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THE STATE OF TEXAS §
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COUNTY OF HARRIS §

**AGREEMENT FOR
THE COLLECTION OF DELINQUENT AD VALOREM TAXES
OF THE CITY OF HOUSTON, TEXAS**

THIS AGREEMENT FOR THE COLLECTION OF DELINQUENT AD VALOREM TAXES FOR THE CITY OF HOUSTON, TEXAS ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a home-rule city of the State of Texas, and **LINEBARGER GOGGAN BLAIR & SAMPSON, LLP** (the "Firm" or "Contractor"), a limited liability partnership doing business in Texas.

WITNESSETH

WHEREAS, the City Council desires to improve the collection of delinquent property taxes and other types of receivables within the City of Houston; and

WHEREAS, Section 6.30 of the Texas Tax Code (the "Code") provides that a taxing unit may contract with a private attorney for the collection of delinquent taxes and to provide compensation for such contract in an amount not to exceed 20% of the amount of delinquent tax, penalty, and interest collected; and

WHEREAS, Sections 33.07, 33.08 and 33.11 of the Code allow a taxing unit to add an additional penalty if the taxing unit has contracted for collection with a private attorney pursuant to Section 6.30 of the Code; and

WHEREAS, various statutory provisions allow for the recovery of attorney's fees in litigation to recover various amounts due to the City; and

WHEREAS, the Firm possesses the expertise and experience necessary to perform the services contemplated by this Agreement and desires to perform such services for the consideration herein specified;

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and benefits herein contained, the City and the Firm hereby agree as follows:

General Scope of Services

The Firm shall, for and in consideration of the payment of the sum of money hereinafter specified, subject to the approval and general supervision of the City Attorney, provide all services necessary for the collection of delinquent City ad valorem

taxes, including annexed water district taxes, and provide such further services as outlined in this Contract.

I.
Firm to Collect Taxes

A. The Firm shall act as the City's delinquent tax collection attorneys. The general legal services to be performed by the Firm shall include without limitation legal representation of the City in ad valorem tax collection matters including the preparation and mailing of legal demand letters, the preparation and filing of pleadings, motions, and judgments, representation of the City in judicial and administrative proceedings, including representation on appeal, and the taking of all other actions necessary to collect delinquent ad valorem taxes and to advise the City on ad valorem tax matters. Demand letters shall include a statement notifying taxpayers that if the notice relates to the taxpayer's homestead and the taxpayer is over 65 years of age or disabled, the taxpayer may be entitled to defer payment of the taxes.

B. Without limitation of the generality of the preceding paragraph, the Firm's duties under this Agreement shall specifically include:

(i) enforcing by suit, or otherwise, the collection of all delinquent taxes, penalty and interest owing to the City, provided that current year real property taxes falling delinquent within the period of this Agreement shall become subject to filing suit on the first day of July of the year in which the same shall become delinquent, and personal property taxes falling delinquent within the period of this Agreement shall become subject to filing suit on the first day of April of the year in which the same shall become delinquent, unless (a) prior permission is obtained from the City Attorney or (b) taxes are delinquent on the real or personal property account for prior years, and all judgments must include all taxes delinquent as of the date of judgment;

(ii) filing a claim for all existing recorded City liens in all applicable delinquent real property tax suits, regardless of whether the Firm filed the original petition in such suit; provided that the Firm shall not receive any additional consideration in connection with the collection of such other liens except for those fees and expenses paid by the debtor pursuant to an award thereof by the applicable court;

(iii) filing City tax claims and representing the City in bankruptcy proceedings, and filing City tax claims in condemnation cases, unless such requirement is modified by enactment of new law eliminating the necessity therefore;

(iv) providing periodic reports within seven days of a request by the City Attorney reflecting the status of pending litigation on behalf of the City and any proposed plans to enhance the enforced collection of City taxes;

(v) establishing and maintaining collections offices within the City of Houston convenient to the City and the County Courthouse (separate from the

County Tax Assessor and Collector's office) with adequate facilities for Taxpayer assistance in the downtown area;

