O. Box 1562
Houston, Texas 77251

Contractor

Phone: _____
Fax: _____

The Parties agree as follows:

2.0 TABLE OF CONTENTS

2.1 This Agreement consists of the following sections:

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- A. DEFINITIONS
- * B. SCOPE OF SERVICES
- * C. EQUAL EMPLOYMENT OPPORTUNITY
- * D. MWBE SUBCONTRACT TERMS
- * E. DRUG POLICY COMPLIANCE AGREEMENT
- F. CERTIFICATION OF NO SAFETY IMPACT POSITIONS
- * G. DRUG POLICY COMPLIANCE DECLARATION
- * H. FEES AND COSTS
- * I. CITY’S CONTRACTORS PAY OR PLAY PROGRAM
- * J. PERFORMANCE BOND

* Note: These Exhibits shall be inserted into the Contract agreement at the time of Contract execution.

***APPENDICES**

- I. CDBG PROGRAM REQUIREMENTS
- II. CERTIFICATE REGARDING LOBBYING
- III. City of Houston Housing and Community Development
- IV. Wage Decision TX080121, Mod. 14, 10/9/2009

3.0 PARTS INCORPORATED

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

4.0 CONTROLLING PARTS

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

5.0 DEFINITIONS

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

6.0 SIGNATURES

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

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

By: _____
Name:
Title:

By: _____
Name:
Title:
Federal Tax ID Number: _____

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

City Purchasing Agent

City Controller

DATE COUNTERSIGNED:

This Contract has been reviewed as to form by the undersigned legal assistant and has been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

Date

Legal Assistant

II. DUTIES OF CONTRACTOR

1.0 SCOPE OF SERVICES

- 1.1 In consideration of the payments specified in this Agreement, Contractor shall provide all supervision, labor, tools, equipment, permits, parts, expendable items, material, and supplies necessary to perform the services described in Exhibit "B."

2.0 RELEASE

- 2.1 PRIME CONTRACTOR/SUPPLIER AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE CITY) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

3.0 INDEMNIFICATION

- 3.1 PRIME CONTRACTOR/SUPPLIER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY "THE CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:
- 3.1.1 PRIME CONTRACTOR/SUPPLIER AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 2.1-3.2, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
 - 3.1.2 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND
 - 3.1.3 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.
 - 3.1.4 PRIME CONTRACTOR/SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS CONTRACT AND FOR FOUR YEARS AFTER THE CONTRACT

TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE. CONTRACTOR SHALL NOT

INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

- 3.2 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.

4.0 INDEMNIFICATION PROCEDURES

- 4.1 Notice of Claims. If the City or Prime Contractor/Supplier 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:

- 4.1.1 a description of the indemnification event in reasonable detail, and
- 4.1.2 the basis on which indemnification may be due and
- 4.1.3 the anticipated amount of the indemnified loss.

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

4.3 Defense of Claims

- 4.3.1 Assumption of Defense. Prime Contractor/Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Prime Contractor/Supplier shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Prime Contractor/Supplier must advise the City as to whether or not it will defend the claim. If Prime Contractor/Supplier does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

- 4.3.2 Continued Participation. If Prime Contractor/Supplier 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. Prime Contractor/Supplier 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 Prime Contractor/Supplier 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.

5.0 INSURANCE

- 5.1 Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverage in the following amounts:
- 5.1.1 Commercial General Liability insurance including Contractual Liability insurance:
\$500,000 per occurrence; \$1,000,000 aggregate
- 5.1.2 Workers' Compensation including Broad Form All States endorsement:
Statutory amount
- 5.1.3 Automobile Liability insurance
\$1,000,000 combined single limit per occurrence
Defense costs are excluded from the face amount of the policy
Aggregate Limits are per 12-month policy period unless otherwise indicated
- 5.1.4 Employer's Liability
- | | |
|---------------------------|---------------------------|
| Bodily injury by accident | \$100,000 (each accident) |
| Bodily injury by disease | \$100,000 (policy limit) |
| Bodily injury by disease | \$100,000 (each employee) |
- 5.2 All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, Contractor shall give written notice to the Director if any of its insurance policies are cancelled, materially changed or non-renewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:
- 5.2.1 immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
- 5.2.2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

6.0 WARRANTIES

- 6.1 Contractor represents and warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.
- 6.2 With respect to any parts and goods furnished by it, Contractor warrants:
- 6.2.1 that all items are free of defects in title, material, and workmanship,
- 6.2.2 that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed, that each replacement item is new in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and
- 6.2.3 that no item or its use infringes any patent, copyright, or proprietary right.

7.0 LICENSES AND PERMITS

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

8.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE

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

9.0 MWBE COMPLIANCE

- 9.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 11% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them.
- 9.2 Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration in Houston, Texas if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "D". If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

10.0 DRUG ABUSE DETECTION AND DETERRENCE

- 10.1 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.

- 10.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
 - 10.2.1 a copy of its drug-free workplace policy,
 - 10.2.2 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
 - 10.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F".
- 10.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G". 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.
- 10.4 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.
- 10.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

11.0 ENVIRONMENTAL LAWS

- 11.1 Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations ("Environmental Laws"). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.
- 11.2 Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Regulations. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil,

gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or

elsewhere on City Property in violation of the Environmental Laws.

12.0 CITY'S CONTRACTOR PAY OR PLAY PROGRAM

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

12.2 The Pay or Play Program for various departments will be administered by the City of Houston Affirmative Action Division's designee and for a Department specific contract; the Department's designated contract administrator will administer the Pay or Play Program.

13.0 CONTRACTOR'S PERFORMANCE

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

14.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

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

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

14.3 Contractor shall defend and indemnify the City from any claims or liability arising out of Contractor's failure to pay its subcontractors as required by law. Contractor shall submit disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

DUTIES OF CITY

15.0 PAYMENT TERMS

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

15.2 TAXES

15.3 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.

16.0 METHOD OF PAYMENT

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

17.0 METHOD OF PAYMENT - DISPUTED PAYMENTS

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

18.0 LIMIT OF APPROPRIATION:

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

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

5.3 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."

- 5.4 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.

19.0 CHANGES

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

CHANGE ORDER

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

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

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:
[Signature of City Purchasing Agent or Director]

- 19.3 The City Purchasing Agent or Director may issue more than one Change Order, subject to the following limitations:
 - 19.3.1 Council expressly authorizes the City Purchasing Agent or Director to approve a Change Order of up to \$50,000. A Change Order of more than

\$50,000 over the approved contract amount must be approved by the City Council.

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

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

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

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

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

III. TERM AND TERMINATION

1.0 CONTRACT TERM

1.1 This Agreement is effective on the Countersignature Date and expires one (1) year after the starting date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement.

2.0 NOTICE TO PROCEED

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

3.0 RENEWALS

3.1 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for four successive one-year option terms on the same terms and conditions. If the Director/Chief of the City Department elects not to renew this Agreement, the City Purchasing Agent shall notify Contractor in writing of non-renewal at least 30 days before the expiration of the then current term.

4.0 TIME EXTENSIONS

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

5.0 TERMINATION FOR CONVENIENCE BY THE CITY

- 5.1 The City Purchasing Agent or Director may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies, which exist now or in the future.
- 5.2 On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section III unless the fees exceed the allocated funds remaining under this Agreement.
- 5.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

6.0 TERMINATION FOR CAUSE BY CITY

- 6.1 If Contractor defaults under this Agreement, the City Purchasing Agent or Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies, which exist now or in the future. Default by Contractor occurs if:
- 6.1.1 Contractor fails to perform any of its duties under this Agreement;
 - 6.1.2 Contractor becomes insolvent;
 - 6.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
 - 6.1.4 a receiver or trustee is appointed for Contractor.
- 6.2 If a default occurs, the City Purchasing Agent or Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent or Director, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director allows Contractor to cure the default and Contractor does so to

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

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

7.0 TERMINATION FOR CAUSE BY CONTRACTOR

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

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

8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS

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

IV. MISCELLANEOUS

1.0 INDEPENDENT CONTRACTOR

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

2.0 FORCE MAJEURE

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

- 2.2 This relief is not applicable unless the affected party does the following:
- 2.2.1 uses due diligence to remove the Force Majeure as quickly as possible, and
 - 2.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.
- 2.3 The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.
- 2.4 If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director may terminate this Agreement by giving 30 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 AT THE TIME OF THE TERMINATION.

3.0 SEVERABILITY

- 3.1 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.

4.0 ENTIRE AGREEMENT

- 4.1 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.

5.0 WRITTEN AMENDMENT

- 5.1 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 duly adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

6.0 APPLICABLE LAWS

- 6.1 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.
- 6.2 Venue for any litigation relating to this Agreement is Harris County, Texas.

7.0 NOTICES

- 7.1 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.

8.0 NON-WAIVER

- 8.1 If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.
- 8.2 An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

9.0 INSPECTIONS AND AUDITS

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

10.0 ENFORCEMENT

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

11.0 AMBIGUITIES

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

12.0 SURVIVAL

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

13.0 PARTIES IN INTEREST

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

14.0 SUCCESSORS AND ASSIGNS

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

15.0 BUSINESS STRUCTURE AND ASSIGNMENTS

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

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

16.0 REMEDIES CUMULATIVE

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

17.0 CONTRACTOR DEBT

17.1 If Contractor, at any time during the term of this agreement, incurs a debt, as the word is defined in Section 15-122 of the Houston City Code of Ordinances, it shall immediately notify the City Controller in writing. If the City Controller becomes aware that Contractor has incurred a debt, 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 therefore.

EXHIBIT A 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, change orders, and any written amendments authorized by City Council and Contractor.

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

"City Purchasing Agent" is defined as the person or duly authorized successor, authorized in writing to act for the City. The term includes, except as otherwise provided in this Contract, the authorized representative of the City Purchasing Agent acting within the limits of delegated authority.

"Contractor Administrator" means the representative of the Appropriate Department who is responsible for the administration for the Contract.

"Contract Award Notice" means the official notification substantiated by the Notice to Proceed issued by the City Purchasing Agent to the Contractor.

"Contract Charges" means charges that accrue during a given month as defined in Article III.

"Contract Term" is defined in Article IV.

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

"Countersignature Date" means the date this agreement is countersigned by the City Controller.

"Director" mean the Directors/Chiefs of each of the Departments or the City Purchasing Agent for the City, or the person he or she designates.

"Effective Date" is defined as date contract is countersigned by the City Controller.

"Governing Body" means the Mayor and City Council of the City of Houston.

"Hazardous Materials" is defined in Article II (Environmental Laws).

"Notice to Proceed" means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance.

