OFFICE OF THE CITY CONTROLLER
CITY OF HOUSTON
TEXAS

RONALD C. GREEN

October 11, 2010

Subject: Letter of Clarification No. 3 to RFQP No. Q23763 for Professional Independent Internal Audit and Consulting Services

To: All Prospective Proposers:

This letter of Clarification is being issued for the following reasons:

- **1) To respond to questions posed by prospective proposers:**

Question #1 Our firm is a 100 percent minority owned business. Will this fact satisfy the city's M/WBE participation requirements?

Answer: The contract requires additional participation through sub-contracting.

Question #2 Is the RFQP available in Word or PDF editable format?

Answer: PDF online

Question #3 What is the overall objective of the work?

Answer: To provide sufficient internal audit and consulting resources in support of the Audit Division achieving its mission and objective (see Audit Division web page at City Controller's website)

Question #4 What specifically are the tasks and responsibilities for the selected provider? is it documentation and/or testing/analysis?

Answer: The tasks are varied depending on the need. Standard audit procedures that are in compliance and accordance with GAS/Yellowbook and IIA/Redbook

Question #5 Is a risk assessment involved up front by the selected provider?

Answer: The engagement(s) may involve a risk assessment component to facilitate scope, and audit objectives, designing tests and deploying resources, etc. It depends on the specific engagement

Question #6 Is the review oriented toward compliance, operations, financial or combination of these?

Answer: The scope of services are intended to cover all of these.

Question #7 What are the required experience levels and skills set?

Answer: Proficiency and Competency to be sufficient to execute the scope of services, such as CPA, CIA, CISA, CFE, CGAP, etc. The specific engagement objectives will dictate the level of expertise, however, each project would require supervision and review to ensure sufficient and appropriate evidence to support conclusions/findings for the final report.

Question #8 Any supplemental language requirements (outside of English)?

Answer: Depending on the engagement.

Question #9 What is the anticipated start date of the work and anticipated duration?

Answer: The contract term is anticipated to be from 12/2010 – 12/2015

Question #10 Where will the work be performed?

Answer: Varied – Mostly throughout the City of Houston.

Question #11 Does it matter that a Firm resides outside Texas if there is no incremental cost to you?

Answer: Generally not a requirement.

Question #12 What is the budget for this project?

Answer: This RFP represents a term and scope of services with specific service orders (SO) yet to be determined. Each SO will have an RFP to be bid by the pool of contractors selected from the current process.

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Professional Independent Internal Audit and Consulting Services

Question #13 Does the City of Houston have an estimated award date/start date?

Answer: Estimated contract start date is December 2010.

Question #14 Do we need to list who our M/WBE partner/subcontractor is as part of our proposal or do we acknowledge/select of partner (send the letter of intent) after the award of the contract is given to the primary contractor?

Answer: We were recommending them to either identify the subs and/or verify that they are listed with AACC.

Question #15 How many audits per year does the City of Houston anticipate the audit outsource provider will perform?

Answer: The range of quantity would be zero to approximately 5-6, depending on engagement size and duration.

Question #16 Is there a typical audit length and resource load for each individual internal audit? (e.g. 4 people for 2 weeks, 2 people for 10 weeks, etc.)

Answer Each engagement varies in resource requirement depending on scope and objectives, however a general range might be 2-3 staff (3-8 weeks), 1 manager(1-3weeks), 1 Principal (1-2 weeks)

Question #17 What is the size of the City of Houston internal audit department?

Answer: 13 professional staff and one staff analyst

Question #18 Has the City of Houston set aside a budget for the internal audit assistance, if so what is the size of the budget?

Answer: The overall value is not set, and each year is a budgetary decision – the average budgeted amount over the last 3-4 years has been between $250k and $400k

Question #19 Does the City have a developed audit plan or does the RFQP contemplate that the outsource provider would perform a risk assessment and assist in development of the annual/tri-annual audit plan?

Answer: The Audit Division has an Annual Audit Plan Posted on our website

Question # 20 For the financial attestation engagements mentioned in the RFQP what is the specific opinion required and what is the scope of the work for attestation engagements?

Answer: The external audit function opining on the CAFR is engaged by the Finance Department under separate contract.