(vi) maintaining adequate facilities for efficient collection efforts and quality taxpayer service, including up-to-date computer equipment and software and at least 120 telephone lines dedicated to City collections with a sequencer and adequate staff to maintain same, such lines to be incoming lines for inquiry for delinquent information;

(vii) maintain legal and support staffing sufficient to efficiently perform the services described herein; after one year following the execution of this Contract, such staffing shall not fall below a minimum of 217 employees, including but not limited to at least 13 attorneys, 58 legal assistants, 18 word processors and/or terminal operators, 41 telephone collection employees, and 87 clerks, without the written permission of the City, or such other staffing configuration as set out in the attached Attachment A, if in the opinion of the City Attorney, such configuration is sufficient to fulfill the City's tax collection goals, allowing for a reasonable time of not more than 30 days to fill vacancies;

(viii) research the tax status of potential city vendors and City Boards and Commissions candidates and ensure that delinquent taxes are not owed and that tax payments are properly credited at the Harris County Tax Office. Such research shall be provided within 1 day of each request.

(ix) review all tax sales and resales under Tax Sale/Resale Interlocal Agreements prior to each month's Constable sales with representatives of the City, Harris County and Houston Independent School District;

(x) target candidate properties for foreclosure and provide statistical information for review of those properties on behalf of the City Housing and Community Development programs;

(xi) assist with tax sale purchases for City Departments;

(xii) provide title reports and tax and collection status reports as requested by the City Attorney within 3 days of the request in relation to projects such as assessing Housing and Community Development multi-family housing loans, lien priority, researching historic cemeteries, "hot sheet" motels, F.A.S.T. properties and other urgent projects. The Firm shall provide the services set out in this subsection at no additional cost to the City as long as the City Attorney requests no more than 300 such reports per year.

C. All City tax suit files, whether maintained by the City or maintained in the office of the Firm shall be the property of the City. The City Attorney may have access at any time to the City files at his sole discretion. The parties agree that upon any termination of this Agreement, all files shall be immediately transferred to the City in the format maintained by the Firm during the contract term.

D. The Firm shall institute a vigorous delinquent tax collection program and shall take all necessary steps to ensure that it will continue an aggressive delinquent tax collection program for the collection of delinquent City taxes during the entire term of this Agreement. The City reserves the right for the City Attorney, upon written notice to

the Firm, to appear in court on behalf of the City in any litigation in which the City is a party.

E. Collection Goals/Minimum Collection Guarantee. The Firm shall collect an amount equal to or greater than the Collection Goal calculated according to the formula set out in Exhibit "A", attached and incorporated into this Agreement, such amount to exclude (i) amounts collected pursuant to the Code Sections 33.07, 33.08 and 33.11 and (ii) amounts of taxes paid prior to July 1 of the year in which they become delinquent during the contract years July 1, 2010 through June 30, 2013 and each renewal year thereafter. Each contract year shall begin on July 1 and end on June 30 of the following year.

The Firm acknowledges that it understands all potential limitations, which may affect the ability of the Firm to meet the above collection level, and that the Firm is entering into the obligation represented by this paragraph notwithstanding such limitations. Specifically, it is the responsibility of the Firm to work with the County Tax Assessor and Collector, or his successor designated by the City as responsible for the collection of the City's current taxes, to attain such level of collections. In the event that the Firm fails to meet the Collection Goal stated herein, the Firm shall pay the City, out of funds other than those collected on behalf of the City under Tax Code Sections 33.07, 33.08, 33.11 and 33.48, by July 31 of each year, an amount equal to the difference between the Collection Goal and the actual amount collected for the preceding contract year.

II. Compensation of Firm

A. The City agrees to pay the Firm as compensation for services hereunder an amount equal to the Tax Code Sections 33.07, 33.08 and 33.11 penalties and Tax Code Section 33.48 recovered costs and expenses actually collected and posted for the City's benefit by the Firm; provided that any court costs, including the cost of serving process, that are recovered will be paid by the Firm to the appropriate court or process server. In no instance will the City be obligated to pay any amount in excess of the Sections 33.07, 33.08 and 33.11 penalties and Section 33.48 recovered costs and expenses actually collected and posted for the City's benefit by the Firm with the exception of the fees for bankruptcy and after tax resales cases as set out below.