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

**EXHIBIT B
SCOPE OF SERVICES**

(To be inserted by the City at the time of Contract execution)

EXHIBIT C
EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

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

EXHIBIT D
MWBE SUBCONTRACT TERMS

(To be inserted by the City at the time of Contract execution)

**EXHIBIT E
DRUG POLICY COMPLIANCE AGREEMENT**

(To be inserted by the City at the time of Contract execution)

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

I,

(Name - Print/Type) **(Title)**

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

Date

Contractor Name

Signature

Title

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

I,

(Name - Print/Type)

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

Date

Contractor Name

Signature

Title

**EXHIBIT G
DRUG POLICY COMPLIANCE DECLARATION**

(To be inserted by the City at the time of Contract execution)

**EXHIBIT H
FEES AND COSTS**

(To be inserted by the City at the time of Contract execution)

**EXHIBIT I
PAY OR PLAY**

(To be inserted by the City at the time of Contract execution)

APPENDIX I

CDBG PROGRAM REQUIREMENTS

SECTION 1

Title VI of The Civil Rights Act of 1964

The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) ("Title VI") and with Title 24 Code of Federal Regulations (CFR) Part 1, which implements Title VI. In accordance with Title VI, no person in the United States shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives federal financial assistance. The Contractor will immediately take any measures necessary to comply with Title VI. If any real property or structure thereon is provided or improved with the aid of federal financial assistance, this clause shall obligate the owner, or in the case of any transfer of such property, any transferee, to comply with the requirements and restrictions contained in this clause for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. **[24 CFR § 570.601]**

SECTION 2

Section 109 of The Housing and Community Development Act of 1974

The Contractor shall comply with Section 109 of the Housing and Community Development Act of 1974 ("Section 109") and implementing federal regulations, **24 CFR § 570.602**, issued pursuant to Section 109. No person in the United States shall, on the basis of race, color, national origin, or sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with community development funds. Section 109 also prohibits discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to any otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). **[24 CFR § 570.602]**

SECTION 3

Environmental Standards

Contractor understands that it does not assume the environmental responsibilities located at **24 CFR § 58. [24 CFR § 570.604]**

SECTION 4

National Flood Insurance Program

- A. If applicable, this Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234) for areas identified by HUD as having special flood hazards. The use of any funds provided for acquisition or construction in identified areas shall be subject to the Mandatory Purchase of Flood Insurance requirements of section 102(a) of said act.
- B. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this Agreement shall contain, if the land is located in an area identified by HUD as having a special flood hazard, provisions which obligate the transferee and its successors or assigns to obtain and maintain, during the life of the project, flood insurance as required under section 102(a) of the Flood Disaster Protection Act of 1973. These provisions shall be required notwithstanding the fact that the construction on the land is not itself funded with funds provided under this Agreement. **[24 CFR § 570.605]**

SECTION 5

Displacement, Relocation, Acquisition

Contractor understands that projects funded hereunder are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655); and that individuals or businesses that are required to move from real property, permanently or involuntarily as a direct result of rehabilitation, demolition, or acquisition for the project assisted hereunder must be compensated pursuant to the URA. **[24 CFR § 570.606]**

SECTION 6

Section 3 Of The Housing And Urban Development Act Of 1968

- (a) The work to be performed under this Agreement is on a project assisted under a program providing federal financial assistance from the Department of Housing and Urban Development (HUD). Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701u, "Section 3") applies to the Agreement. Under Section 3, to the greatest extent feasible, for any contract award in excess of \$100,000, the Contractor shall give opportunities for training and employment to lower-income residents of the City and shall award contracts for work in connection with the project to business concerns which are located in or owned in substantial part by persons residing in the City.
- (b) The Contractor will comply with the provisions of Section 3, and all applicable rules and orders of HUD issued there under prior to the execution of the Agreement. The Contractor certifies and agrees that there is no contractual or other disability which would prevent compliance with these requirements.
- (c) The Contractor shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the labor organization or workers' representative of the commitments under this Section 3 clause and shall post copies of the notice in

conspicuous places available to employees and applicants for employment or training.

(d) The Contractor will include or have included a Section 3 clause in every subcontract for work in connection with the project. The Contractor shall, at the direction of the City, take appropriate action pursuant to any subcontract upon a finding that the subcontractor is in violation of this Section 3 clause. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR § 135. The Contractor shall not let any subcontract unless the subcontractor has provided the Contractor with a preliminary statement of ability to comply with the requirements of this Section 3 clause.

(e) Compliance with the provisions of Section 3, and all applicable rules and orders of HUD issued there under prior to the execution of this Agreement shall be a condition of the federal financial assistance provided to the project. These provisions are binding upon the City, its contractors and subcontractors, their successors and assigns. Failure to fulfill these requirements shall subject the City, its contractors and subcontractors, their successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided.

(f) The Contractor shall have completed, signed and delivered a Voluntary Compliance Form (provided by the City) to the Director prior to the execution of this Agreement.

SECTION 7

Executive Order 11246, as amended by 12086

The Contractor agrees as follows:

A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor 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 nondiscrimination clause.

B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

C. The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor set forth at 41 CFR § 60.

E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of the U.S. Department of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

F. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of the U.S. Department of Labor, or as otherwise provided by law.

G. The Contractor will include provisions similar to paragraph A through F in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of the U.S. Department of Labor, issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon subcontractors or vendors. The Contractor will take such action with respect to any subcontract or purchase order as the City 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 City, the Contractor may request the United States to enter into such litigation to protect the interests of the United States. **[24 CFR § 570.607]**

SECTION 8

Lead-Based Paint Poisoning Prevention Act

This contract may be subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the implementing regulations at 24 CFR § 35, together with the Federal Lead-Based Paint Regulation, effective September 15, 2000, implementing Title X of the Housing and Community Development Act of 1992. Specifically, this contract may be subject to the provisions for the elimination of lead-based paint hazards pursuant to said regulations, and the Contractor may be responsible for all required inspections and certifications. **[24 CFR § 570.608]**

SECTION 9

Use Of Debarred, Suspended, Or Ineligible Contractors or Subrecipients

(a)The Contractor shall not employ, award contracts to, or otherwise engage the services of any contractor or subcontractor during any period of debarment, suspension, or placement in ineligibility status under provisions of 24 CFR § 24 or under the authority of the City.

(b)The Contractor shall not use CDBG funds for any contract for the construction, alteration or repair of the project funded under this agreement with any contractor or subcontractor of a

foreign country, or any supplier of products of a foreign country, that is identified by the Office of the United States Trade Representative as discriminating against U.S. firms in conducting procurement for public works projects. This restriction covers, without limitation, all architectural, engineering and construction services, and includes all products or goods, except construction equipment or vehicles used during the construction, alteration or repair which do not become part of a delivered structure, product or project. **[24 CFR § 570.609]**

SECTION 10

Uniform Administrative Requirements And Cost Principles

The Contractor shall comply with the policies, guidelines, and requirements of **24 CFR § 85**, "Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally-Recognized Indian Tribal Governments," and **OMB Circular numbered A-110, now codified at 24 CFR Part 84, A-87, and A-122 and A-133** as applicable, as they relate to the acceptance and use of Federal funds. **The applicable sections of 24 CFR Parts 84 and 85 are set forth at 24 CFR § 570.502. [24 CFR § 570.610]**

SECTION 11

Conflict Of Interest

A. In the procurement of supplies, equipment, construction, and services by the City or a subrecipient, the conflict of interest provisions in 24 CFR § 84 and 85 respectively, shall apply. In all cases not governed by 24 CFR § 84 and 85, the following shall apply:

In all cases not governed by 24 CFR § 84 and 85, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient, by its sub recipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g. rehabilitation, preservation, and other improvements of private properties or facilities pursuant to §570.202, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to **§ 570.203, § 570.204 or § 570.455**.

- (i) In accordance with **24 CFR § 570.611**, no persons described in paragraph (ii) (below) who exercise or have exercised any functions with respect to CDBG activities or who are in a position to participate in a decision-making process or gain inside information with regard to CDBG assisted activities, may obtain a personal or financial interest or benefit from, or have any interest in any contract, subcontract, or agreement or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
- (ii) The requirements of paragraph (i) apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, of any designated public agency, or sub recipient under which receives funds under the CDBG grant agreement with HUD. **[24 CFR § 570.611]**

SECTION 12

Executive Order 12372

Contractor understands that implementing regulations at 24 CFR § 52 are applicable to planning or construction of water or sewer facilities only, and that such regulation does not impart any responsibility upon it, rather the regulation imposes the Executive Order Review Process upon the City when funds are proposed for activities subject to review. **[24 CFR § 570.612]**

SECTION 13
Eligibility for Certain Resident Aliens

Contractor understands that certain newly legalized aliens, as described in 24 CFR § 49, are not eligible to apply for benefits under activities meeting the requirements of section § 570.208 (a) that either (1) have income eligibility requirements limiting the benefits exclusively to low and moderate income persons or are targeted geographically are otherwise to primarily benefit low and moderate income persons (excluding activities serving the public at large, such as sewers, roads, sidewalks, and parks), and that provide benefits to persons on the basis of application.

Contractor further understands that this restriction applies to covered activities funded under the Housing and Community Development Act of 1974, as amended; and that "benefits" under this section means financial assistance, public services, jobs, and access to new rehabilitated housing and other facilities made available under covered activities funded by the Community Development Block Grant Program. Benefits do not include relocation services and payments to which displaces are entitled by law. Furthermore, these restrictions apply only to applicants for new benefits not being received by covered resident aliens as of the effective date of this section. Compliance can be accomplished by obtaining certification as provided in **24 CFR § 49.20. [24 CFR § 570.613]**

SECTION 14
Findings Confidential

All of the reports, information, data, etc., prepared or assembled by the Contractor for purposes of meeting program requirements are confidential and the Contractor agrees that they shall not be made available to any individual or organization, other than an agency of the United States Government, without the prior approval of the City.

SECTION 15
Court Actions

The Contractor agrees to give the City immediate notice in writing of any actions or suits filed and prompt notices of any claims made against the City, the Contractor, or any of the parties involved in the implementation and administration of this Agreement.

SECTION 16
Records For Audit Purposes

Without limitation to any other provision of this Agreement the Contractor shall maintain all records concerning the program or project financed under this Agreement which the City reasonably requires for **four years** from the expiration date of the Agreement unless a longer period is required under **24 CFR § 570.502**. The Contractor will give the City, HUD, the Comptroller General of United States, the General Accounting Office, or any of their authorized representatives access to and the right to examine, copy, or reproduce all records pertaining to the acquisition and construction of the project and the operation of the program or project. The right to access shall continue as long as the records are required to be maintained.

SECTION 17
Compliance With Clean Air And Water Acts

This Agreement is subject to the requirements of the Clean Air Act, as amended (42 U.S.C. 7400 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.) and the regulations of the Environmental Protection Agency, **40 CFR § 15**. In compliance with the regulations, the Contractor agrees that:

A. No facility to be utilized in the project or program is listed on the list of Violating Facilities issued by the U.S. Environmental Protection Agency (EPA) pursuant to 40 CFR § 15.20.

B. The Contractor will comply with all the requirements of section 114 of the Clean Air Act, as amended, (42 U.S.C. 7414) and section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) pertaining to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308, and all regulations and guidelines issued thereunder.

C. As a condition for the award of this Agreement, the Contractor shall give prompt notice to the City of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized is under consideration to be listed on the EPA List of Violating Facilities.

D. The Contractor will include or cause to be included the requirements contained in paragraphs A through C of this clause in every lower-tier nonexempt contract and will take such action as the City may direct as a means of enforcing such provisions.

In no event shall any amount of the funds provided under the Agreement be utilized with respect to a facility which has given rise to a conviction under section 113(c)(1) of the Clean Air Act or section 309(c) of the Federal Water Pollution Control Act.

SECTION 18

Architectural Barriers Act and The Americans with Disabilities Act

The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 CFR Part 40 for residential structures, and Appendix A to 41 CFR Part 101-19, Subpart 101-19.6, for general type buildings).

The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 25, 1993 that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable--that is, easily accomplished and able to be carried out without much difficulty or expense.[24 CFR § 570.614]

SECTION 19

Audit Requirements

a. Limited Scope Audit - Contractor understands that Non-Federal entities that expend less than \$500,000 a year in Federal awards are exempt from Federal audit requirements for that year, but records must be available to review and audit as described hereinabove at Section 16. Contractor further understands that limited scope audits can and may be required by the City for Non-Federal entities that expend less than \$500,000. If the City requires such limited scope audits, same shall be performed in accordance with Office of Management and Budget (OMB) Circular A-133 - "Audits of States, Local Governments, and Non-Profits" which rescinds Circular A-128, Audits of State and Local Governments (codified at 24 CFR Part 45) and it supersedes the prior Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions, issued April 22, 1996 (codified at 24 CFR Part 44).

b. Single Audit - Contractor further understands that Non-Federal entities that expend \$500,000 or more a year in Federal awards shall have a single audit conducted pursuant to A-133, except when they elect to have a program-specific audit pursuant to and as described in A-133. Prior arrangements must be made to conduct such audit. Once the Contract is executed, Contractor understands that it is barred from considering such audit and must have a single audit conducted as described hereinabove.