Question #21 May we submit our financial statements in a separate envelop and mark them proprietary and confidential rather than placing them in the body of the proposal?

Answer: Yes

Question #22 May the List of Previous Customers in Exhibit III be incorporated by reference to a section of our proposal?

Answer: Yes

Question #23 Is a copy of the Certificate of Registration required to be submitted with the proposal?

Answer: The Certificate of Registration is not required to be submitted with the proposal. However, if your firm is recommended for contract award, your firm will be required to register with the Texas Secretary of State's Office, if not already registered to do business in the State of Texas.

Question #24 In a non-partnership company such as ours, can the managing director provide the Certificate of Vote authorization to identify directors that are authorized to execute agreements on behalf of the company?

Answer: Depends on what kind of business entity the company is– a corporation? Limited liability company? Limited partnership? They need to provide this information.

Question #25 Since we're a publically traded company, can we reference our financial statements which are available online or is it mandatory to submit a copy with our response?

Answer: Business decision if the on-line audit meets the requirements of the RFP

Question #26 Do we need to include the Certification of Agreement to Comply with Pay or Play Program as a professional services company?

Answer: Yes

END OF RESPONSES TO QUESTIONS

Note: No further questions will be accepted after the publication of this Letter of Clarification.

- **2) The solicitation document is changed as follows:**

    - Reference page 16 of 52, change RFQP number CTR-091010 to read **Q23763**.
    - Exhibit XI "Specimen Contract" is hereby added and attached hereto.

When issued, Letter(s) of Clarification shall automatically become a part of the bid documents and shall supersede any previous specification(s) and/or provision(s) in conflict with the Letter(s) of Clarification. It is the responsibility of the bidders to ensure that it has obtained all such letter(s). By submitting a bid on this project, bidders shall be deemed to have received all Letter(s) of Clarification and to have incorporated them into this solicitation.

Furthermore, it is the responsibility of each Contractor to obtain any previous Letter of Clarification associated with this solicitation.

David Schroeder

David Schroeder
City Auditor
832.393.3510

Attachment: Exhibit XI "Specimen Contract

THE STATE OF TEXAS '
'
COUNTY OF HARRIS '

I. PARTIES/PREAMBLE

THIS AGREEMENT FOR PROFESSIONAL INDEPENDENT INTERNAL AUDIT AND CONSULTING SERVICES ("Agreement") is made between the **CITY OF HOUSTON, TEXAS** ("City"), a Texas municipal corporation, and _____ ("Contractor"), a Delaware corporation doing business in Texas.

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

City	Contractor
City Controller City of Houston P. O. Box 1562 Houston, Texas 77251	_____ _____ _____ _____

Specimen Contract

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B. Compliance with Equal Employment Opportunity Ordinance

C. MWBE Subcontract Terms

D. Drug Policy Compliance Agreement

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F. Drug Policy Compliance Declaration

G. Hourly Rates

B. Parts Incorporated

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

Specimen Contract

C. Signatures

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

ATTEST/SEAL: _____

By: _____
Name:
Title:

By: _____
Name:
Title:

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

_____
City Secretary

_____
Mayor

APPROVED:

COUNTERSIGNED BY:

_____
City Controller

_____
City Controller

APPROVED:

_____
Mayor

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

_____
Sr. Assistant City Attorney
L.D. File No.

_____

Specimen Contract

III. DEFINITIONSError! Bookmark not defined.

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

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

“Attestation Audit” has the meaning set out in the Government Auditing Standards promulgated by the Comptroller General of the United States, as such standards may be amended from time to time.

"Audit" means any examination and analysis of an organization, program, function or activity to check the reliability and integrity of information; compliance with policies, plans, procedures, laws, regulations, and contracts; safeguarding of assets; and accomplishment of established objectives and goals for operations or programs. The Contractor may inspect, analyze, and verify records and obtain information by interviews, questionnaires, and physical inspections.

"Basic Services" are defined in Section IV(A)(2).

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

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

"City Controller" means the City Controller of the City of Houston or such other person as she shall designate.

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

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

"Deliverables" means those items that Contractor is to deliver to the City Controller pursuant to the Tasks assigned to the Contractor. Deliverables for Basic Services are described in Article IV(A)(2).

"Department" as used in this Agreement shall mean the City department which is the focus of an individual Audit.