B. The City has adopted ordinances under Section 33.07, 33.08 and 33.11 and instructed its Tax Assessor Collector to provide delinquent taxpayers a notice pursuant to Sections 33.07, 33.08 and 33.11 in the amount of twenty percent (20%).

C. In any bankruptcy cases in which the Firm represents the City, its fees for this representation shall be the Tax Code Section 33.07, 33.08 and 33.11 penalties and Tax Code Section 33.48 attorney's fees awarded to the City by the debtor and approved by the bankruptcy court. If the Firm participates in such proceedings and actively seeks the amounts due the City, including the Sections 33.07, 33.08 and 33.11 penalties and the Section 33.48 attorney's fees where there is a good faith claim for such fees, but the

actual fees awarded by the Court are less than 15% of the taxes actually awarded and collected in the proceedings, the Firm will be entitled to a portion of such taxes awarded and collected equal to the difference between 15% of the taxes, penalties, and interest awarded and collected and the Sections 33.07, 33.08 and 33.11 penalties and Section 33.48 attorney's fees awarded. On the fifteenth day of each calendar month, the Firm shall submit a report to the City showing the amount of these fees paid during the prior month and a cumulative total for the term of this Agreement.

D. Notwithstanding any other provision of this Agreement, if approved in writing by the City Attorney in advance, the City will pay the Firm 15% of delinquent taxes, penalties (not including penalties assessed pursuant to Texas Property Tax Code Sections 33.07, 33.08 and 33.11), and interest actually and finally collected by the Firm for the City, less any court costs, abstract fees, publication fees, constable fees and/or similar litigation, foreclosure, seizure and resale costs, from those properties that were sold to a taxing unit that was a party to the judgment pursuant to Section 34.01 and were resold pursuant to Section 34.05.

III.
Time of Compensation

On or before the 15th of each month throughout the term of this Agreement, the City shall pay the Firm all fees earned under this Agreement by the Firm during the previous month.

IV.
Title Reports

A. The Firm shall not file tax suits upon real property without securing title information concerning the proper identity of owners and others interested in the property and other liens recorded by the City.

B. The Firm shall make all title work purchased or prepared by the Firm relating to City tax accounts available to the City for its use at no additional charge.

V.
Products and Reports

The Firm shall timely produce operating reports as necessary for the efficient operation of the City. At the request of the City, the following reports will be provided within seven days:

- A. Collection reports with a breakdown of base tax, penalties and interest, and attorney's fees.
- (1) Weekly
 - (2) Monthly
 - (3) Year to date

(4) Contract to date

B. Delinquent tax reports

- (1) Summary and detailed breakdown by year and type of property
- (2) Age of accounts
- (3) Size of accounts
- (4) Status of accounts

C. Lawsuits

- (1) Filing report by property type
- (2) Service statistics
- (3) Judgments entered
- (4) Judgment abstracts
- (5) Number of tracts of property sold

D. Other reports

- (1) Letters mailed
 - (a) First notice
 - (b) Second notice
 - (c) Notice of suit
 - (d) Notice of seizure
 - (e) Special notice
- (2) Return telephone calls
- (3) Telephone calls handled
- (4) Name and address corrections
- (5) Installment agreements
- (6) Tax warrants issued and served
- (7) Uncollectible accounts as established by City guidelines
- (8) Any other report requested by the City Attorney

VI.

Installment Payment of Delinquent Taxes

The Firm, on behalf of the City, shall enter into agreements for installment payment of delinquent taxes under the provisions of Tax Code Sec. 33.02. The City Attorney shall have the right of approval of the form of all such agreements and the City shall set criteria for approval by the Firm.

VII.

Foreclosure of Tax Liens on Homesteads

The Firm shall abide by the City policy of not selling any property on behalf of the City at a tax foreclosure sale that is owned and occupied as a homestead residence without prior written permission from the City Attorney. Should such foreclosures be authorized, the Firm shall proceed with the disposal of such property at no cost to the

City. Nothing contained in this Article shall limit the right of any taxing entity other than the City to enforce its tax lien on a homestead.