SECTION 20

Labor Standards/Davis-Bacon Act

To the extent applicable, Contractor shall comply with the federal wage requirements for federally-assisted construction projects pursuant to the Davis-Bacon Act, as amended. **[24 CFR § 570.603]**

APPENDIX II

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds, other than Federally appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certificate is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

Date

By: _____

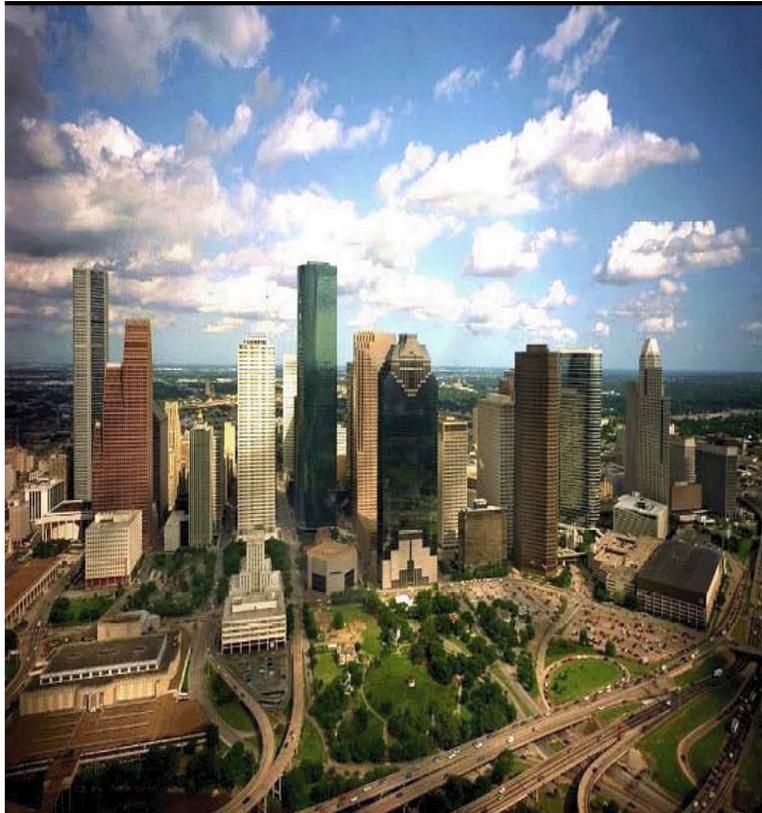
Name: _____

Title: _____

APPENDIX III

CITY OF HOUSTON
HOUSING AND COMMUNITY DEVELOPMENT
DEPARTMENT

C
D
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C
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G

Project Name & Address: _____

Name of the Contractor/Subcontractor: _____

Address including zip code: _____

Area Code/Phone Number: _____ Fax: _____

Services to be provided: _____

Company's Tax ID Number: _____

Amount of Contract: _____

Owner's Ethnicity/Racial Background: _____

Contract Person: _____

FC-0

SPECIAL CONDITIONS

**COMMUNITY DEVELOPMENT BLOCK GRANT ("CDBG")
PROGRAM PROVISIONS**

Contractor must comply with all of the regulations governing the CDBG Program (24 CFR Part 570), including but not limited to the provisions set forth below. The following terms and conditions are applicable to any contract, including construction work, assisted in whole or in part by funds awarded pursuant to Title I of the Housing and Community Development Act of 1974, as amended, and take precedence over any conflicting provisions in the foregoing Contract:

1. **AVAILABILITY OF FEDERAL FUNDS**

Contractor admits knowledge of the fact that the CITY's obligation hereunder for payment of compensation and expense reimbursement, if any, is limited to the Letter of Credit issued by the United States Government in connection with the CITY's CDBG Program Agreement, and that unless and until adequate funds have been received by the CITY under this Federal Grant and Letter of Credit to pay the Contractor's compensation and expense reimbursement, if any, the CITY shall have no obligation for payment of compensation and expense reimbursement to the Contractor.

2. **SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968**

- A. The work to be performed under this Contract is funded under a grant providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701u). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.
- B. The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of the Department of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of the Contract. The parties to the Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- C. The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding if any, a notice advising the said labor organization or worker's representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- D. The Contractor will include or have included this Section 3 clause in every lower-tier contract for work in connection with this Contract and will, at the direction of the CITY, take appropriate action pursuant to the lower-tier contract where it has notice or knowledge that the letter has been found in violation of regulations under 24 CFR Part 135 and will not

approve any lower-tier contract unless the lower-tier contractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

CDBG.FC - 03/09

- E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135 and all applicable rules and orders of the U.S. Department of Housing and Urban Development issued there under prior to the execution of the Contract, shall be a condition of the Federal financial assistance provided to the grant, binding upon the CITY, its successors, and assigns.

Failure to fulfill these requirements shall subject the CITY, its contractors and subcontractors, its successors, and assigns those sanctions specified by the grant or loan agreement or contract through which Federal Assistance is provided, and to such sanctions as are specified by 24 CFR Part 135, and revisions thereto. Attached hereto as **Attachment I** and made a part of this Contract are the Compliance forms to be completed and signed by the Contractor at the time of Contract execution and promptly mailed to the City of Houston, Housing and Community Development Department, Monitoring and Evaluation Section, P.O. Box 1562, Houston, Texas, 77251, Attention - Contract Compliance Officers.

3. DAVIS-BACON ACT-FEDERAL LABOR STANDARDS PROVISIONS (HUD4010)

Except with respect to the rehabilitation of residential property designed for residential use for less than eight families, the Contractor and all third-tier and lower-tier contractors engaged under contracts in excess of Two Thousand and No\100 Dollars (\$2,000.00) for the construction, prosecution, demolition, completion or repair of any building or work funded in whole or in part with monies provided under this Contract shall comply with the following requirements:

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of Americas and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

FC-2

A. Minimum Wages.

- (1). All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1948 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics, are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a) (1) (iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (2). Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- a. The work to be performed by the classification requested is not performed by a classification in the wage determination;
- b. The classification is utilized in the area by the construction industry; and
- c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator or the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise HUD or its designee or will notify HUD or its designee within the thirty (30)day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise HUD or its designee or will notify HUD or its designee within the thirty (30)day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140); and

The wage rate (including fringe benefits where appropriate) determined pursuant to this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- (3). Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4). If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

B. Withholding.

HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helper, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentices, trainee or helpers, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

C. Payrolls and Basic Records.

(1). Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(2). The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00041-1),

U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible

for the submission of copies of payrolls by all subcontractors. (Approved by the office of Management and Budget under OMB Control Number 1215-0149).

- (3). Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- a. That payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5(a)(3)(i) and that such information is correct and complete;
 - b. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
 - c. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by this Section.

The falsification of any of the above certifications may subject the contractor of subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

- (4). The contractor or subcontractor shall make the records required under Paragraph 1 of this Section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

D. Apprentices and Trainees.

- (1). **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In

addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provision of the Apprenticeship Program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (2). **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to an individually registered in a program which has received prior approval, evidence by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (3). **Equal Employment Opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order Number 11246, as amended, and 29 CFR Part 30.

E. Compliance with Copeland Act Requirements.

The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

F. Subcontracts.

The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may be appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

G. Contract Termination; Debarment.

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

H. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3 and 5 are herein incorporated by reference in this contract, as well as HUD Handbook Number 1344.1 (Federal Labor Standard Compliance in Housing and Community Development Programs), as applicable.

I. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

J. Certification of Eligibility.

By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

- (1). No part of this contract shall be subcontracted to any person or firm negligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.
- (2). The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration Transactions", provides in part:

"Whoever, for the purpose of....influencing in any way the action of such Administration....makes, utters or publishes any statement, knowing the same to be false...shall be fined not more than Five Thousand and No\100 Dollars (\$5,000.00) or imprisoned not more than two years, or both".

K. Complaints, Proceedings, or Testimony by Employees.

No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this contract to his employer.

4. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

As used in this paragraph, the terms "laborer" and "mechanic" include watchmen and guards.

A. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek, whichever is greater.

B. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in this Section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in this Section, in the sum of Ten and No\100 Dollars (\$10.00) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in this Section.

C. Withholding for Unpaid Wages and Liquidated Damages.

HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally - assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as

provided in the clause set forth in this Section.

D. Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in Paragraphs A through D of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in Paragraphs A through D of this Section.

E. Health and Safety.

- (1). No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulations.
- (2). The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly Part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96).
- (3). The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor.
The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

F. Helpers.

(1). Contracts awarded on or after October 21, 1993.¹

Contractors and subcontractors **may not employ "helpers"** as that term was defined in Section 5.2 (n) (4) of the suspended regulations on any Davis-Bacon covered contract awarded on or after October 21, 1993. Semi-skilled helper classifications and wage rates that were issued in wage determinations pursuant to the suspended regulations and that have been included in contracts awarded on or after October 21, 1993, are not valid. Moreover, the regulatory provision that allowed the consideration of additional classification actions for helpers is suspended; therefore, the Department of Labor ("Department") will not consider any additional classification requests that would permit the use of helpers as defined in the suspended regulations on such contracts. Davis-Bacon general wage determinations are being modified to omit those helper classifications and wage rates that were issued pursuant to the suspended regulations.

In accordance with its prior practice, the Department will, however, recognize helper classifications that are separate and distinct classes of workers performing duties distinguished from those of journey-level workers or other classifications listed on the wage determination; whose use prevails in an area; and who are not employed in an informal apprenticeship or training capacity. As detailed in the November 5, 1993, notice, the Department will issue such helpers on wage determinations or consider additional classification requests for such helpers where these criteria are met and a specific description

of duties is associated with the particular helper class. Helpers may be employed on contracts awarded after October 21, 1993, only if a definition of helper's duties establishing the helper as a separate and distinct classification is set forth in the wage determination or on the additional classification approval documents.

⁴IN THE CASE OF PROJECTS ASSISTED UNDER THE NATIONAL HOUSING ACT, THE APPLICABLE DATE IS THE START OF CONSTRUCTION OR THE INITIAL ENDORSEMENT OF THE MORTGAGE, WHICHEVER OCCURS FIRST. SIMILARLY, IN THE CASE OF PROJECTS TO RECEIVE HOUSING ASSISTANCE PAYMENTS UNDER SECTION 8 OF THE U.S. HOUSING ACT OF 1937, THE APPLICABLE DATE IS THE BEGINNING OF CONSTRUCTION OR THE DATE THE HOUSING ASSISTANCE PAYMENT CONTRACT IS EXECUTED, WHICHEVER OCCURS FIRST.

- (2). Contracts awarded prior to October 21, 1993 where the contract contains the newly-suspended helper clauses and the contract wage determination contains a helper classification or a helper classifications has been approved for use on the project.

Contractors and subcontractors may continue to employ individuals in helper classifications that were issued for application to contracts or approved for use on contracts awarded prior to the suspension of the regulations. The workers must, however, be employed in accordance with the regulatory definition set forth in Section 5.2 (n) (4) of Regulations, Part 5, which was applicable at the time the contract was awarded, and the workers must be paid at least the corresponding wage rate for the helper classification in which they are performing.

The Department will continue to take action to ensure that workers erroneously classified as helpers are reclassified as journey-level workers or laborers in accordance with the work performed (those cases, for example, where employees performed work solely of a skilled nature, where individuals do not work under the supervision and direction of a journey-level classification, or where workers perform duties beyond the duties performed by helpers pursuant to the practice in the area. The Department will also take enforcement action against any contractor or subcontractor that fails to compensate its helpers according to the applicable wage determination rate or approved conformance wage rate. Contracting agencies are also reminded of their enforcement responsibilities under Reorganization Plan Number 14 of 1950 and encouraged to take action as may be necessary to ensure compliance in such situations.

- (3). Contracts awarded prior to October 21, 1993 where the contract contains the newly-suspended helper clauses but the contract wage determination does not contain helper classification and a helper classification has not yet been approved for use on the project.

Contractors and subcontractors may not employ any classification, including helpers, on a Davis-Bacon covered project unless the wage determination contains the classification or the classification is approved pursuant to the Department's additional classification procedures. The regulations provide that the wage rates determined for unlisted classifications under the additional classification procedures shall be paid to all workers performing work in that classification from the first day on which work was performed. This regulatory provision permits retroactive application of approved additional classifications and wage rates and, at the same time, also allows for retroactive enforcement action against a contractor or subcontractor whose proposed additional classification and/or wage rate is denied by the Department.