"Director" shall mean the director of the Department which is the subject of an Audit or such other person as the Director may designate.

"Document" means reports, charts, analyses, maps, letters, tabulations, exhibits, computer databases and diskettes, notes and other work products obtained by Contractor from the City or prepared by an Contractor as a Task under this Agreement. "Document" does not include, however, the Contractor's proprietary methodologies, software or databases.

"Engagement Letter" means each letter sent from the City Controller to the Contractor assigning services to be performed hereunder in substantially the form as set forth in Exhibit "A" attached hereto.

"Financial Audit" has the meaning set out in the Government Auditing Standards promulgated by the Comptroller General of the United States, as such standards may be amended from time to time.

"Fiscal Year" means the City's fiscal year, which runs from July 1 through June 30.

"Mayor" means the Mayor of the City or his designated representative.

AParties@ mean all the entities set out in the Preamble who are bound by this Agreement.

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"Performance Audit" has the meaning set out in the Government Auditing Standards promulgated by the Comptroller General of the United States, as such standards may be amended from time to time; however, such audits shall encompass an objective and systematic examination of evidence to provide an independent assessment of the efficiency and effectiveness of the City's system of internal controls and the quality of performance based on quantifiable criteria in meeting objectives, and shall not extend to any policy initiatives beyond the financial oversight authority granted to the City Controller in the Houston City Charter prior to the approval of Article VIII § 7 thereof.

"Project Administrator" means the City Auditor selected by the City Controller to manage this Agreement on behalf of the City. The Project Administrator is responsible for monitoring and coordinating Contractor's day-to-day activities through verbal and written communication, meetings, progress reports and ensuring audits progress timely.

"Site" means the area(s) within the Department that Contractor will have to access to perform the requested Audit.

"Special Services" are defined in Section IV (A)(3).

"Subcontract Cost" means the amount to be paid to any subcontractor hired by Contractor for the principal purpose of obtaining the auditing services under this Agreement plus ten percent (10%) as an administrative fee to the Contractor.

"Tasks" are defined in Section IV (A)(2).

"Travel Costs" includes the ordinary and reasonable cost of travel and per diem expenses for travel necessary for the purposes of this Agreement for which the Contractor has received advance written authorization from the City Controller or her designee.

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"Work in Progress" means any work as defined under Basic Services or Special Services for which the City has not yet received and approved Contractor's work product.

IV. DUTIES OF CONTRACTOR

A. Scope of Services

1. General Description

For and in consideration of the payments to be received hereunder, Contractor agrees to provide all labor, materials and supervision necessary to perform the following independent internal audit and/or consulting services, in accordance with the requirements of this Agreement and in conformity with established professional auditing standards:

Basic Services as set out below; and
Special Services as set out below.

City and Contractor understand and acknowledge that the Basic Services and Special Services herein do not constitute an audit of the City's financial statements or a comprehensive evaluation of citywide internal controls and, accordingly, the findings reported from these services only relate to the accounts or items tested and do not purport to provide an opinion on the City's financial statements or citywide internal control structure.

Contractor acknowledges and understands that this is not an exclusive contract and that the City shall have the right to contract with other auditors to perform some or all of the services described hereunder and that the City makes no guarantees as to the quantity of work Contractor will receive during the Agreement Term. All requests for Audit services shall be on an as-needed basis. In addition, City and Contractor understand and acknowledge that the City Controller will be responsible for requesting the specific services to be provided by the Contractor and that Contractor shall assume responsibility for performing such services and preparing the resulting report(s). The City Controller shall have the sole responsibility for

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approving the scope of each Audit's work plan, required fees and hours to be dedicated to each Task.

Requests for auditing/consulting services shall be made by the City Controller in writing in the form of an Engagement Letter substantially similar to the letter attached to this Agreement as Exhibit "A". If the Controller requests such services, Contractor shall, within ten (10) Business Days thereafter, provide the City Controller with a written itemized cost estimate at the rates set out in Exhibit "G" including any Subcontract Cost for performance of such services, along with a description of the specific work plan, financial and business risks associated with the Audit, specialized skills, timetable, documents to be delivered, estimate of travel involved, if any, and the estimated hours and personnel required for the Audit. Upon agreement between the City Controller and the Contractor as to the Audit to be performed, the City Controller shall deliver to the Contractor an Engagement Letter in a form substantially similar to the letter set forth in Exhibit "A" attached hereto.