VIII.

Term of Agreement and Termination Clause

A. The term of this Agreement shall begin on July 1, 2010 and shall continue through June 30, 2013, unless terminated sooner as provided herein.

B. The City Attorney, with the approval of the City Council, shall have the right to terminate this Agreement at any time without cause by giving written notice of such intention to the Firm sixty (60) days in advance of the effective date thereof. In case of such termination, the Firm shall be entitled to receive and retain all compensation earned to the date of said termination. Copies of all reports whether completed or partially completed, and all records of the City shall be delivered to the City when and if this Agreement is terminated or upon its expiration if not sooner terminated. The Firm shall also deliver to the City all files and delinquent tax lawsuits in process and not completed on the date this Agreement expires or is terminated, and the Firm shall have no further authority to represent the City as of such date, except an additional six (6) months to reduce to judgment and collection of all suits and bankruptcy claims filed prior to the expiration or termination date; provided that the Firm agrees not to file any tax collection suits following the receipt of a termination notice without the consent of the City Attorney.

IX.

Default/ Liquidated Damages

A. Termination for Cause

Either party may terminate its performance under this Agreement if the other party defaults and fails to cure the default after receiving notice of it. Default occurs if a party fails to perform one or more of its material duties under this Agreement, but does not include failure to meet a Collection Goal, as long as the Firm promptly pays the Minimum Collection Guarantee. Failure to pay the Minimum Collection Guarantee herein by July 31 shall constitute a Default. If a Default occurs, the Injured party shall deliver a written notice to the defaulting party describing the default and the proposed termination date. The date must be at least 30 days after the defaulting party's receipt of the notice. The injured party, at its sole option, may extend the proposed termination date to a later date. If the defaulting party cures the Default before the proposed termination date, the proposed termination is ineffective. If the defaulting party does not cure the Default before the proposed termination date, the injured party may terminate its performance under this Agreement on the termination date. The Director of the Finance Department (the "Director") shall act on behalf of the City to notify the Firm of a Default and to effect termination.

B. Liquidated Damages for Firm's Default

The amount of actual damages that the City might sustain by reason of Firm's Default under this Agreement may be difficult to ascertain. Therefore, upon termination of the Firm's performance hereunder for Default as set out in subsection A above, the Director, in his or her sole discretion, may elect either to:

(1) Require the Firm to pay liquidated termination damages in the amount of \$3,000,000.00, which the parties agree is reasonable and just compensation for such Default, and which the Firm promises to pay and the City agrees to accept as liquidated damages, and not as a penalty, or

(2) Require the Firm to pay the City's actual damages resulting from the Firm's Default.

As security for the above damages, the City may collect on the Firm's Performance Bond in the amount of \$3,000,000.00 as provided under Article XXXVI.

The Director shall make the above election by giving the Firm written notice of the termination of this agreement for the Firm's Default.

X. Monitoring and Auditing

The City and the Firm shall each have right to audit the procedures and transactions arising out of this Agreement. It is agreed that for the purposes of monitoring and administering this Agreement, the City's representatives shall be the Director of the Department of Finance and the City Attorney, and the Firm's representatives shall be the Firm.

XI. Prohibitions Against Waiving Penalties and Interest

It is understood that under the Code it is unlawful to waive penalty and interest due in connection with delinquent property taxes unless specifically authorized by law and that neither party shall waive any penalty or interest except by mutual agreement.

XII. Additional Services and Expenses

A. The parties recognize that from time to time the City may have need for the performance of certain collection-related services by the Firm or other services as may be requested by the City Attorney not expressly included in this Agreement. If the City Attorney specifically requests that such services be performed by the Firm and if the City Attorney approves the fees for such services in advance, the Firm shall provide

the services requested; however, unless the Firm's fees are collectable from the debtor in the collection action, the Firm's obligation to perform such additional services shall be conditioned upon the City's issuance of a Notice of Supplemental Allocation in substantially the form set out in Exhibit "B". Nothing herein shall be interpreted to obligate the City Attorney to authorize any such additional services.