Clearly, the Department cannot act on conformance requests for helpers or requests for reconsideration of such conformance actions given the Congressional action. Thus,

contractors or subcontractors who classify and pay individuals as helpers with the expectation that the Department will approve an additional classification request at some future point place themselves at risk of subsequent enforcement action, including the withholding of contract funds. Under these circumstances, agencies should use their enforcement discretion in determining whether withholding action is appropriate to protect the interest of employees where contractors pay individuals less than the journey-level rate during the period of the prohibition. Agencies clearly should withhold contract funds where the Department has denied a conformance request, even though the contractor or subcontractor may have or may intend to request reconsideration of the additional classification denial. Agencies should also withhold contract payments on any contract completed or nearing completion during the suspension of the helper regulations so that any back wages potentially due employees are not lost because the contract was closed and contract funds paid out.

- (4). Contracts awarded prior to October 21, 1993 where the contract does not contain the revised helper clauses.

In implementing the helper regulations after the lifting of the prohibition imposed by Section 303 of the 1991 Dire Emergency Supplement Appropriation Act, the Department suggested that contracting agencies modify existing contracts to include the revised helper contract clauses, thereafter permitting the addition of helper classifications through the additional classification procedures in Section 5.5(a)(1) (ii) of Regulations; Part 5. However, in light of the Congressional action, that option no longer exists for contracts that were awarded without the helper contract clauses and which have not yet been modified. Contractors and subcontractors performing on such contracts may not employ helpers as those classifications were defined by section 5.2(n)(4) of Regulations, Part 5.

5. LISTING OF EMPLOYMENT OPENINGS

[This clause is applicable pursuant to 41 CFR 50-250 if this contract is for Two Thousand Five Hundred and No\100 Dollars (\$2,500.00) or more].

- A. The Contractor agrees, in order to provide special emphasis to employment of qualified disabled veterans and veterans of the Vietnam era, that all suitable employment openings of the Contractor which exist at the time of the execution of the Contract and those which occur during the performance of this Contract, including those not generated by this Contract and including those occurring at an establishment other than the one wherein the Contract is being performed, but excluding those of independently operated corporate affiliates, shall be offered for listing at an appropriate local office of the State employment service system wherein the opening occurs and to provide such reports to such local office regarding employment openings and hires as may be required: **PROVIDED**, That if this Contract is for less than Ten Thousand and No\100 Dollars (\$10,000.00) or if it is with a State or local government, the reports set forth in Paragraphs C. and D. are not required.

- B. Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment service or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veterans. This listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in any statutes, Executive Orders, or regulations regarding nondiscrimination in employment.
- C. The reports required by Paragraph A. of this clause shall include, but not limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than one establishment in a State, with the central office of the State employment service. Such reports shall indicate for each establishment: (i) the number of individuals who were hired during the reporting period; (ii) the number of those hired who were disabled veterans; and (iii) the number of those hired who were disabled veterans of the Vietnam era. The Contractor shall submit a report within thirty (30) days after the end of each reporting period wherein any performance is made under this Contract. The CITY shall maintain copies of the reports submitted until the expiration of one (1) year after final payment under this Contract, during which time, they shall be made available, upon request, for examination by any authorized representatives of the Secretary of Labor and the CITY.

6. **EXECUTIVE ORDER NUMBER 11246**

During the performance of the Contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor 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 nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- C. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order Number 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- D. The Contractor will comply with all provisions of Executive Order Number 11246 of September 24, 1965, and of the rules, regulations and relevant orders of Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Executive Order Number 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of the U.S. Department of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the CITY and the Secretary of the U.S. Department of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- F. In the event of the Contractor's noncompliance with the nondiscrimination 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 may be declared ineligible for further Government Contracts in accordance with procedures authorized in Executive Order Number 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order Number 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of the U.S. Department of Labor, or as otherwise provided by law.
- G. The Contractor will include the provisions of Paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of the U.S. Department of Labor issued pursuant to section 204 of Executive Order Number 11246 of September 24, 1965, so that such provisions will be binding upon subcontractors or vendors.

The Contractor will take such action with respect to any subcontractor or purchase order as the CITY 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 CITY, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

7. **EQUAL OPPORTUNITY**

All personnel action, including but not limited to, hiring, promotion, reassignment and termination of project staff or personnel shall be done in compliance with all applicable Federal, State and City equal employment and economic opportunity laws, statutes, ordinances, resolutions, and instructions. The Contractor shall provide, upon request of the CITY, written assurances and information concerning the Contractor's implementation of such laws, statutes, ordinances, resolutions and instructions in such Contractor's employment practices.

8. **FINDINGS CONFIDENTIAL**

All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential and the Contractor agrees that they shall not be made available to any individual or organization other than an agency of the United States Government, without the prior approval of the CITY.

9. **CONFLICT OF INTEREST**

- A. The Contractor agrees that no member of or Delegate to the Congress of the United States, and no Residents Commissioner, shall be admitted to any share or part of this Contract or to any benefit direct or indirect to arise from the same.
- B. The Contractor agrees that no member, officer, employee, or other public official or agent of the CITY who exercises any functions or responsibilities in connection with the CDBG Program or any person who exercises any functions or responsibilities in connection with the CDBG Program during his tenure or for one (1) year thereafter shall have any personal financial interest direct or indirect, in this Contract or lower-tier contract or the proceeds thereof.
- C. The Contractor covenants that none of his officers, directors, employees, or agents presently have nor shall acquire any interest direct or indirect within the boundaries of the City of Houston or any parcels therein, which conflict or give the appearance of conflicting in any manner or degree with the performance of the work hereunder. The Contractor further covenants that no person shall be employed in the performance of this Contract who has any interest which would be in conflict with the performance of work hereunder or which would give the appearance of being in conflict with the performance of work hereunder.
- D. Contractor covenants that no person of the Contractor, including but not limited to: owners; officers; directors; employees; agents or consultants shall either offer to give or give any gratuity, favor, or anything of monetary value to any member, officer, employee, or other public official or agent of the CITY who exercises any functions or responsibilities in connection with the planning and carrying out the Housing and Community Development Prime Grant Agreement.
- E. The Contractor further covenants that no person of the Contractor who has any connection with the performance of the work called for by this Contract, including but not limited to: owners; officers; directors; employees; agents or consultants shall either offer to give or give any gratuity, favor, or anything of monetary value to any subcontractor or potential subcontractor.

10. **REPORTS AND RECORDS**

The Contractor shall submit all reports and keep all records as required by the CITY and the U.S. Department of Housing and Urban Development and shall give the CITY, the U.S. Department of Housing and Urban Development, and the Comptroller General, through any authorized representative, the access to and the right to examine at any time all records, books, papers, or documents related to this Contract.

11. **ENVIRONMENTAL QUALITY**

That Contractor agrees to take care to conduct all services or functions in the performance of this Contract in a manner which will preserve and enhance the quality of the natural environment. The Contractor further agrees to conform to any instructions issued by the CITY from time to time for the purpose of eliminating or minimizing real or potential harm to the natural environment caused by actions or omissions of the Contractor or any lower-tier contractor. A lower-tier contractor for the purpose of this clause is any entity which contracts for the performance of a portion of the services called for by this Contract.

12. **COMPLIANCE WITH CLEAN AIR AND WATER ACTS**

This Contract is subject to the requirements of the Clean Air Act, as amended (42 USC 1857 et seq.) the Federal Water Pollution Control Act, as amended (33 USC 1251 et seq.), and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended, from time to time. In compliance with said regulations, the Contractor agrees that:

- A. No facility to be utilized in the performance of any nonexempt contract hereunder is listed on the List of Violating Facilities issued by the U. S. Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- B. Contractor will comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as (33 USC 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- C. As a condition for the award of this Contract, prompt notice shall be given to the CITY of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the Contract or any portion thereof is under consideration to be listed on the EPA List of Violating Facilities.
- D. Contractor will include or cause to be included the requirements contained in Paragraphs A. through C. of this clause in every nonexempt contract, whether third-tier or lower-tier, hereunder and will take such action as the CITY may direct as a means of enforcing such provisions. In no event shall any amount of the funds provided under this Contract be utilized with respect to a facility which has given rise to a conviction under Section 113 (c)(1) of the Clean Air Act or Section 309 (c) of the Federal Water Pollution Control Act.

13. **COMPLIANCE WITH THE ARCHITECTURAL BARRIERS ACT OF 1968**

The Architectural Barriers Act of 1968, 42 U.S.C. 4151 is applicable to assistance under this Contract and requires that the design of any facility constructed in whole or in part with funds from Title I of the Housing and Community Development Act of 1974 comply with the "American Standard Specification for Making Buildings and Facilities Accessible, and Useable by, the Physically Handicapped" Number A-117.1 R-1971, as modified (41 CFR 101-19.603).

14. **TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (P. L. 88-352) ("Title VI") and with Title 24 Code of Federal Regulations ("CFR") Part 1 which implement Title VI. In accordance with Title VI, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives federal financial assistance. The Contractor will immediately take any measures necessary to comply with Title VI. If any real property or structure thereon is provided or improved with the aid of federal financial assistance, this clause shall obligate the owner, or in the case of any transfer of such property, any transferee, to comply with the requirements and restrictions contained in this clause for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

15. **SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974**

The Contractor shall comply with Section 109 of the Housing and Community Development Act of 1974 ("Section 109") and implementing federal regulations, (24 CFR & 570.602), issued pursuant to Section 109. No person in the United States shall, on the ground of race, color, national origin or sex, may be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with community development funds. Section 109 also prohibits discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

16. **COURT ACTIONS**

The Contractor agrees to give the City immediate notice in writing of any actions or suits filed and prompt notices of any claims made against the City, the Contractor or any of the parties involved in the implementation and administration of this Agreement.

17. **DRUG-FREE WORKPLACE ACT OF 1988**

The Contractor will act in accordance with the requirements of the Drug-Free Workplace Act of 1988 and develop a Drug-Free Workplace Statement. The Contractor will publish a statement to all its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and that certain specific actions will be taken against employee's for violation of such prohibition.

18. **BENEFIT TO LOW AND MODERATE INCOME PERSONS**

The Grantee understands that projects which receive CDBG funds must principally benefit low and moderate income persons. The Grantee shall ensure that the facility shall serve primarily the low and moderate income persons who reside in the area of the project.

The term "low and moderate income persons" shall have the meaning given the terms "lower income families" in Section 3 (b)(2) of the United States Housing Act of 1937.

19. **LEAD-BASED PAINT POISONING PREVENTION ACT**

This contract is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Sections 4821-4846 and implementing regulations, at 24 CFR Part 35). Specifically this contract shall be made subject to the provisions for the elimination of lead-based paint hazards under Subpart B of said regulations, and Contractor shall be responsible for the inspections and certifications required under Section 35.14 (f) thereof.

20. **RECORDS FOR AUDIT PURPOSES**

Notwithstanding any other provision of this Agreement, the Contractor shall maintain all records concerning the program or project financed under this Agreement which the City reasonably requires for three years from the expiration date of the Agreement unless a longer period is required under Title 24 CFR §84.53 for non-profit organizations and 24 CFR §84.42 for others. The Contractor shall maintain records required by 24 CFR §135.120 for the period that HUD requires the records to be

maintained. The Contractor will give the City, HUD, the Comptroller General of the United States, the General Accounting Office, or any of their authorized representatives access to and the right to examine, copy or reproduce all records pertaining to the acquisition and construction of the project and the operation of the program or project. The right to access shall continue as long as the records are required to be maintained.

21. **USE OF DEBARRED, SUSPENDED, OR INELIGIBLE CONTRACTORS OR SUBRECIPIENTS**

- A. The Contractor shall not employ, award contracts to, or otherwise engage the services of any contractor or subcontractor during any period of debarment, suspension or placement in ineligibility status under provisions of 24 CFR Part 24 or under the authority of the City.
- B. The Contractor shall not use CDBG funds for any contract for the construction, alteration or repair of the project funded under this agreement with any contractor or subcontractor of a foreign country, or any supplier of products of a foreign country, that is identified by the Office of the United States Trade Representative as discriminating against U.S. firms in conducting procurement for public works projects. This restriction covers, without limitation, all architectural, engineering and construction services, and includes all products or goods, except construction equipment or vehicles used during the construction, alteration or repair which do not become part of a delivered structure, product or project.