The Contractor shall provide all services and materials necessary for the proper performance of the audits and consulting services. When engaged to conduct or assist on an Audit or consulting engagement, the Contractor shall notify the City Controller of any material deficiencies of which it becomes aware and make recommendations for curing such deficiencies with the objective of improving the performance of the operation being examined.

The City Controller may direct Contractor to perform Financial Audits, Attestation Audits and Performance Audits, in accordance with the Government Auditing Standards promulgated by the Comptroller General of the United States, as such standards may be amended from time to time.

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2. Basic Services

Basic Services shall include a work plan designed to address the general tasks associated with a given audit, review, or consulting service:

Task I: Develop an understanding of audit scope, risks, and testing needed. Prepare a detailed audit program that addresses the City's financial and business risks associated with the engagement.

Task II: Assess the internal control structure specific to the engagement, including information technology access and processing controls. Based on the analysis, the Contractor shall make recommendations for improvements in controls and the development of a plan to improve the effectiveness and efficiency in the operations.

Task III: Analyze and test performance – for each type of significant risk identified, the Contractor shall select a sample of transactions for detailed testing to determine compliance with prescribed policies, procedures, laws and regulations. The Contractor may utilize its own software to analyze transactions and select the sample to be tested. Upon completion of Task III, the Contractor shall provide a written report to the City Controller containing findings, recommendations and commendations related to the detailed testing.

Task IV: Management's response - during the performance of each Task, the Contractor shall communicate to the City Controller its findings and support for such findings and shall make recommendations based on those findings. All preliminary findings shall be discussed with the Department Director or other designated Department management to verify that the findings are

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factual and the recommendations are both meaningful and practical. The Department shall be responsible for preparing written responses for each recommendation and where appropriate develop a corrective action plan. Contractor shall also review management responses as to facts and responsiveness. Upon completion of Task IV, the Department shall deliver management's responses to the City Controller for inclusion with the final report. The City Controller shall attach the Department's management responses to the final audit report. As an alternative, management's responses may be incorporated within the body of the audit report.

Task V: Finalize and present the final reports to the City Controller who will distribute such reports with management responses to the Mayor, City Council, and Department Directors. The reports (minimum 10 copies per audit) will be presented in a hard copy bound version as well as an electronic format.

3. Special Services

Special Services include, but are not limited to, the following tasks:

a. Expert Witness - A Contractor may be requested to assist the City as an expert witness in litigation with third parties or at administrative proceedings.

b. Conference or Training – The Contractor shall attend periodic conferences with City Officials or conduct special training sessions related to City policies and procedures, redesigned business processes, technical governmental or financial accounting and auditing issues, grant compliance requirements, and other applicable laws and regulations.

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c. Special Investigations or Studies – At the request of the City Controller, the Contractor shall conduct special investigations or studies (within Contractor's professional qualifications and within the City Controller's authority to undertake) reasonably related to the Basic Services or Special Services, but not specified herein.

B. Coordinate Performance**Error! Bookmark not defined.**

Contractor shall coordinate the performance of its services with the City Controller. Contractor understands and agrees that the City Controller will be monitoring the day-to-day activities of Contractor through daily contact, meetings and formal progress reports. Contractor shall promptly report to the City Controller any conditions, transactions, situations or circumstances it encounters in the performance of its services, that would impede or impair the proper conduct of the services hereunder or which would seem to warrant a special investigation or report in more detail than which is necessary to perform the audit described in the Engagement Letter.

C. Time of Performance

Contractor shall commence services under this Agreement on the date specified in each Engagement Letter from the City Controller. Such services shall be diligently performed and shall be completed within the time period designated by the City Controller, unless an extension of time is agreed to by the City Controller in writing.

D. Reports

Contractor shall prepare and submit reports as requested by the City Controller in each Engagement Letter.

E. Subcontractors

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Contractor shall be responsible for negotiating subcontracts with its subcontractors. Such agreements shall require the subcontracting parties to substantially comply with all the terms expressed herein. Also, Contractor shall notify the City Controller any time it utilizes a subcontractor and shall provide the City Controller with the subcontractor's professional qualifications and responsibilities prior to entering into an agreement with the subcontractor.