B. The Firm shall provide without further cost to the City legal services, up to and including foreclosure, in support of the City's Land Assemblage Redevelopment Project and Project Houston Hope (sometimes hereinafter collectively referred to as the "Redevelopment Projects"). The Firm agrees to provide without further cost to the City legal services, up to and including foreclosure, in support of City projects for an additional 1,500 tax delinquent properties each year of the contract term. All properties already identified or to be identified by the City to the Firm for inclusion in the Redevelopment Projects shall be sometimes hereinafter referred to as the "Designated Properties."

If all applicable taxing entities do not concur with the addition of any Designated Properties to the Redevelopment Projects, then these properties will be treated in the same manner as other tax delinquent properties pursuant to the terms and conditions of a separate Interlocal Agreement.

C. The Firm shall work in concert with a title company, to be approved by the City, throughout the duration of the Redevelopment Projects, to ensure the accuracy of the tax foreclosure process. The Firm further agrees that each property ultimately conveyed to the Land Assemblage Redevelopment Authority ("LARA") will have insurable title with a title commitment by the Firm's title company as and when such title policy shall be required.

The City acknowledges that it has been advised and agrees that in cases where citation in the tax suit was either accomplished by posting or publication, the title company may impose a waiting period after the first sale prior to the issuance of a title policy consistent with such title company's underwriting policy.

D. The Firm shall provide at no cost to the City the following services in support of the Redevelopment Projects:

- Attend meetings with City officials and others as requested by the City throughout the duration of the Redevelopment Projects.
- Coordinate with the City for property selection and profiling.
- Aid and facilitate coordination with the officials and attorneys of Harris County and the Houston Independent School District on all aspects of the Redevelopment Projects.

- For each property, the Firm will create and maintain a redevelopment file, including assembling tax data for all entities, appraisal district records, and City public improvement, demolition and health and safety assessments.
- Determine the current address for any recorded title holders and lien holders, based on the title product supplied by the Firm's title company. The Firm's research will include the following databases:
 - City of Houston Water Records
 - Justice Information Management System
 - Lexis
 - HCAD
 - Zebec Data Systems
 - Accurint
- Review all title documents.
- Generate the Original Petition and any Citations necessary for the filing of each tax foreclosure suit.
- Provide title reports within 30 days of a request from the City on properties.
- Provide 75 title reports per month within thirty (30) days of a request from the City on properties identified as dangerous buildings (whether or not delinquent ad valorem taxes are owed). In addition the Firm will provide updated title information for all dangerous buildings identified by the City as it becomes available.
- Provide all legal services necessary to obtain the properties for LARA.

E. The Firm shall provide the following services at no additional cost after the entry of the Court's Judgment in each case:

- After strike-off at the Constable's Sale, the Firm shall prepare the conveyancing document necessary to convey title to each property to LARA on a form developed and approved by the City Attorney. The Firm will prepare and deliver to the City Attorney at the time of the aforesaid conveyance, a complete duplicate file containing copies of all title work, investigative research, litigation documents, and other supporting materials evidencing a diligent, accurate and valid tax foreclosure.
- In the event that any legal challenge to the foreclosure process for any property in the Redevelopment Projects occurs within 5 years after the

date of judgment, the Firm agrees to defend the City's interests at no cost to the City including any appeals.

It is also agreed that all work products and files used or created during the performance of the Redevelopment Projects shall be the property of the City.

F. Firm acknowledges that if, pursuant to applicable procurement procedures, the Firm is selected to perform additional services which will be funded with Federal Community Development Block Grant funds ("CDBG"), then, to the extent CDBG funds are utilized, the Firm shall comply with the requirements of Exhibits "H", "I" and "J" and shall perform such services in accordance with all applicable CDBG regulations, whether or not expressly stated in this Agreement or appended hereto and incorporated into this Agreement as exhibits.