22. **UNIFORM ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES**

The Contractor shall comply with the policies, guidelines and requirements of 24 CFR 85, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments," and OMB Circular Numbers A-110, A-87 and A-122 as applicable, as they related to the acceptance and use of Federal funds.

23. **FLOOD DISASTER PROTECTION**

- A. This Agreement is subject to the requirement of the Flood Disaster Protection Act of 1973 (P.L. 93-234) for areas identified by HUD as having special flood hazards. The use of any funds provided for acquisition or construction in identified areas shall be subject to the mandatory purchase of flood insurance requirements of Section 102 (a) of said act.
- B. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain, if the land is located in an area identified by HUD as having a special flood hazard, provisions which obligate the transferee and its successors or assigns to obtain and maintain, during the life of the project, flood insurance as required under Section 102 (a) of the Flood Disaster Protection Act of 1973. These provisions shall be required notwithstanding the fact that the construction on the land is not itself funded with funds provided under this Agreement.

24. * **TITLE VIII OF THE CIVIL RIGHTS ACT OF 1965 AND EXECUTIVE ORDER 11063**
(*APPLIES TO CONTRACTS OF INSURANCE OR GUARANTY)

The Contractor shall comply with Title VIII of the Civil Rights Act of 1968 (P.L. 90-284) ("Title VIII"). Title VIII prohibits any person from discriminating in the sale of rental of housing, the financing of housing or the provisions of brokerage services, including in any way making available or denying a dwelling to any person because of race, color, religion, sex, or national origin. The Contractor shall further comply with Executive Order Number 11063 and with the implementing regulations. 24 CFR Part 107. The failure or refusal to comply with Executive Order Number 11063 or this part shall be a proper basis for the imposition of sanctions provided in 24 CFR Part 107.60.

* **This section applies to contracts of insurance of guaranty.**

25. **AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (41 CFR 60-741-4)**

- A. The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as 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.
- B. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- D. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- E. The contractor will notify each labor union or representatives of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

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- F. The contractor will include the provisions of this clause in every subcontract or purchase order of Two Thousand Five Hundred and No\100 Dollars (\$2,500.00) or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontract or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

MINORITY, WOMEN, DISADVANTAGED BUSINESS ENTERPRISE & SMALL BUSINESS ENTERPRISE PROGRAM REQUIREMENTS

A. **Documents that must be signed and returned to the Housing and Community Development Department ("HCDD") with the proposal or within a period designated by HCDD upon notification of finalist or successful proposer status.**

- (1). Minority/Women Business Enterprise ("M/W/DBE & SBE") Participation Plan (FC-55) - List of proposed Subcontractors and Suppliers
- (2). Executed Subcontract(s), or Letter(s) of Intent for each M/W/DBE & SBE Subcontractor or Supplier, including:

Name of M/W/DBE & SBE Subcontractor/Supplier;
Description of the Scope of Work to be Performed;
Dollar value or each proposed M/W/DBE & SBE subcontract; or
Documentation of Good Faith Efforts to meet the M/W/DBE & SBE Goal.

These documents should be submitted to HCDD, along with documentation of Good Faith Efforts, if applicable.

B. **Report that must be submitted during the course of the contract.**

M/W/DBE & SBE Monthly Utilization Report (FC-56)
Mail original of completed report to:

Housing and Community Development Department 601 Sawyer, Suite 101
Houston, TX 77007 **ATTN.:** Laura Ortiz

C. **M/W/DBE & SBE Requirements**

- (1). Purpose

To facilitate implementation of Chapter 15 Article V of the City of Houston Code of Ordinances relating to M/W/DBE & SBE Contract Participation.

- (2). Policy

It is the policy of the City to encourage the full participation of M/W/DBE & SBEs in all phases of its procurement activities and to afford them a full and fair opportunity to compete for City contracts at all levels.

FC-23

(3). Policy Elements

- (a). The Contractor agrees to ensure that M/W/DBE & SBEs, as defined in Chapter 15 Article V of the City of Houston Code of Ordinances, have a full and fair opportunity to participate in the performance of City contracts. In this regard, the Contractor shall take all reasonable Good Faith Efforts as defined herein, to meet the M/W/DBE & SBE Goal for this contract.
- (b). The Contractor and any Subcontractor/Supplier shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of City contracts.
- (c). The M/W/DBE & SBE Participation Plan (FC-55) must be submitted with the Proposal or within a period designated by HCDD upon notification of finalist or successful proposer status. This decision is the responsibility of HCDD.
- (d). Contractor's performance in meeting the M/W/DBE & SBE Participation Goal will be monitored by the HCDD Real Estate Compliance Services Division.

(4). Percentage Goal

The percentage goal for M/W/DBE & SBE participation in the work to be performed under this contract is _____ percent.

(5). Proposer Responsibilities

- (a). **Prior to Award:** Proposer must submit a plan ("Plan") setting out how the goal is to be met with the Proposal or within a period designated by HCDD upon notification of finalist or successful proposer status, which must minimally include:

- (i) M/W/DBE & SBE Participation Plan (FC-55) - List of proposed Subcontractors/Suppliers. All M/W/DBE & SBEs listed on this form must be certified by the Affirmative Action Division prior to the Request for Proposal due date with the following exception: The Affirmative Action Division will consider priority certification of non-certified firms in those cases where the successful proposer proposes the utilization of a firm for a specific capability not found among at least three (3) certified firms.

- (ii). Executed Subcontract(s), or Letter(s) of Intent for each M/W/DBE & SBE Subcontractor or Supplier, including:

Subcontractor/Supplier;	Name of M/W/DBE & SBE Description of the Scope of Work to be Performed; Dollar value or each proposed M/W/DBE & SBE subcontract; or
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- (iii). Documentation of Good Faith Efforts to meet the M/W/DBE & SBE Goal, if the goal is not met. See **Attachment "II"** for minimum standards for Good Faith Efforts. Such documentation shall be

presented to HCDD for review by the Affirmative Action Division.

Note 1: Failure to respond within the designated period could result in a finalist being considered non-responsive and the next proposer being considered for award.

Note 2: The Proposer shall be bound by the Plan submitted unless a waiver is received from the Director of HCDD ("Director").

Note 3: The Director is authorized to suspend any Contractor who has failed to make Good Faith Efforts to meet an established M/W/DBE & SBE Goal; and to suspend any M/W/DBE & SBE who has failed to make Good Faith Efforts to meet all requirements necessary for participation as an M/W/DBE & SBE.

- (b). Prior to award, the successful proposer shall execute written contracts with all of its M/W/DBE & SBE Subcontractors and shall assure that all such contracts contain the terms set out in **Attachment II-A**. Contracts (including purchase orders or similar instruments) with M/W/DBE & SBE suppliers may be issued after the Notice to Proceed but should incorporate the terms in **Attachment II-A**.
- (c). Prior to award, Contractor shall designate an M/W/DBE & SBE liaison officer who will administer the Contractor's M/W/DBE & SBE programs and who shall be responsible for maintenance of records of Good Faith Efforts to

subcontract with M/W/DBE & SBE Subcontractors/Suppliers.

- (d). After Award, Contractor shall:
 - (i). Submit M/W/DBE & SBE Monthly Utilization Reports (FC-56), attached herein, to the HCDD Real Estate Compliance Division.
 - (ii). Comply with Form (FC-55) M/W/DBE & SBE Participation Plan, unless it has received approval from the Director to deviate therefrom. Approval will not be reasonably withheld.
 - (iii). Upon approval of the Director, make Good Faith Efforts to replace a certified M/W/DBE & SBE Subcontractor/Supplier that is displaced, for any reason, with another certified M/W/DBE & SBE.

- (iv). Submit all disputes with M/W/DBE & SBE Subcontractors and Suppliers that are unable to be resolved by the HCDD to binding arbitration as set out in the City's Affirmative Action and Contract Compliance Division, M/W/DBE & SBE Procedures.
 - (v). Make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of the contract; and agree to protect, defend and indemnify the City from any claims or liability arising out of Contractor's failure to make such payments. (Disputes relating to payment of M/W/DBE & SBE Subcontractors shall be submitted to arbitration in the same manner as any other disputes under the M/W/DBE & SBE subcontract. Failure of the Contractor to comply with the decisions of the arbitrator may, at the sole discretion of the City, be deemed a material breach leading to termination of this contract).
- (6). Eligibility of M/W/DBE & SBEs
- (a). To ensure that the M/W/DBE & SBE program benefits only those firms that are owned and controlled by a minority person(s) or a woman (women), the Affirmative Action Division will certify the eligibility of M/W/DBE & SBE Subcontractors/Suppliers. Contact the Affirmative Action Division at (713) 837-9000 for information regarding certification.
 - (b). The Affirmative Action Division publishes and maintains a M/W/DBE & SBE Directory. This Directory is available from the Affirmative Action Division for contractor use.

NOTE: ALL M/W/DBE & SBE FIRMS, EVEN IF CERTIFIED BY ANOTHER AGENCY, MUST BE CERTIFIED BY THE AFFIRMATIVE ACTION DIVISION IN ORDER TO QUALIFY FOR ATTAINMENT OF THE M/W/DBE & SBE GOAL.

(7). Determination of M/W/DBE & SBE Participation

M/W/DBE & SBE participation shall be counted toward meeting the M/W/DBE & SBE Goal in accordance with the following:

- (a). Once a firm is certified as an M/W/DBE & SBE, the total dollar value of the subcontract awarded to the M/W/DBE & SBE is counted toward the M/W/DBE & SBE Participation Goal.
- (b). When a Contractor or Subcontractor organizes a joint venture with one (1) or more M/W/DBE & SBEs to satisfy its M/W/DBE & SBE Goal, the Director shall determine the percent of participation resulting from such joint venture to be counted toward the M/W/DBE & SBE Goal.
- (c). Contractor may count toward its M/W/DBE & SBE Goal those M/W/DBE & SBE Subcontractors/Suppliers performing a Commercially Acceptable Function.

COMMERCIALLY ACCEPTABLE FUNCTION means a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the M/W/DBE & SBE by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the M/W/DBE & SBE is responsible. Without limiting the generality of the foregoing, an M/W/DBE & SBE will not be considered to be performing a Commercially Acceptable Function if it subcontracts, to non-M/W/DBE & SBE firms or to other M/W/DBE & SBE firms, more than fifty (50%) percent of a contract being counted toward the applicable participation goal, unless such subcontracting in excess of fifty (50%) percent has been expressly permitted by the Director of Affirmative Action in a written waiver of this requirement. A waiver shall be granted upon

demonstration that the industry standard for the type of work involved is to subcontract over fifty (50%) percent of the work.

(8). Compliance of the Contractor

To ensure compliance with M/W/DBE & SBE requirements, the HCDD will monitor Contractor's efforts regarding M/W/DBE & SBE Subcontractors/Suppliers during the performance of this Contract. This may be accomplished through the following: job site visits, reviewing of records and reports, interviews of randomly selected personnel.

(9). Records and Reports

(a). Contractor shall submit an initial report forty (40) days after the Contract begins, and each month thereafter, outlining M/W/DBE & SBE participation until all M/W/DBE & SBE subcontracting or material supply activity is completed. The report will be due on the 15th day following each month. The M/W/DBE & SBE Utilization Report (FC-56), herein attached, is to be used for this reporting. This form may be reproduced by the contractor from the copy herein enclosed.

(b). Contractor shall maintain the following records for review upon request by the HCDD:

- (i). Copies of Subcontractor agreements and purchase orders as executed;
- (ii). Documentation of payments and other transactions with M/W/DBE & SBE Subcontractors/Suppliers; and
- (iii). Appropriate explanations of any changes or replacements of M/W/DBE & SBE Subcontractors/Suppliers.

NOTE: ALL REPLACEMENT M/W/DBE & SBES MUST BE CERTIFIED BY THE AFFIRMATIVE ACTION DIVISION.

(c). If the M/W/DBE & SBE Goal is not being met, the monthly report shall include a narrative description of the progress being made in M/W/DBE & SBE participation. Reports are required when no activity has occurred in a reporting period.

(d). All such records must be retained for a period of four (4) years following completion of the work and shall be available at reasonable times and places for inspection by authorized representatives of the City.