F. Payment of Subcontractors

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

G. **RELEASE**

CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE ACITY@) 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 CONCURRENT NEGLIGENCE AND/OR THE CITY=S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

H. Insurance

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Contractor shall maintain in effect certain insurance coverage, which is described as follows:

(1) Risks and Limits of Liability. Contractor shall maintain the following coverages and limits of liability:

(Coverage)	(Limit of Liability)
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	Bodily Injury by accident $500,000 (each accident) Bodily Injury by Disease $500,000 (policy limit) Bodily Injury by Disease $500,000 (each employee)
Commercial General Liability: Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations	Bodily Injury and Property Damage, Combined Limits of $500,000 each Occurrence and $1,000,000 aggregate
Automobile Liability Insurance (for vehicles Contractor uses in performing under this Agreement, including Employer's Non-Owned and Hired Auto Coverage)	$1,000,000 combined single limit per occurrence
Professional Liability Coverage	$1,000,000 combined single limit

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

(2) Insurance in Full Force. Contractor shall provide and maintain the above insurance in full force and effect at all times during the Agreement term and any extensions thereto.

(3) Form of Certificates. The Project Administrator may approve the form of the Certificates of Insurance, but nothing the Project Administrator does or fails to do relieves Contractor from its duties to provide the required coverage under this Agreement. The Project Administrator's actions or inactions do not waive the City's rights under this Agreement.

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(4) Issuers of Policies. The issuer of any policy shall have a Certificate of Authority to transact insurance business in Texas or 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, Property-Casualty United States.

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

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

(7) Cancellation. Such Certificates shall further reflect that the Contractor shall provide the City with thirty (30) days written notice prior to reduction in the amount of the insurance or cancellation or termination of the policy. The acceptance of delivery by the Project Administrator of any Certificates of Insurance evidencing the insurance coverages and limits required in the Agreement does not constitute approval or agreement by the City that the insurance requirements of this Agreement have been met or that the insurance policies evidenced by the Certificates are in compliance with the requirements of this Agreement.

(8) Subrogation. Each policy except Professional Liability must contain an endorsement to the effect that the issuer waives any claim or right of subrogation

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to recover against the City, its officers, agents, or employees as a client of Contractor.

(9) Endorsement of Primary Insurance. All insurance coverages provided herein, except Workers' Compensation and Professional Liability must contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement.

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

(11) Subcontractors. Contractor shall require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements except amount. The amount must be commensurate with the amount of the subcontract, but in no case less than $500,000 per occurrence. Contractor shall provide copies of insurance certificates to the Project Administrator.

(12) Proof of Insurance.

(a) Before commencing services hereunder, Contractor shall furnish the City with Certificates of Insurance on industry standard form ACORD 25-5.

(b) Contractor shall continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If Contractor does not comply with this requirement, the Project Administrator, at his or her sole discretion, may

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

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

The City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

(13) Other Insurance. If requested by the Project Administrator, Contractor shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Contractor's operations under this Agreement.

I. Warranties; Limitation of Warranties**Error! Bookmark not defined.**

Contractor warrants that its services hereunder shall be of professional quality consistent with generally accepted professional standards for the performance of such services.

J. Confidentiality

(1) A party who receives (the "Recipient") any confidential or proprietary information ("'Confidential Information") of the other party (the "Disclosing Party") shall keep confidential and agrees not to disclose, divulge or reveal the Confidential Information to third parties without the prior written approval of the Disclosing Party. This obligation of confidentiality shall not apply to information that (i) is or becomes publicly available by other than a breach hereof (including, without limitation, any information filed with any governmental agency and available to the public); (ii) is required to be disclosed by order of a court of competent jurisdiction, administrative agency or governmental body, or by subpoena, summons or other legal process, or by law, rule or regulation, or by applicable regulatory or professional standards, provided that prior to such disclosure by the Recipient the Disclosing Party is given reasonable advance notice of such order and an opportunity to object to such disclosure; or (iii) is disclosed by the Recipient in connection with any judicial or other proceeding involving the City

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and Contractor (or any partners, principals or employees of Contractor) (whether or not such proceeding involves any third party) relating to Contractor's services for the City or this Agreement.