G. The Firm shall provide without additional cost, a collection service for all outstanding accounts receivable whose payment is secured by City health and safety liens. City health and safety liens shall include, but are not limited to, liens securing payment for the following services:

- Weedcutting
- Demolition of dangerous structures
- Securing dangerous buildings
- Removing visual blight
- Abatement of swimming pool hazards
- Abatement of health hazards

The collection services shall include name and address research on all accounts under returned mail codes, quarterly billing of all accounts if requested, law firm demand letters on unpaid accounts, telephone collection activities, payment arrangements and lawsuits to seek personal judgments and lien foreclosure on those accounts where the previous collection activities are unsuccessful. In cases in which the Firm institutes litigation to collect the foregoing accounts, the Firm shall be entitled to be paid any amounts recovered as attorneys' fees by either settlement or court award.

At the discretion and request of the Director of the Department of Finance of the City, the Firm further agrees to perform any or all administrative functions of this Department including maintenance of all official records, posting of payments and other administrative functions connected with the collection of these liens.

XIII. Computer Software License

The Firm grants to the City, upon the execution of this Agreement, a perpetual license to use and modify all computer software developed, owned and used by the Firm to perform this Contract. The Firm will furnish to the City a current copy of all such

software and all amendments thereto. If any such software has been purchased by the Firm pursuant to a copyright license, then the Firm shall procure a license for the City to utilize such software during the term of this Agreement.

XIV. Indemnification

Notwithstanding the liquidated damages specified above or any other provision of this Agreement, the Firm, its successors-in-interest and assigns, agree to and do hereby fully and completely indemnify and hold the City harmless from any and all claims, demands and causes of action of whatsoever nature or character which have been or which may hereafter be asserted by any person, firm, corporation or entity whatsoever or whomsoever claiming a violation of their rights or any damage whatsoever caused by the terms of this Agreement or the Firm's actions in performing any function, duty or action under this Agreement. This indemnity and hold harmless agreement running in favor of the City is intended to cover all costs of any future litigation, including attorneys' fees and other defense costs.

Furthermore, this indemnity and hold harmless agreement running in favor of the City is specifically intended to operate and be applicable even if it is alleged, charged, or proved that all or some of the facts, acts, incidents, or events complained of or all or some of the damages sought were solely and completely caused by the fault or the negligent or grossly negligent acts or omissions of the City. Finally it is agreed that no statute of limitations period or period of laches shall begin to run against this hold harmless/indemnity agreement until each claim, demand, or cause of action for which hold harmless or indemnity protection is sought has been asserted against the party or parties seeking to invoke the protection of this hold harmless/indemnity agreement and until such party has received written notification of such claim, demand, or cause of action. This indemnity shall survive the termination of this Agreement.

XV. Insurance Requirements

The Firm shall obtain and maintain in effect during the term of this Agreement, insurance coverage as set out below, and shall furnish appropriate certificates of insurance, in duplicate form, prior to the effective date of this Agreement. The City shall be named as an additional insured on the policies listed under items two through four below, and as a loss payee on the policies listed under item five below. All liability policies shall be issued by a company authorized to do business in Texas. 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.

The Firm shall maintain the following insurance coverages in the following amounts:

1. Workers' Compensation - Statutory limits
2. Comprehensive General Liability with limits of \$1,000,000 Combined Single Limit, per occurrence, for Bodily Injury Liability, Slander and Libel Liability, and Property Damage Liability including Premises-Operations Liability; Independent Contractor's Liability; Personal Injury Liability extending to claims arising from employees (Coverages A, B, & C); Board Form Liability Coverages; and Blanket Contractual Liability.
3. Umbrella Liability with limits of \$1,000,000 in excess Comprehensive General Liability Coverage.
4. Professional Errors and Omissions Liability including Personal Injury and Contractual Liability with limits of \$1,000,000 per occurrence, \$2,000,000 aggregate.
5. Comprehensive Commercial Crime Coverage - \$5,000,000 limit, including:
Employee Dishonesty (Form A) - \$500,000 Limit
Depositors Forgery (Form B) - \$500,000 Limit

All of the insurance required to be carried by the Firm hereunder shall be by policies which shall require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City and that the Firm shall give thirty (30) days advance written notice to the City before they may be cancelled or materially changed and within such thirty (30) day period, the Firm covenants that it will provide other suitable policies in lieu of those about to be cancelled or materially changed, so as to maintain in effect the coverage required under the provisions hereof. Failure or refusal of the Firm to obtain and keep in force the above-required insurance coverage shall authorize the City, at its option, to terminate this Agreement at once.