(1). ***General***

Pursuant to Section 15-86 of the Code of Ordinances, the Director is authorized to suspend for a period of up to, but not to exceed, five (5) years, any Contractor who has failed to make Good Faith Efforts or who has failed to comply with its submitted Plan pursuant to Section 15-85 unless a waiver has been granted from engaging in any Contract with the City. The Director is also authorized to suspend any M/W/DBE & SBE who has failed to make Good Faith Efforts from engaging in any Contract affected by Article V of Chapter 15 of the Code of Ordinances, for a period of up to, but not to exceed, five (5) years.

(2). ***Guidelines for Imposition of Sanctions***(a). ***General***

- (i). No suspension shall be imposed by the Director except upon evidence of specific conduct on the part of an M/W/DBE & SBE or a Contractor that is inconsistent with or in direct contravention of specific applicable requirements for Good Faith Efforts; and
- (ii). Imposition and enforcement of suspensions shall be consistent with applicable state law.

(b). ***Severity of Sanctions***

In determining the length of any suspension, the Director shall consider the following:

whether the failure to comply with applicable requirements involved intentional conduct or, alternatively, may be reasonably concluded to have resulted from a misunderstanding on the part of the Contractor or M/W/DBE & SBE of the duties imposed on them by Article V of Chapter 15 of the Code of Ordinances and these procedures;

the number of specific incidences of failure by the Contractor or M/W/DBE & SBE to comply;

whether the Contractor or M/W/DBE & SBE has been previously suspended;

whether the Contractor or M/W/DBE & SBE has failed or refused to provide the Director with any information requested by the Director or required to be submitted to the Director pursuant to law or these procedures;

whether the Contractor or M/W/DBE & SBE has materially misrepresented any applicable facts in any filing or communication to the Director; and

whether any subsequent restructuring of the subject business or other action has been undertaken to cure the deficiencies in meeting applicable requirements.

(3). Delegation

A decision to implement a suspension may be taken after notice and an opportunity for a hearing by the Director or by another impartial person designated by the Director for that purpose. The Director or other person conducting the hearing shall not have participated in the actions or investigations giving rise to the suspension hearing.

(4). Notice

(a). Prior to the imposition of any suspension, the Director shall deliver written notice to the Contractor or M/W/DBE & SBE setting forth the grounds for the proposed suspension and setting the date, time and place to appear before the Hearing Officer for a hearing on the matter.

(b). Any notice required or permitted to be given hereunder to any Contractor or M/W/DBE & SBE may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to their most recent address as specified in the records of the Affirmative Action and Contract Compliance Division or in the Contract if no address is on file with the Affirmative Action and Contract Compliance Division.

(5). Hearing Procedures

Proceedings before the Director or other hearing officer shall be conducted informally, provided that each party may be represented by counsel and may present evidence and cross-examine witnesses. The burden shall be upon the City by a preponderance of evidence. The decision shall be reduced to writing and notice provided to the Contractor or M/W/DBE & SBE.

(6). *Appeals*

Appeals authorized pursuant to Section 15-86(b) of the Code of Ordinance shall be conducted by an arbitrator who shall act as the Hearing Officer. Alternatively, an appeal may be taken to City Council, subject to the appellant's compliance with Rule 12 of the City Council Rules of Procedure. Appeals shall be initiated by filing a written notice of appeal with the Director no later than fifteen (15) days following the mailing of notice of the decision of the Director and the appeal notice shall state whether the appeal is requested to City Council or to an arbitrator. If an arbitration appeal is requested, then the arbitrator shall be selected as provided in Section 9 of these Procedures. The arbitrator's or City Council's decision, as applicable, shall be final. The Director shall determine whether to suspend his or her order pending an appeal, taking into account the criteria set forth in Section 6(B)(2) of these Procedures.

**CITY OF HOUSTON
M/W/DBE & SBE
GOOD FAITH EFFORTS**

"Good Faith Efforts" means those efforts required to be made and demonstrated by an apparently successful bidder or proposer prior to award of a Contract (whether a Goal Oriented Contract or a Regulated Contract) and at the conclusion of performance of the Contract in the event it has been unsuccessful in meeting the Contract's M/W/DBE & SBE Goal.

A. Good Faith Efforts for non-M/W/DBE & SBEs in construction, procurement and professional services shall mean at a minimum the following:

1. *Delivery of written notice to the following:*

a. All local certified M/W/DBE & SBEs in the directory for the month prior to the month of the bid or proposal submission date and identified as performing work or services or providing commodities for all potential subcontracting or supply categories in the Contract;

b. All minority and women focused associations identified in the directory for the month prior to the month of the bid or proposal submission date;

c. All news media focused toward minority persons and women identified in the directory for the month prior to the month of the bid or proposal submission date; and
All M/W/DBE & SBEs which requested information on the Contract.

2. *The written notices will contain:*

a. Adequate information about plans, specifications and relevant terms and conditions of the Contract and about the work to be subcontract or the goods to be obtained from Subcontractors and Suppliers;

b. A contact person within the apparent low bidder's or proposer's office to answer questions;

c. Information as to the apparent low bidder's or proposer's bonding requirements, the procedure for obtaining any needed bond and the name and telephone number of one (1) or more acceptable surety companies to contact;

d. The last date for receipt by the bidder or proposer of M/W/DBE & SBE bids or price quotations.

1 Attendance at any special pre-bid meeting called to inform M/W/DBE & SBEs of subcontracting or supply opportunities, if set forth in the bidding or proposal documents.

4. Division of the Contract, as recommended by the department head of the initiating City Department and in accordance with normal industry practices, into small, economically feasible segments that could be performed by M/W/DBE & SBE.

5. Provide an explanation for rejection to any M/W/DBE & SBE whose bid or price quotation is rejected, unless another M/W/DBE & SBE is accepted for the same work, as follows:

a. Where price competitiveness is not the reason for rejection, a written rejection notice including the reason for rejection will be sent to the rejected M/W/DBE & SBE; and

b. Where price competitiveness is the reason for rejection, a meeting must be held, if requested, with the price-rejected M/W/DBE & SBE to discuss the rejection.

2 Provide an explanation for rejection of any M/W/DBE & SBE to the Housing and Community Development Department ("HCDD"), unless another M/W/DBE & SBE firm is accepted for the same work. Include the name of the non-M/W/DBE & SBE firm proposed to be awarded the subcontract or supply agreement and if price competitiveness is the reason for rejection, the M/W/DBE & SBE's price quotation and the successful non-M/W/DBE & SBE's price quotation.

- B. Good Faith Efforts for M/W/DBE & SBEs in construction, procurement and professional services shall mean at a minimum the following:
- 1 Furnishing prompt written responses to any written inquiry from the Director or any employee of the HCDD regarding the M/W/DBE & SBEs performance or information pertaining to the M/W/DBE & SBEs certification;
 - 2 Ensuring that at all times during the performance of any Contract or subcontract subject to the requirements of Chapter 1 of the Code of Ordinances the M/W/DBE & SBE is engaging in a commercially acceptable function as that term is defined herein;
 - 3 Ensuring that no application, response to a request for information, or other factual material submitted to the Director or any employee of the HCDD contains any material misrepresentation; and
 - 4 Furnishing prompt responses to requests from the department administering the Contract, the City Attorney and the City Controller for information, books and records needed to verify compliance.

SPECIAL ITEMS

SPECIAL ITEMS:

ADMINISTRATIVE REQUIREMENTS

The following administrative requirements should be considered in any HUD assisted construction activities when Davis Bacon Act applies. In order to ensure expeditious processing of the paper work necessary for compliance, please follow the instructions below:

- A. Request for a wage determination must be made prior to advertising the bid. Wage determination requests, including the Scope of Work for the project, should be submitted to the Real Estate Compliance Division of the City's Housing and Community Development Department.
- B. The applicable wage determination, including any modifications must be part of the bid documents and **it should be verified by the City's Housing and Community Development Department ten (10) days prior to the bid opening date. Failure to include the required wage determination and appropriate Labor Standards Provisions in bid documents or contracts will not relieve the City or contractors from potential liabilities for enforcement actions.**
- C. The contract should be awarded within ninety (90) days after Bid opening. Otherwise, any modifications announced in that wage decision(s) prior to the award of the contract will be applicable to that decision(s).
- D. **Verification of the contractors eligibility to work on federally funded projects is a must.** The Real Estate Compliance Division of the Housing and Community Development Department ("HCDD") must verify that all the prime contractors are eligible prior to contract award by reviewing the current HUD list of debarred, suspended, or ineligible participants. **The department cannot process payment requests if the prime contractors are not cleared, even though the construction may be partially done. Please follow these steps:**
 - (1). A copy of the attached form (Request for Contractor Clearance, page FC63) should be submitted by all contractors (bidders) at the time of the bid. Once the bids are opened and an apparent low bidder has been identified, submit the Request for

Contractor Clearance form to the Real Estate Compliance Division by fax at (713) 868-8343, attention: Laura Ortiz.

- (2). The HCDD will not co-sign the Request for Council Action (RCA) recommending award of a contract to the apparent low bidder unless the apparent low bidder has been cleared by the City.
- (3). If there is MWDBE & SBE Goal involved after notification of award, the Contractor has ten (10) working days to document MWDBE & SBE subcontractor/supplier certification by submitting the proper form (FC- 55) or to demonstrate a good faith effort.

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- (4). All MWDBE & SBE Firms, even if certified by another agency must be certified by the Affirmative Action Division in order to qualify for attainment of the MWDBE & SBE Goal. Please contact the Affirmative Action Division at (713) 837-9000 for further assistance. **FC-37**

ATTACHMENT I

FC-38

SECTION 3 PLAN FORMAT FOR CONTRACTS AND SUBCONTRACTS OF \$100,000 AND OVER

POLICY

The purpose of this format is to set forth procedures to assure compliance with Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u. Section requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns that are located in or owned in substantial part by persons residing in the project.

INSTRUCTIONS

Contractor and Subcontractor shall fill out, sign and return to the City of Houston, Department of Housing & Community Development, the following applicable forms at the times identified. All forms must be signed by a duly authorized member of the firm. If you have other pertinent information in addition to that requested on the forms, please include it as an attachment. Listed below are the forms which the Contractor must submit:

Section 3 Resident Certification FC-40 Upon Employment Section 3 Business Certification FC-41 10 days after Notice of Intent to Award Contractor Section 3 Compliance Certification FC-43 10 days after Notice of Intent to Award HUD-4238-CD-1 (Equal Opportunity) Form FC-44 10 days after Notice of Intent to Award First Source Hiring Agreement FC-45 10 days after Notice of Intent to Award Contractor Workforce Analysis Form 1 FC-47 10 days after Notice of Intent to Award Subcontractor Workforce Analysis Form 2 FC-48 10 days after Notice of Intent to Award Section 3 Business Utilization Form 3 FC-49 10 days after Notice of Intent to Award Contractor Section 3 Compliance Form 4a FC-50 Monthly, after Start of Work Subcontractor Section 3 Compliance Form 4b FC-51 Monthly, after Start of Work Contractor's Income Verification Form 5 FC-53 To be Maintained in Contractors Records MWDBE & SBE Participation Plan FC-55 10 days after Notice of Intent to Award MWDBE & SBE Monthly Utilization Report FC-56 Monthly, after Start of Work Request for Contractor Clearance FC-63 Upon Submission of Bid

FC-39

SECTION 3 RESIDENT CERTIFICATION

- 1 I am a resident of the City of Houston, Texas and have been since .
- 2 My current address is .
- 3 My source of income is .
(exact source, i.e. employers name, SSI, AFDC, etc....)
- 4 My monthly income is \$ and my yearly income is \$.