(2) Each party shall carry out its respective obligations hereunder using the same degree of care that it uses in protecting its own Confidential Information, but at least a reasonable degree of care. Provided that the Recipient shall have met the foregoing standard of care, the Recipient shall not be liable or responsible for any inadvertent or accidental disclosure by the Recipient of Confidential Information.

(3) Each party agrees that it will not provide any subcontractor or other third party with access to the Confidential Information of the other, unless such subcontractor or third party has agreed to be bound by similar confidentiality and nondisclosure obligations in favor of the Disclosing Party.

K. Use of Work Products

The City may use all notes, plans, computations, databases, tabulations, exhibits, photographs, reports, underlying data and other work products (collectively, the "Documents") that Contractor prepares or obtains under this Agreement. However, except as required by statute, including but not limited to the Texas Public Information Act, or court order, any Documents that identify an underlying source shall not be submitted or reviewed by the City unless Contractor can to its satisfaction redact all information from such Documents that identifies the source(s) of the information.

In addition, the Contractor shall provide the City Controller with supporting schedules, flow charts or other analysis necessary to understand the reported findings and recommendations. Generally, this information is attached as exhibits to the final report;

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however, if requested by the City Controller, Contractor shall provide this information from its work papers files.

L. Working Papers**Error! Bookmark not defined.**

Working papers for work performed under this Agreement by Contractor shall be provided to the Project Administrator as necessary to support findings under the following circumstances:

1. If the City performs an audit of Contractor to determine if Contractor's performance is sufficient under this Agreement;
2. If this Agreement is terminated for cause.

The determination of whether the City needs the working papers shall be at the sole discretion of the Project Administrator. However, except as required by statute or court order, any Documents that identify an underlying source shall not be submitted or reviewed by the City unless Contractor can to its satisfaction redact all information from such Documents that identifies the source(s) of the information.

M. Licenses and Permits

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation for the performance under this Agreement. Contractor shall immediately notify the Project Administrator of any suspension, revocation, or other detrimental action against a license having a material adverse effect on the performance under this Agreement.

N. Compliance with Laws

Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances in its performance under this Agreement.

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O. Compliance with Equal Employment Opportunity Ordinance

In its performance under this Agreement, Contractor shall comply with City's Equal Employment Opportunity Ordinance as set out in Exhibit "B".

P. MWBE Compliance

In its performance under this Agreement, 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 up to 24% 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 in its performance under this Agreement.

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

Q. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence

Specimen Contract

Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary=s Office.

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

(a) a copy of its drug-free workplace policy,

(b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit AD,@ together with a written designation of all safety impact positions and,

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

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

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

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

R. <u>Conflicts of Interest</u>

Specimen Contract

If an actual or potential conflict arises between the City=s interests and the interests of other clients Contractor represents that is within the actual knowledge of Contractor's engagement partner for this Agreement, this engagement partner for Contractor shall immediately notify the City Controller by fax transmission or telephone. Contractor may represent existing or new clients in any matter that is not substantially related to its services under this Agreement, even if the interests of such clients in those unrelated matters are directly adverse to the City. However, Contractor shall not represent any other client in any matter that is substantially related to the subject matter of this Agreement or as to which Contractor has obtained from the City sensitive, proprietary or other confidential information of a non-public nature that, if known to any other client, could be used by such client to the material disadvantage of the City's interests.

S. Pay or Play

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

V. DUTIES OF CITY

A. Payment Terms

Subject to all terms and conditions of this Agreement, the City shall pay fees to Contractor and Contractor agrees to accept fees as specified in each Engagement Letter. For each Audit, the City Controller will specify in the Engagement Letter the hourly rates to apply to such Audit from hourly rates set forth in Exhibit "G". By executing an Engagement Letter, Contractor acknowledges that the fees set out in the Engagement Letter are sufficient to perform

the Audit services described therein. Contractor further acknowledges that the fees set forth in the Engagement Letter represent the maximum compensation to be received by Contractor for performing the Audit unless the City Controller agrees, in writing, to expand the scope of the Audit and simultaneously provide additional funding for the expanded scope. All fees and expenses may only be paid from Allocated Funds, as provided in Section D below.