XVI. MWBE Compliance

Firm 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. Firm shall make good faith efforts to award subcontracts or supply agreements in at least twenty-four percent (24%) of the value of this Agreement to MWBEs. Firm 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.

Firm shall require written subcontracts with all MWBE subcontractors and shall

submit all disputes with MWBEs to binding arbitration to be conducted in Houston, Texas, if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "C".

XVII.

Compliance with Equal Employment Opportunity Ordinance

The Firm agrees to comply fully with the provisions of the City's Equal Employment Opportunity Ordinance, attached hereto as Exhibit "D", incorporated herein by reference and made a part of this Agreement for all purposes.

XVIII.

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. Firm shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

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

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

If the Firm 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." The Firm 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) The Firm also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to the Firm's employee work force.

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

XIX.
Independent Contractor

The Firm is an independent contractor, and all of the services provided for herein shall be accomplished by the Firm in such capacity. The City will have no control or supervisory powers as to the detailed method or manner of the Firm's performance of this Agreement. All personnel supplied or used by the Firm shall be deemed employees or subcontractors of the Firm and will not be considered employees, agents or subcontractors of the City for any purpose whatsoever. The Firm shall be solely responsible for the compensation of all such personnel, including but not limited to the withholding of income, social security and other payroll taxes and for the coverage of all worker's compensation benefits.

XX.
Force Majeure

1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or the Firm. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Firm, riots, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle the Firm to extra Reimbursable Expenses or payment.

2. — This relief is not applicable unless the affected party does the following:

- (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
- (b) provides the other party with prompt written notice of the cause and its anticipated effect.

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

decision of the Director is final.

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

5. If the Force Majeure continues for more than 30 days from the date performance is affected, the Director may terminate this Agreement by giving 7 days' written notice to the Firm. This termination is not a default or breach of this Agreement. **THE FIRM WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

6. The Firm is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. The Firm shall employ only fully trained and qualified personnel during a strike.

XXI.
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.

XXII.
Entire Agreement

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

XXIII.
Written Amendment

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

XXIV.
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.

XXV.

Business Structure and Assignments

The Firm shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, the Firm 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.

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

XXVI.

Non-Waiver

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

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

XVII.

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.

XVIII.

Applicable Law

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.

XIX.
Parties In Interest

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

XXX.
Remedies Cumulative

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

XXXI.
Inspections and Audits

City representatives may perform, or have performed, (1) audits of Firm's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Firm shall keep its books and records available for this purpose for at least 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

XXXII.
Ambiguities

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

XXXIII.
Survival

The Firm 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.

XXXIV.
Publicity

The Firm shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director. The Director will not unreasonably withhold agreement for a public announcement regarding the contract award, or the publishing of a case study regarding the project upon successful completion.

XXXV.
Pay Or Play

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. The Firm 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.

XXXVI.
Bond for Performance Security

Prior to the execution of this Agreement, the Firm shall deliver to the Director a **\$3,000,000.00** corporate surety Performance Bond, in a form approved by the City Attorney, as security for the Firm's performance of all obligations under and throughout the life of this Agreement. The Bond shall be completed and executed by the Firm, as Principal, and by a corporate Surety (i) authorized to transact business in Texas, (ii) listed in the most recent United States Treasury Circular No. 570, and (iii) possessing an underwriting limitation in at least the amount of the Bond.

XXXVII.
Address and Notice

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 below 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.

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

FIRM: Linebarger Goggan Blair & Sampson, LLP
1300 Main – Suite 300
Houston, Texas 77002
Attention: Norman Nelson, Managing Partner

XXXVIII.
Contractor Debt

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

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN TESTIMONY OF WHICH this instrument has been executed on behalf of the parties
in multiple originals which shall be considered of equal force and effect.

FIRM:

LINEBARGER GOGGAN BLAIR
& SAMPSON, LLP

By: Leah Stolar
Name: Leah Stolar
Title: Partner

WITNESS:

Name: _____
Title: _____

CITY OF HOUSTON, TEXAS

Annise D. Parker

Mayor Michelle B. Apple

ATTEST/SEAL

Cynthia Russell
City Secretary

COUNTERSIGNATURE:

Ronald C. Grier
City Controller Ronald C. Grier

DATE OF COUNTERSIGNATURE:

5-20-10

APPROVED:

Michelle Mitchell
Director, Department of Finance

APPROVED AS TO FORM

Lan P. Nguyen
Assistant City Attorney
L.D. File No. 0390900549001

EXHIBIT "A"
COLLECTION GOAL

DEFINITIONS:

Turnover year = Year in which unpaid property taxes first become delinquent; e.g. 2010 property tax is delinquent if not paid by February 1, 2011. 2011 is the Turnover Year for unpaid 2010 property taxes during the 2011-2012 Contract Year.

Turnover Year Unpaid Balance

The Turnover Year Unpaid Balance is equal to the base tax unpaid balance reported by the Harris County Tax Office contained in report TA245A (Tax Collector Report – Balance by Roll type) issued as of, or the most recent report prior to, the 1st of September of each of the contract year.

Prior Year Unpaid Balance

The prior year base tax unpaid balance will be the sum of all the City's unpaid base tax balances for all tax years other than the turnover year as reported by the Harris County Tax Office contained in the report TA245A issued as of, or the most recent report prior to the 1st of September of each of the contract years, less the base tax due on all personal property accounts which have been delinquent for more than eight (8) years on the report date.

CALCULATION OF COLLECTION GOAL

X = 50% of Turnover Year Unpaid Balance
Plus
Y = 12.5% of the Prior Years Unpaid Balance

The Collection Goal shall be a dollar amount equal to the sum of X+Y.

The above calculated Collection Goal shall be measured against the Turnover Year and Prior Years' "Levy" plus "Penalty Interest" per monthly "Distribution Report" plus "Refunds" (without including Returned Items and Transfers/Reversals) per monthly "Deposit Distribution Reversal Detail Schedule (TC298-M)" for the period from September 1st to August 31st as provided by Harris County Tax Office.

The City's Director of Finance or designated personnel shall calculate the Collection Goal and make best efforts to advise the Firm by October 15th of the year in which the Goal must be attained.

EXHIBIT "B"

LIMIT OF APPROPRIATION

- (1) The City's duty to pay money to the Firm under this Agreement is limited in its entirety by the provisions of this Section.
- (2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$ _____ to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
- (3) The City makes a "Supplemental Allocation" by issuing to the Firm a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

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

\$ _____

- (4) The Original Allocation plus all Supplemental Allocations are the "Allocated Funds". The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. The Firm must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Firm'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.

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.

e. All arbitrations shall be conducted in Houston, Texas unless the parties agree to another location in writing.

EXHIBIT "D"

EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

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

EXHIBIT "E"

DRUG POLICY COMPLIANCE AGREEMENT

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

_____ (Contractor)
(Name of Company)

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

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

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

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

Date

Contractor Name

Signature

Title

EXHIBIT "F"

**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 §5.18 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)

EXHIBIT "G"

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 _____, 20____.

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

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

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

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

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

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

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

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

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

 (Date)

 (Typed or Printed Name)

 (Signature)

 (Title)

EXHIBIT "H"

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 thereunder 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 thereunder 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 is 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 shall be made subject to the provisions for the elimination of lead-based paint hazards pursuant to said regulations, and the Contractor shall 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 subrecipients, 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 subrecipient 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 § 85.42. 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 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 \$300,000 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 \$300,000. 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 \$300,000 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.

EXHIBIT "I"

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

The undersigned 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 judgment 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 government 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

I am unable to certify to the above statements. My explanation is attached.

EXHIBIT "J"

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.

Contractor

Date

By: _____
Name: _____
Title: _____

ATTACHMENT A
STAFFING CONFIGURATION

The following staffing is needed to perform the services under this Agreement and fulfill the City's tax collection goals.

Number of Attorneys:	<u>13</u>
Number of Legal Assistants:	<u>58</u>
Number of Word Processors:	<u>18</u>
Number of Telephone Collection Employees:	<u>41</u>
Number of Clerks:	<u>87</u>