Signature:

Telephone

Number:

STATE OF TEXAS §

CITY OF HOUSTON §

SECTION 3 BUSINESS CERTIFICATION

The undersigned makes this affidavit with full knowledge that its contents will be used in the expenditure of funds provided by the United States Government. Under penalty of perjury he/ she hereby states:

1. I am the _____ of (owner, partner, officer, representative, agent)
(Company Name) and whose business concerns is (check only one)
 - () 51 percent or more is owned by section 3 residents; or
 - () Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three (3) years of the date of first employment with the business concern were section 3 residents; or
 - () Provides subcontracts in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraph I.B.(1) or (2) of the definition of Section 3 business concerns.
 - () None of the above

2. And the Project I/We claim preference in the category indicated below (check only one)
 - () **(Category 1 business)** Business concerns that are 51 percent or more owned by residents of the housing development(s) for which the section 3 covered assistance is expended, or whose full-time, permanent work force includes 30 percent of these person as employees;
 - () **(Category 2 business)** Business concerns that are 51 percent or more owned by residents of other housing development(s) managed by the Housing Authority, or whose full-time, permanent work force includes 30 percent of these persons as employees;

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- () **(Category 3 business)** HUD Youth build programs being carried out in the City of Houston, Texas where the section 3 covered assistance is expended;
- () **(Category 4 business)** Business concerns that are 51 percent or more owned by section 3 residents; or, whose permanent, full-time work force includes no less than 30 percent section 3 residents; or, that subcontract in excess of 25 percent of the dollar awarded of the total amount of the subcontracts identified above as a **Category 1** or a **Category 2 business**.
- () No preference claimed.

Affiant's Signature:

Address:

Affiant's Title:

Telephone: Affiant's Company Name:

Subscribed and sworn to under oath before me this _____ day of , 200____.

. My commission expires:

NOTARY: _____

STATE OF TEXAS

§ CITY OF

HOUSTON §

CONTRACTOR'S SECTION 3 COMPLIANCE CERTIFICATION

The undersigned makes this affidavit with full knowledge that its contents will be used in the expenditure of funds provided by the United States Government. Under penalty of perjury I hereby state:

- 1 I am the _____ of . (owner, partner, officer, representative, agent)
(Company Name)
- 2 My company adheres to Section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended, 12 U.S.C. 1701u which requires, to the greatest extent feasible, that a "good faith effort" given to identifying small businesses located within the boundaries of the Section 3 service area, making them aware of contracting opportunities, encouraging their participation and actually awarding contracts to Section 3 business concerns through the assistance of the City of Houston and their referral system.
- 3 An attempt will be made to undertake outreach activities intended to encourage participation by Section 3 residents in training and employment opportunities, to include but not be limited to utilizing the referral established by the City of Houston, the Texas Employment Commission and Houston Works.

Affiant's Signature:

Address:

Affiant's Title:

Telephone:

Affiant's Company Name:

Subscribed and sworn to under oath before me this _____ day of , 200 ____.

My commission expires:

NOTARY: _____

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**HUD-4238-CD-1
(66-6)
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
CERTIFICATION OF BIDDER REGARDING EXECUTIVE ORDER 11246**

INSTRUCTIONS

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.

CERTIFICATION OF BIDDER

Bidder's Name:

Address:

- 1 Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.
Yes No Not Required
- 2 Compliance reports were required to be filled in connection with such contract. Yes No
- 3 Bidder has filled all compliance reports due under applicable instructions, including SF-100. Yes No
- 4 If answer to item is "No", please explain in detail on reverse side of this certification.

Certification - The information above is true and complete to the best of my knowledge and belief.

NAME AND TITLE OF SIGNER (PLEASE TYPE)

SIGNATURE

DATE

May 28, 1996

Bidder
Certification

**CITY OF HOUSTON
DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT
SECTION 3 COMPLIANCE**

First Source Hiring Agreement

This agreement, is entered into this day of , 200 , by and between the City of Houston and, hereinafter referred to as the "City", and hereinafter referred to the "Contractor", in connection with work to be performed in relation to the City's HUD-assisted project entitled, hereinafter referred to as the "project".

Whereas, HUD has promulgated certain regulations to implement Section 3 of the Housing and Urban Development (HUD) Act of 1968 (12 U.S.C. 1701u)(Section 3), which regulations were published in the Federal Register June 30, 1994 at page 33865, hereinafter referred to as the "Section 3 regulations"; and

Whereas, the purpose of Section 3 regulations is to ensure that employment and other economic opportunities generated by Section 3 covered assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low-and very low-income persons, and to business concerns which provide economic opportunities to such persons.

Whereas, HUD has set forth numerical employment, and contracting goals to be achieved by all Community Development recipients of Section 3 covered assistance and by other recipients of such assistance in which HUD's share exceeds \$200,000 per project and by those Contractors whose share of such projects exceeds \$100,000; and

Whereas, the numerical goal so established by HUD applicable to the Project is set forth below; and

Whereas, recipients of Section 3-covered assistance and their contractors can demonstrate compliance with the Section 3 regulations by committing to employ Section 3 eligible persons as the applicable percentage of the aggregate number of new hires during the time period involved in the Section 3-covered project; and

Whereas, the City and the Contractor are desirous of being in compliance with the Section 3 regulations as they relate to the Project;

Now Therefore, the City and the Contractor agree as follows:

1. The Contractor and any of its subcontractors shall supply the City with a list of all full-time employees currently employed, indicating which, if any, of said employees were hired within the past three years and were also low or very low-income persons when so hired;

2. The Contractor and any of its subcontractors shall provide a listing of any and all positions for which new hires are expected to be required as a result of the Project;
3. The Contractor and any of its contractors will, to the greatest extent feasible, endeavor to hire 30% percent of the new hires generated by the Project from the following list of Section 3-eligible groups, in the order of priority listed:
 - A. Section 3 residents of service area or neighborhood;
 - B. Youth build participants;
 - C. Homeless projects; Homeless persons; and
 - D. Other Section 3 residents.

- 1 The Contractor and any of its subcontractors will be encouraged to make new hires from the list of Section 3-eligible groups in Paragraph 3 above for any and all other projects assisted with Federal funding, whether or not such project is subject to the Section 3 regulations;
- 2 The Contractor and any of its subcontractors shall accept referrals of Section 3-eligible persons from the City.

Provided, however, that nothing in this agreement is to be construed requiring any party hereto, or its subcontractors, to hire any person or persons who are unqualified to or incapable of carrying out the work required of any such new hires.

Witness our hands and seals on the date first written above:

The City of Houston Witness:
 Department of Housing & Community Development

by its
 Direct
 or

Contractors Name:

Witness:

by its
 Owner/Preside
 nt

May 28, 1996

CDBG.FC - 03/09

Hiring
 Agreement

CONTRACTOR WORKFORCE ANALYSIS FORM

ESTIMATED PROJECT WORK FORCE BREAKDOWN

Job Category	Total Estimated Positions Needed for Project	No. Positions Occupied by Permanent Employees	Number of Positions Not Occupied	Number of Positions to be Filled w/Section 3 Residents
Officer/Supervisor				
Professionals				
Technical				
Hsg Sales/Rent				
Office/Clerical				
Service Workers				
Others				
TRADE:				
Journeyman				
Apprentices				
Laborers				
Trainees				
Others				
TRADE:				
Journeyman				
Apprentices				
Laborers				
Trainees				
Others				

EMPLOYMENT CERTIFICATION (make additional copies of this form if necessary)

The Company hereby certifies that the above table represents the appropriate number of employee's positions required in the execution of

project and also represents the number of Section 3 service area residents that the company proposes to employ.

The Company certifies that it will make a good faith effort to employ the number of lower income employees stated utilizing such community-based organizations and service agencies as the Texas Employment Commission and Houston Works.

Company: _____ Title: _____
 By: _____ Date: _____

SUBCONTRACTOR WORKFORCE ANALYSIS FORM

ESTIMATED PROJECT WORK FORCE BREAKDOWN

Job Category	Total Estimated Positions Needed for Project	No. Positions Occupied by Permanent Employees	Number of Positions Not Occupied	Number of Positions to be Filled w/Section 3 Residents
Officer/Supervisor				
Professionals				
Technical				
Hsg Sales/Rent				
Office/Clerical				
Service Workers				
Others				
TRADE:				
Journeyman				
Apprentices				
Laborers				
Trainees				
Others				
TRADE:				
Journeyman				
Apprentices				
Laborers				
Trainees				
Others				

EMPLOYMENT CERTIFICATION (make additional copies of this form if necessary)

The Company hereby certifies that the above table represents the appropriate number of employee's positions required in the execution of project and also represents the number of Section 3 service area residents that the company proposes to employ. The Company certifies that it will make a good faith effort to employ the number of lower income employees stated utilizing such community-based organizations and service agencies as the Texas Employment Commission and Houston Works.

Company: _____ Date: _____
 By: _____ Title: _____

ay 28, 1996

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Form 2

SECTION 3 BUSINESS UTILIZATION FORM

The Company shall utilize Business concerns located in the Section 3 service area for project _____ in contracting for work

to be performed in connection with the completion of the contract. To this end, the Company shall require the services of companies as follows:

Project Name Total Amount of Contract:

Name of Prime Contractor:

Address:

Name of Contact Person:

Date:

NAME OF SUBCONTRACTOR	SECTION 3 BUSINESS *	ADDRESS & PHONE NO.	TRADE/SERVICE OR SUPPLY	CONTRACT

* Check if a Section 3 Business concern

TOTAL DOLLAR AMOUNT AWARDED TO SECTION 3 BUSINESS: \$

TOTAL DOLLAR AMOUNT OF ALL SUBCONTRACTS: \$

FC-49

(NOTE: INCLUDE "SUBCONTRACTOR WORKFORCE ANALYSIS FORM 2")

May 28, 1996 Form 3

CITY OF HOUSTON
HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT
Real Estate Compliance
CONTRACTOR SECTION 3 COMPLIANCE FORM
CONTRACTOR NAME PROJECT NAME Racial/Ethnic Codes: 1-White American

ADDRESS CONTRACT AMOUNT 2-Black American 3-Native American

CONTACT PERSON DATE REPORT SUBMITTED 4--Hispanic American 5-Asian Pacific American

PHONE NUMBER 6-Hasidic Jews (For Part II only)

Part 1: Employment and Training (*Include New Hires In columns C and D.)

A Job Category	B Number of New Hires: TOTAL / Section 3	C Total Number of staff hours for Section 3 Employees and Trainees *	D Number of Section 3 Employees and Trainees*	E Radical/Ethnic Code(s) For Columns D and E, show Numbers 1 * 2 * 3 * 4 * 5 *
Professionals				
Technicians				
Office/Clerical				
Construction by Trade (List) Trade:				
Trade:				
Trade:				
Trade:				
Trade::				
Other:(List)				

Part II Section A 3 Business

A Type of Contracts	B Total dollar amount awarded on project	C Total dollar amount awarded to Section 3	D Total number of Section 3 Business receiving contract	E Radical/Ethnic Code(s) For Columns D and E, show Numbers 1 * 2 * 3 * 4 * 5 * 6
Construction				
Non-Construction				

**CITY OF HOUSTON
HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT
Real Estate Compliance
SUBCONTRACTOR SECTION 3 COMPLIANCE FORM**

CONTRACTOR NAME PROJECT NAME Racial/Ethnic Codes: 1-White American
ADDRESS CONTRACT AMOUNT 2-Black American 3-Native American
CONTACT PERSON DATE REPORT SUBMITTED 4--Hispanic American 5-Asian Pacific American
PHONE NUMBER 6-Hasidic Jews (For Part II only)

Part 1: Employment and Training (*Include New Hires In columns C and D.)