B. Taxes**Error! Bookmark not defined.**

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 Project Administrator will furnish the City=s exemption certificate and federal tax identification number to Contractor if requested.

C. Method of Payment

Payment for any hourly rates incurred for Basic Services and Special Services rendered by Contractor shall be made in accordance with the rates and hours approved by the City Controller and set forth in the Engagement Letter for such services. The City shall pay Contractor within thirty (30) days of receipt and approval by City Controller of an invoice submitted by Contractor for services rendered by Contractor in the previous month. To be approved each invoice must be submitted to the City Controller and shall include: (1) a description of the services performed during the period covered by the invoice ("the Billing Period"), (2) a summary of the hours worked by personnel classification along with the applicable hourly rate, (3) authorized Travel Costs, if any, incurred by the Contractor during the Billing Period, (4) the amount the Contractor requests for payment and (5) Subcontract Cost, if any (a summary of the subcontractor hours worked by personnel classification along with the applicable hourly rate plus the administrative fee).

Specimen Contract

All fees due to Contractor under this Agreement shall only be payable from certain Allocated Funds, as provided in Section V(D). The City shall make all payments in accordance with Texas Government Code Chapter 2251.

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

D. Limit of Appropriation**Error! Bookmark not defined.**

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

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of $0.00 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

(3) The City makes a supplemental allocation by sending a notice signed by the Project Administrator and the City Controller to Contractor in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

Specimen Contract

DATE:[Date of notice]

SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Agreement").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of $_____, upon the request of the below-signed Project Administrator, 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.

The aggregate of all sums allocated for the purpose of such Contract, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is $_____, of which $_____has been allocated to (name of Contractor).

SIGNED:
(Signature of the City Controller)
City Controller of the City

REQUESTED:

(Signature of the Project Administrator)
Project Administrator

(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 and Contractor has no obligation to perform services under this Agreement until it has received a Notice of Supplemental Allocation of 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.

E. Access to Site

Contractor may enter and leave the premises at all reasonable times without charge. Contractor and its employees may use the common areas and roadways of the premises where it

is to perform the services together with all facilities, equipment, improvements, and services provided in connection with the premises for common use. Contractor shall repair any damage caused by it or its employees as a result of its use of the common areas.

F. Access to Data

The City shall, to the extent permitted by law, allow Contractor to access and make copies of documents in the possession or control of the City or available to it that are reasonably necessary for Contractor to perform under this Agreement.

The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Contractor=s use.

G. City Assistance

The City Controller's office and City Department personnel shall be available to render all reasonable assistance and shall, to the extent permitted by law, provide all books and records, information technology reports, and account analyses in the City's possession that are necessary for Contractor to perform services under this Agreement. The Controller reserves the right to assign a member of the City Controller's staff to any Audit to assist the Contractor.

H. Reproduction Services and Workspace

The City shall provide reasonable on-site reproduction services to Contractor. Costs of special or extensive reproduction shall be the responsibility of the Contractor. The City shall provide reasonable working space to the Contractor in locations maintained by the Controller's Office or City Departments.

Contract

VI. TERM AND TERMINATION

A. Agreement Term

This Agreement is effective on the Countersignature Date and shall remain in effect for three years, unless sooner terminated under this Agreement.

B. Renewals

This Agreement shall renew automatically for up to three successive one-year terms upon the same terms and conditions, unless the Controller gives Contractor notice that it will not be renewed at least thirty (30) days prior to the then-current term.

C. Termination for Convenience by City

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

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

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

Specimen Contract

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.

D. Termination for Cause

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

(1) Contractor fails to perform any of its material duties under this Agreement;

(2) Contractor becomes insolvent;

(3) all or a substantial part of Contractor=s assets are assigned for the benefit of its creditors; or

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

If a default occurs and the City Controller determines that the City wishes to terminate the Agreement, then the City Controller must deliver a written notice to Contractor describing the default and the proposed termination date. The date must be at least thirty (30) days after Contractor receives notice. The City Controller, at her sole option, may extend the termination date to a later date. If Contractor cures the default before the proposed termination date, then the proposed termination is ineffective. If Contractor does not cure the default before the termination date, then the City Controller may terminate this Agreement on the termination date, at no further obligation of the City.

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To effect final termination, the City Controller 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.

E. Termination for Cause by Contractor

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 Project Administrator describing the default and the proposed termination date. The date must be at least 30 days after the Project Administrator 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.

F. Effects of Termination

Upon termination, Contractor shall immediately turn over any Work in Progress to the City Controller. Termination of this Agreement shall termination Contractor performance under any Engagement Letter.

Specimen Contract

VII. MISCELLANEOUS

A. Independent Contractor

It is understood and agreed that each of the parties hereto is an independent contractor and that neither party is, nor shall be considered to be, an agent, distributor or representative of the other. Neither party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other.

B. Severability

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

C. Entire Agreement

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

D. Written Amendment

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

Specimen Contract

E. Applicable Laws

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

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

F. Notices

All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

G. Captions

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

H. Non-Waiver**Error! Bookmark not defined.**

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

An approval by the Project Administrator, 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

Specimen Contract

establish a standard of performance other than that required by this Agreement and by law. The Project Administrator is not authorized to vary the terms of this Agreement.

I. Inspections and Audits

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

J. Enforcement**Error! Bookmark not defined.**

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 reasonably related to Contractor's performance under this Agreement 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.

K. Ambiguities**Error! Bookmark not defined.**

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.

L. Survival

The parties shall remain obligated to each other under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement.

Specimen Contract

M. Release of Information**Error! Bookmark not defined.**

Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the City Controller. The City does, however, grant Contractor the right to use the City's name as part of a general client list and as a specific citation within proposals and other directed marketing efforts.

N. Parties In Interest**Error! Bookmark not defined.**

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

O. Successors and Assigns

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

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

Contractor shall not delegate any portion of its performance under this Agreement without the Project Administrator=s prior written consent.

Q. Remedies Cumulative

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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 that exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

R. Limitation of Liability

Contractor shall not be liable to the City for any amounts representing loss of profit, loss of business or special, consequential or punitive damages.

S. Contractor Debt

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN § 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 FOR ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFORE.

EXHIBIT "A"

FORM ENGAGEMENT LETTER

To: Contractor
_____
_____
_____

Re: [Insert Project Name]

Dear _____:

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

[Insert description, objectives, and scope of Audit including any reports to be produced by Contractor as a result of the Audit]

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

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

The City Controller has established a MWBE participation goal of 24 percentage of the fee established for this Audit. You must make good faith efforts as described in our Agreement to meet this goal. You may also invoice the City for ten percent (10%) of the value of the subcontractor's fee as an administration charge.

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

Annise D. Parker
City Controller

[Insert name of Contractor]

_____

Specimen Contract

Q23763/ Letter of Clarification No. 3
Professional Independent Internal Audit and Consulting Services

By:_____
Date: _____

EXHIBIT "B"

EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

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

Specimen Contract

EXHIBIT "C"
MWBE SUBCONTRACT TERMS

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

1. _____ (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director").

2. _____ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of subcontractor=s books and records, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep its books and records available for inspection for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall change the time for bringing a cause of action.

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

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

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

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

c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.

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

Specimen Contract

EXHIBIT "D"

DRUG POLICY COMPLIANCE AGREEMENT

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

_____
(Contractor)
(Name of Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).

2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.

3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.

4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

_____ _____
Date Contractor Name

_____
Signature

_____
Title

Specimen Contract

EXHIBIT "E"

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

I, _____, _____,
(Name) (Title)

as an owner or officer of _____
(Contractor)
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in ' 5.17 of Executive Order No. 1-31, that will be involved

in performing
_____.
(Project)

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

_____ _____
(Date) Typed or Printed Name)

_____
_____
(Signature)

_____
_____
(Title)

Specimen Contract

EXHIBIT "F"
DRUG POLICY COMPLIANCE DECLARATION

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

_____ (Contractor)
(Name of Company)

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

This reporting period covers the preceding 6 months from _____ to _____, 19____.

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

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

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

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

_____ Initials — From _____ (Start date) to _____ (End date) the following test has occurred

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

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

_____ Initials — I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

_____

_____

Specimen Contract

(Date) (Typed or Printed Name)

_____ _____

(Signature)

_____ _____

(Title)

EXHIBIT "G"

HOURLY RATES

Position Title	***Hourly Rate***

End of Document

Specimen Contract