A B C D E
Total Number of Number of New
staff hours for Number of Section
Section 3 3
Radical/Ethnic Code(s) Hires:
For Columns D and E, show Numbers Job
Employees and Employees and
1 * 2 * 3 * 4 * 5 * TOTAL / Section 3
Trainees *Trainees*

Professionals Technicians Office/Clerical Construction by Trade (List)

Trade: Trade: Trade:

Trade: Trade::

Other:(List)

Part II Section A 3 Business

A B C D E Total
number of
Radical/Ethnic Code(s) Total
dollar amount
Total dollar amount Section 3 Business
For Columns D and E, show Numbers Type of
Contracts

awarded on projectawarded to Section 3 1 * 2 * 3 * 4 * 5 * 6receiving contract

Construction Non-

Construction

May 28, 1996 Form 4b

FC-51

**Houston-Baytown-Sugar Land
2008 Annual and Monthly Income Limits For
Extremely Low-Income, Very Low-Income and Low-Income Families
Under the Housing Act of 1937**

Released March 19, 2009

Persons in Household	30% of Median "Extremely Low" Annual Monthly Income Income	50% of Median "Very Low-Income" Annual Monthly Income Income	80% of Median "Low-Income" Annual Monthly Income Income
1	\$13,400 \$1,117	\$22,350 \$1,863	\$35,750 \$2,979
2	15,300 1,275	25,500 2,125	40,850 3,404
3	17,250 1,438	28,700 2,392	45,950 3,829
4	19,150 1,596	31,900 2,658	51,050 4,254
5	20,700 1,725	34,450 2,871	55,150 4,596
6	22,200 1,850	37,000 3,083	59,200 4,933
7	23,750 1,979	39,550 3,296	63,300 5,275
8	25,300 2,108	42,100 3,508	67,400 5,617

FY 2008 Median Family Income \$63,800.00

* Definitions (Source 24 CFR 570.3) :

- 1 "Low and moderate income household" or "lower income household" means a household having an income equal to or less than the Section 8 lower income limits established by HUD. The method for determining income under the Section 8 Housing Assistance Payments program need not be used for this purpose.
- 2 "Low and moderate income person" or "lower income person" means a member of a family having an income equal to or less than the Section 8 lower income limits established by HUD. Unrelated individuals shall be considered as one person families for this purpose. The method for determining income under the Section 8 Housing Assistance Payments program need not be used for this purpose.

May 28, 1996
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Income Verification

CONTRACTOR'S INCOME VERIFICATION

FORM

Contractor's Name:

Project Name:

Address: Date Report Submitted:

Contact Person:

Phone Number:

NAME OF EMPLOYEE	TITLE	CITY OF HOUSTON SECTION 3 RESIDENTS		MONTHLY SALARY	IS SALARY BEL
		YES			NO

FC-53

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**ATTACHMENT II
FC-54**

**CITY OF HOUSTON
DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT**

MWDBE & SBE PARTICIPATION PLAN

PROJECT NAME & NUMBER
PRIME CONTRACTOR
ADDRESS LIAISON

REPORT DATE CONTRACT NO. CONTRACT AMOUNT MWDBE &
SBE GOAL % PHONE

SUB/VENDOR NAME	DATE OF AA CERTIFICATION	DATE OF CONTRACT	SUBCONTRACT AMOUNT	% OF TOTAL CO
TOTAL				

Use additional pages if needed

Provide support documentation on all revenues paid to MWDBE & SBEs to reflect up/down variances on contract amount.

Submit to: Housing & Community Development Depa
ATTN.: Laura Ortiz
P. O. Box 1562
Houston, Texas 77251, (FAX) 868-8343

FC-55

**CITY OF HOUSTON
DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT
MWDBE & SBE MONTHLY UTILIZATION REPORT**

REPORT PERIOD

PROJECT NAME & NUMBER
PRIME CONTRACTOR
ADDRESS LIAISON

REPORT DATE CONTRACT NO.
CONTRACT AMOUNT MWDBE
& SBE GOAL
% PHONE

SUB/VENDOR NAME	DATE OF AA CERTIFICATION	DATE CONTRACT	SUBCONTRACT AMOUNT	% OF TOTAL CONTRACT	AMOUNT PAID THIS PERIOD	AMOUNT PAID TO DATE	C
TOTAL							

Use additional pages if needed **Submit by the 15th day following the end of the report period to:**Housing & Community Development Department ATTN.: Laura Ortiz

Provide support documentation on all revenues paid to MWDBE & SBES. O. Box 1562
to reflect up/down variances on contract amount.Houston, Texas 77251, (FAX) 868-8343 **FC-56**

ATTACHMENT II-A

FC-57

MWDBE & SBE Subcontract Terms

Contractor shall insure that all subcontracts with MWDBE & SBE 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 _____ (MWDBE & SBE subcontractor) shall not delegate or subcontract more than fifty (50%) percent 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 ("Director").

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

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

4 As concluded by the parties to this Contract on the advice of the counsel and as evidenced by the signatures of the parties and their respective attorneys any controversy between the parties to this Contract involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one (1) party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration and such arbitration shall comply with and be governed by the provisions of the Texas General Arbitration Act (Art. 224 et. seq. V.A.T.S. - "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 as set out above;

The parties shall select an arbitrator from a revolving list of certified arbitrators provided by the Director.
c. If the parties are unable to agree on an arbitrator, each party may strike one name from the list and the first name immediately following the last strike shall be the one designated to hear the dispute. Each party shall deposit with the Director one-half (1/2) of the fee estimated by the arbitrator for all proceedings required;

d. The arbitrator shall have all powers set out under the Act and shall hear testimony, consider evidence and render a written decision within three (3) days of submission of the dispute. As part of the decision, the arbitrator shall determine which party or parties shall pay all or part of the arbitrator's fee; and

e. The decision of the arbitrator shall be final as provided in the Act and upon payment of the arbitrator's fees, the Director shall return that part of the deposit of any party in excess of the amount the party was ordered to pay.

FC-58

CERTIFICATES

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**CERTIFICATE FROM CONTRACTOR APPOINTING OFFICER OR EMPLOYEE
TO SUPERVISE PAYMENT OF EMPLOYEES**

Project Name Date

Location Project No.

(I) (We) hereby certify that (I am) (we are) (the prime contractor) (a subcontractor) for

(Specify "General Construction," "Plumbing," "Roofing," etc.) in connection with

construction of the above-mentioned Project, and that (I)(we) have appointed * , whose signature appears below, to supervise the payment of (my)(our) employees beginning

, 20 ; that he/she is in a position to have full knowledge of the facts set forth in the payroll documents

and in the statement of compliance required by the so-called Kick-Back Statue which he/she is to execute with (my) (our) full authority and approval until such time as (I) (we) submit to the

a new certificate appointing some other person for the purposes herein above

stated.

* (Identifying Signature of Appointee)

Attest (if required): (Name of Firm or Corporation)

By: (Signature)

(Signature)

(Title) (Title)

NOTE: This certificate must be executed by an authorized officer of a corporation, by a member of a partnership, or the sole owner and shall be executed prior to the start of construction and submitted promptly. Should the appointee be changed, a new certificate must accompany the first payroll for which the new appointee executes a statement of compliance required by the Kick-Back Statute.

CERTIFICATION REGARDING LOBBYING

[For Contracts, Grants, Loans, and Cooperative Agreements]

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds, other than Federally appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certificate is a prerequisite for making or entering into this transaction imposed by Division 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

CONTRACTOR:

By: _____

Date

Name:

Title:

FC-61

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER

RESPONSIBILITY MATTERS

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;
- (b) Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph (b) of this certification; and
- (d) Have not within a three (3) year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000.00 or imprisonment for up to five (5) years, or both.

Type Name & Title of Authorized Representative

Signature of Authorized Representative

Date

G I am unable to certify to the above statements. My explanation is attached. FC-62

REQUEST FOR CONTRACTOR CLEARANCE

THIS FORM MUST BE FORWARDED OR FAXED TO THE CITY OF HOUSTON AT THE ADDRESS BELOW BY, OR ON BEHALF OF, THE APPARENT LOW BIDDER AS SOON AS BIDS

ARE TABULATED.

Date:

HUD Project No.:

Project Name & Address:

Name of Contractor:

Federal ID Number:

Address:

(Include Zip Code)

Telephone Number:

Sole Proprietorship:

(List Sole Owner)

Partnership:

(List All Partners)

Corporation:

(Names of All Principals)

and their Titles:

Laura Ortiz

City of Houston

Housing and Community Development Department

P. O. Box 1562

Houston, TX 77251

Phone: (713) 865-4291

Fax: (713) 868-8343

Approved: _____ Date: _____ Laura Ortiz

FC-63

APPENDIX IV

WAGE DECISION for GRAFFITI PROJECT

General Decision Number: TX08 0121 10/09/2009 TX121

Superseded General Decision Number: TX2007O125

State: Texas

Construction Type; Building

County; Harris County in. Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories). (Use current highway general wage determination for Paving & Utilities incidental to Building Construction for Harris County)

Modification Number	Publication Date
0	02/08/2008
1	03/21/2008
2	03/28/2008
3	04/11/2008
4	04/25/2008
5	06/06/2008
6	06/27/2008
7	07/18/2008
8	09/05/2008
9	10/10/2008
10	12/26/2008
11	01/23/2009
12	04/10/2009
13	09/04/2009
14	10/09/2009

*** ASBE0022-002 06/01/2009**

	<u>Rates</u>	<u>Fringes</u>
ASBESTOSWORKER/INSULATOR (Including application of all insulating materials, protective coverings, coatings and finishing to all type of mechanical systems).....	\$20.63	8.30
<hr/>		
BOIL0074-002 0	08/08/2008	
	<u>Rates</u>	<u>Fringes</u>
BOILERMAKER	25.02	14.66
<hr/>		
CARP055 1-001	04/01/2008	
	<u>Rates</u>	<u>Fringes</u>
CARPENTER (Including Acoustical Ceiling Work).	\$21.00	6.43
ELEC0716-002	09/01/2008	
	<u>Rates</u>	<u>Fringes</u>
ELECTRICIAN (.Including Pulling and Low Voltage wiring and Installation of Fire Alarms, Security- Systems, Telephones, and Computers -),	\$24.85	7.61

ELEV0031-001 01/01/2009 Rates Fringes

ELEVATOR MECHANIC. \$33.725 18.285

FOOTNOTES; a,- Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Chr1st ma s Day

PLAS 00 79-001 07/01/2004 Rates Fringes

PLASTERER. \$19.42 1.00

PLUM0068-0G3 11/10/2008 Rates Fringes

Plumbers (Excluding HVAC Pipe). \$27.79 8.84

* PLUM0211-004 04/01/2009

Pipefitters (HVAC Pipe Only)... Rates Fringes \$23.07 9.31

SFTX0663-0Q1 04/01/2009 Rates Fringes

SPRINKLER FITTER (Fire Sprinklers) \$25.90 14.30

SHEE0G54-004 07/01/2009 Rates Fringes

Sheet metal worker (1ncluding HVAC Duct and System Installation)..... \$25.74 10.17

SUTX2O05-O1O 03/24/2005 Rates Fringes

Asbestos Abatement Worker (Ceilings , Floors, & Walls Only) \$14.00 0.00

Bricklayer Rates Fringes \$18.00 0.00

Cement Mason/Concrete Finisher \$12.83 0.00

Drywall Finisher/taper \$12.13 1.01

Drywall Hanger, Including Studs Installation \$12.96 1.59

Formbuilder/formsetter	\$11.82	0.00
Glazier	\$14.92	2.78
Insulator – Batt and Foam	\$10.00	0.00

Ironworkers:

Reinforcing	\$12.06	0.00
Structural	\$15.68	0.00

Laborers:

Common	\$9.29	0.00
Mason Tender Brick	\$10.13	0.00
Mason Tender Cement	\$9.86	0.00
Pipe layer	\$12.35	0.00
Plaster Tender	\$12.90	2.51

LATHER \$16.90 3.61

Painter (Brush, Roller, and Spray)..... \$11.17 0.00

Pipefitters (Excluding HVAC Pipe! \$ 19.20 8.23

POWER EQUIPMENT OPERATOR:

Asphalt Paver.....	\$ 13.50	0.25
Backhoe	\$12.54	0.00
Crane	\$17.95	3.56
Forklift.....	\$15.46	5.15
Slab & Wall Saw.....	\$15.54	3.83

ROOFER \$ 11.51 0.57

TILE FINISHER \$12.00 0.43

TILE SETTER \$15.70 1.09

TRUCK DRIVER \$10.78 1.57

WELDERS Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included with the scope of the Classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a) (1) (iii). In the listing above, the "SU" designation, means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there *been* an initial decision in the matter? This can be:

- an existing published wage determination
- a survey underlying a wage determination
- a Wage and Hour Division letter setting forth a position on a wage determination matter
- a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2 and 3 should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
2 00 Constitution Avenue, N,W.
Washington, DC 20210

2.) If the answer to the question in 1) is yes, then an interested party (those affected by the action) can request review and reconsideration from the wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7).

Wage and Hour Administrator

U.S. Department of Labor

200 Constitution Avenue

N. W., Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, Project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the wage Appeals Board), Write to:

Administrative Review BOARD U.S. Department of Labor 200
Constitution Avenue, N.W. Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION