

II. DEFINITIONS

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

“Boundary Audit” means a review of the physical locations of taxpayers’ places of business to verify that they are located within the boundaries of the City’s corporate limits, excluding areas annexed for limited purposes and subject to a strategic partnership agreement with the City, as defined in section 43.0751 of the Texas Local Government Code, and that the sales/use tax collected on those businesses are being properly paid by the TCPA to the City.

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

“CPO” means the Chief Procurement Officer of the City of Houston.

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

“Countersignature Date” means the date shown as the date countersigned by the City Controller on the signature page of this Agreement.

“Director” means the Director of the City of Houston Finance Department or his or her designee.

“Misallocation of Sales/Use Tax Payments” means Sales/Use tax within the City’s corporate limits that should have been paid to the City by TCPA but are not paid or paid incorrectly by the TCPA, other than errors identified in a Boundary Audit. This definition excludes areas annexed for limited purposes and subject to a strategic partnership agreement with the City, as defined in section 43.0751 of the Texas Local Government Code.

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

“Recoveries” means amounts of the Sales and Use Tax recovered and received by the City, including cash, credit, or checks, from the TCPA, as a result of the Sales/Use Tax Audit (SUTA) services performed by Contractor under this Agreement

“TCPA” means Texas Comptroller of Public Accounts.

III. DUTIES OF CONTRACTOR

A. Scope of Services

(1) Sales and Use Tax Audit (“SUTA”) Services

a) In consideration of the payments specified in this Agreement, Contractor shall provide the City with the sales and use tax audit services (“SUTA Services”) described herein. Contractor shall provide all labor, material and supervision necessary to perform a detailed audit of the sales and use tax as described in Section I of the attached “Exhibit A” and as may be assigned by the Director, for the purpose of identifying Recoveries from incorrect distributions, including but not limited to Boundary Audits as defined in Article II, or Misallocations of Sales/Use Tax Payments due to the City by the TCPA, with the potential for a cash/credit Recovery from TCPA (“Detailed Review”). The Director shall authorize in writing a list of zip codes for Contractor to conduct Boundary Audits to determine whether business taxpayers are properly taxed in the correct taxing jurisdiction for sales/use tax. The Contractor will not receive any payment for Boundary Audits performed without written authorization by the Director. However, Contractor’s task of finding Misallocation of Sales/Use Tax Payments by the TCPA shall not require the Director’s zip code authorization.

After Contractor has performed a Detailed Review and identified errors with a potential for Recovery to be pursued against TCPA (“Claims”), Contractor shall

document and present a list of such Claims in writing to the Director for review within 60 calendar days from the date the Contractor has identified the errors with a potential for Recovery, unless the Director agrees to a longer time in writing. (the "Claims List"). The Claims List will include business name and sales tax registration number and estimated potential dollar value of the claim, but will not include the basis for the error. However, the basis for the error will be included in the quarterly reporting. The Director shall have ten business days to review the Claim(s) presented by Contractor and to notify Contractor in writing, including e-mail, as to the Claim(s) the Director desires Contractor to pursue. Contractor shall not pursue any Claim that has not been authorized by the Director, and the City shall have no obligation to pursue any Claim recommended by Contractor, nor shall it be liable to pay Contractor anything for Claims the Director does not decide to authorize Contractor to pursue. Once authorized by the Director, Contractor may pursue each such Claim for twenty-four months dating from the date of the Director's written authorization to pursue the Claim. Contractor shall provide to the City a copy of all documentation of claims filed with TCPA no less than quarterly and sooner if requested by the City regarding a specific Claim. However, at any time during the twenty-four months period, the Director may withdraw authorization to pursue a Claim by notifying Contractor in writing to cease collection efforts regarding the particular Claim ("Withdrawn Claim"). At no time may the City withdraw a Claim unless it provides Contractor with written documentation that it has the authority not to collect the amounts owed or that it has determined the amounts are not owed to the City. Upon receipt of a written notice from the Director to cease collection efforts on a particular Claim, Contractor shall stop all attempts to collect on the Withdrawn Claim but Contractor does

not guarantee that the TCPA will cease its efforts. If the City receives any payment for a Withdrawn Claim (whether from the TCPA, the taxpayer, or through some other means) and the City does not refund all those monies to the taxpayer, Contractor is entitled to apply its fee to the monies the City retains. On the other hand, should Contractor receive payment compensation from the City for Claims paid by TCPA which were later determined by the TCPA that the City is not entitled to or paid to the City in error, and the City later is required to refund the monies to TCPA, then Contractor shall refund the fees related to such Claims to the City. Contractor is not authorized to compromise or settle any Claim or to agree to receive partial payment on any Claim. Contractor is not authorized to receive any payment from TCPA, but rather all payments or credits shall be made by TCPA directly to the City. Under no circumstances may Contractor engage or utilize legal counsel to initiate or threaten legal action to pursue any Claim. If at the end of twenty-four months following the date of authorization to pursue a potential Claim, and the expiration of any extensions of that Claim (as provided for in section V.C), the TCPA has not remitted the funds to the City, the Contractor shall cease its active collection efforts of such Claim and return the Claim to the City, and the City shall have no obligation to pay any funds hereunder to Contractor, even though the City makes a Recovery against the Claim at a later time.

(b) Exclusions from SUTA Services

Potential Claims identified by Contractor that have been identified by the City before the date the Claims list is submitted may be excluded by the Director and will not result in any compensation to the Contractor.

Nothing in this Agreement shall be construed as granting an exclusive right to Contractor or as, in any way, otherwise limiting the City's right to identify and collect outstanding sums due to the City outside the auspices of this Agreement and to perform its own Boundary Audit through its own employees or through other contractors.

2) Sales/Use Tax Analysis and Reporting Services (“STARS”)

In addition to SUTA services, in consideration of the payments specified in this Agreement, Contractor shall provide all labor, material and supervision necessary to perform STARS services as described in Section II of the attached “Exhibit A”.

3) Additional Consulting Services

The Director may request that Contractor provide additional consulting services at any time during the term of this Agreement, if there are sufficient funds allocated to pay for these additional services. If Contractor and City agree on the scope of the additional consulting services requested, then Contractor shall provide the additional consulting services on a time and materials basis as set forth in Exhibit “E” Compensation, subject to the allocation of funds.

B. Reports

The Contractor shall submit all reports and quarterly progress updates required by the Director as described in Exhibit “A”.

C. Personnel of the Contractor

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

D. RELEASE

CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS AND LEGAL REPRESENTATIVES

(COLLECTIVELY THE “CITY”) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE OR LOSS IS CAUSED BY THE CITY’S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY’S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

E. INDEMNIFICATION

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS= FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

(1) CONTRACTOR’S AND/OR ITS AGENTS’, EMPLOYEES’, OFFICERS’, DIRECTORS’, CONTRACTORS’, OR SUBCONTRACTORS’ (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, “CONTRACTOR”) ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

(2) THE CITY’S AND CONTRACTOR’S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND

(3) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

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

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

F. Indemnification Procedures

(1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances, which could give, rise to an indemnified loss, the receiving party shall give written notice to the other party within 30 days. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30-day period, it does not

waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

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

(b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

G. Payment of Subcontractors

In accordance with the Texas Prompt Payment Act, 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**

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 Director may approve the form of the Certificates of Insurance and the required endorsements, but nothing the Director does or fails to do relieves Contractor from its duties to provide the required coverage under this Agreement. The Director's actions or inactions do not waive the City's rights under this Agreement.
- (4) Issuers of Policies. The issuer of any policy shall have a Certificate of Authority to transact insurance business in Texas or have an A.M. Best's rating of at least B+ and an A.M. Best's Financial Size Category of Class VI or better, according to the most current edition A.M. 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 provide a separate endorsement naming the City (and its officers, agents, and employees), as a client of Contractor, as an Additional Insured on the original policy and all renewals or replacements during the term of the Agreement.
- (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. **THE CONTRACTOR MUST GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE CITY BEFORE ANY POLICY IS CANCELED, MATERIALLY CHANGED, OR NONRENEWED.** Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or nonrenewed so as to maintain in effect the required coverage. The acceptance of delivery by the Director 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 to recover against the City, its officers, agents, or employees.
- (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 Director.

(12) Proof of Insurance.

(a) Before commencing services hereunder, Contractor shall furnish the City with updated certificates of insurance and the endorsements as required above.

(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 Director, at his or her sole discretion, may

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

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

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 Director, 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

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

J. Licenses and Permits

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

K. Compliance with Laws

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

L. Compliance with Equal Opportunity Ordinance

Contractor shall comply with City's Equal Employment Opportunity Ordinance as set out in Section 15-17 of the Code of Ordinances

M. MWBE Compliance

Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least ____% 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 Office of Business Opportunities ("OBO"), and will comply with them.

Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to mediation if directed to do so by the OBO Director.

N. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale or use of illegal drugs or alcohol

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

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

- (a) a copy of its drug-free workplace policy,
- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "B," 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 "C." 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 "D." 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.

O. Confidentiality - Protection of City's Interest

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

P. Pay or Play

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

IV. DUTIES OF CITY

A. The Director shall authorize in writing a Boundary Audit of the specific zip codes by Contractor under this Agreement. In addition, the Director shall also provide Contractor a list of business taxpayers not to be audited within the assigned zip codes, as the City has already canvassed and completed its audit of those businesses.

B. Payment terms

1) **SUTA Services.** In exchange for Contractor performing SUTA services under this Agreement, the City shall pay Contractor as follows:

a) For each Claim that is identified by Contractor and approved by the Director during the first twelve months of the Agreement that results in a Recovery to the City at any time under this Agreement, including subsequent periods authorized under the extensions in V.C, the City shall pay Contractor, only out of Recovered Funds, a contingency fee payment of ____% of the Recoveries received by the City for the periods set out under subsection c) herein. In the case where the Contractor identifies an error made by an existing City taxpayer or TCPA that results in an underpayment of sales/use tax to the City, the City shall also pay Contractor ____% of the increase between the corrected payment and the prior underpayment, for the periods set out under subsection c) herein.

b) For each Claim identified by Contractor and approved by the Director during the second year and beyond of the Agreement that results in a cash/credit Recovery to the City, the City shall pay Contractor, only out of Recovered funds, ____% contingency fee of the Recoveries received by the City for the periods set out under subsection c) herein. In the case where the Contractor identifies an error made by an existing City taxpayer or TCPA that results in an underpayment of sales/use tax to the City, the City shall also pay Contractor ____% of the increase between the corrected payment and the prior underpayment for the periods set out under subsection c) herein.

c) **Limitations of Payments to Contractor.** The contingency fee percentages of the Recoveries to be paid to Contractor set out under the above subsections (a) and (b)

shall be limited to eight quarters starting from the Date of Correction quarter, and all retroactive quarters which include: all quarters between, and inclusive of, the Date of Correction and the Date of Knowledge quarters; and all legally eligible prior quarters prior to the "Date of Knowledge" quarter, for up to a maximum of four (4) years prior to the Date of Knowledge. As used herein, the "Date of Knowledge" is the date situated in the calendar quarter in which Contractor notifies the TCPA of the existence of an error. As used herein, the "Date of Correction" refers to the calendar quarter in which the TCPA distributes and the City receives the correct sales/use tax payment, based on the taxpayer's reporting.

By way of example, to illustrate the foregoing:

	Prior Quarters			"8 Quarters"	
	Legally eligible prior quarters	Date of Knowledge	Quarters between	Date of Correction	7 following quarters
Example 1	Up to 4 years prior	Quarter 0	Quarters 1-2	Quarter 3	Quarters 4-10
Example 2	Up to 4 years prior	Quarter 0	Quarters 1-4	Quarter 5	Quarters 6-12

d) All expenses incurred by Contractor in providing the SUTA services are the sole and exclusive responsibility of Contractor, except those expenses that receive prior written approval of the Director, subject to the allocation of funds.

2) **STARS Services**

The City shall pay Contractor for STARS services rendered under this Agreement in accordance with the Compensation schedule set forth in Exhibit "E".

C. Method of Payment

1) For SUTA services, the City will, when practical, notify Contractor within 30 days after the end of the month of receipt of payments from TCPA (cash payments, installment payments, or other compensation directly benefiting the City) resulting from Contractor's services under this Agreement. Contractor will invoice the City within 10 days of City's notification of receipt of the TCPA's payments. The City shall pay Contractor within 30 days of the receipt and approval by the Director of a detailed invoice from Contractor describing the Claim(s) recovered, each taxpayer to whom each portion of each Recovery is attributable to ("Source of Recovery") and the resultant Contractor fee, if any. The City shall be able to independently verify the Sources of Recoveries to its complete satisfaction prior to approval and payment of Contractor's invoices.

2) For STARS services, the City shall pay Contractor for the STARS Package described in Section II of Exhibit "A", based upon invoices showing the amounts at the rates set forth in Exhibit "E",

D. Limit of Appropriation

The City's duty to pay money to Contractor for Claims Recoveries received from TCPA under this Agreement is limited in its entirety by the provisions of this Section.

a) With regard to SUTA Services, Contractor shall not be entitled to any compensation for a Claim until the City actually receives a cash, credit, or check Recovery from such Claim from TCPA. The City hereby allocates the applicable percentage of the cash, credit, or check, actually recovered and received by the City under this Agreement for the purpose of making payments to the Contractor for SUTA Services, estimated to be \$_____ (the "Original Allocation for SUTA Services"). Because this amount is only an estimate, it can be higher or

lower than the actual amount needed to pay Contractor. The City shall never be obligated to pay any money for Claims Recoveries under this Agreement, except from Recoveries received by the City, and Contractor shall look only to Recoveries for any payment for SUTA services under this Agreement.

(b) With regard to STARS Services, 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 for STARS Services"). 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:

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

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

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

\$ _____

(d) The Original Allocation for SUTA Services and the Original Allocation for STARS Services plus all supplemental allocations are the "Total Allocated Funds." The City

shall never be obligated to pay any money under this Agreement in excess of the Total Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Total 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. Taxes

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

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. However, the Director shall have the final determination as to what documents the City shall provide to the Contractor. The City shall have no obligation to reformat data, provide data or documents to the Contractor except those documents and data that the Director determines that the Contractor shall review.

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.

Notwithstanding the above, the City shall assist Contractor by providing necessary information and assistance to include, but not limited to, the following:

- Providing Contractor, on a timely basis, information necessary to conduct its compliance review activities, including but not limited, to monthly tax payment histories.

- Providing a letter of authorization identifying Contractor as an authorized agent of City to perform sales and use tax reviews and to receive and examine taxpayer records (hard copy and electronic) necessary to assure sales and use tax compliance and revenue forecasts.
- Pursue in good faith corrective action on errors and omissions detected by Contractor.

V. TERM AND TERMINATION

A. Contract Term

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

B. Renewals

If the Director, at his or her sole discretion, makes a written request for renewal to Contractor (with a copy of the request sent to the CPO) at least 5 days before expiration of the then-current term, and if sufficient funds are allocated, then, upon expiration of the Initial Term, this Agreement may be renewed for up to two successive one-year terms each upon the same terms and conditions. No new Claim will be authorized for submission to the TCPA after the last day of the Initial Term or any renewal term, whichever is later.

C. Time Extension; Payment for Post-Termination Recoveries

If Contractor requests an extension of time beyond the 24 month period allowed in Section III.A.(1)(a) above to complete its performance of a pending Claim, then the Director, in consultation with the CPO, may, in his or her sole discretion, extend the time for 180 days, upon receipt of a written explanation showing Contractor’s reasonable and diligent efforts in pursuing the Claim and explaining both why the Claim is still pending and what steps Contractor will take to try and resolve the Claim during the extension. At the Director’s discretion, the Director may make a second extension if the Contractor provides a written explanation showing the specific

reason why the TCPA has continued to delay payment, for example if the TCPA is still auditing an amended return, and Contractor's continued reasonable and diligent efforts in pursuing the Claim during the previous extension. The extension must be in writing but does not require amendment of this Agreement.

For Claims submitted to TCPA before expiration or termination of this Agreement, and subject to the Director's right to withdraw authorization to pursue a Claim under section III.A.(1)(a), the following rights shall survive termination or expiration:

- Contractor's right to continue pursuing claims for the remainder of the 24-month period authorized in III.A.(1)(a) and any extensions granted in this section V.C ("Recovery Period"); and
- Contractor's right to invoice for and receive payment from the City on Recoveries received by the City after termination or expiration of the Agreement, but before the expiration of the Recovery Period.

D. Termination for Convenience

The Director or the City Attorney may terminate this Agreement by giving 30 days written notice of such termination to the Contractor with a copy of the notice to the CPO.

On receiving the notice, Contractor shall discontinue all services under this Agreement, except for continuing to pursue (i) Claims authorized in writing by the Director pursuant to Section III.A.(1)(a) above, and (ii) Claims submitted before termination and authorized for continued pursuit under Subsection C. above. Upon this Agreement's termination, Contractor shall submit an invoice showing in detail any amounts due to Contractor by the City up to the termination date. The City shall then pay any fees due to Contractor by the City before the

termination date of this Agreement, but not already paid for, in the same manner as prescribed in Article IV.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED (including, but not limited to, the continued payment rights under this Subsection D. and Subsection C. above) ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

E. Termination for Cause

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

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

If a default occurs, the Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The Director, at his or her sole option, may extend the termination date to a later date. If the Director allows Contractor to cure

the default and Contractor does so to the Director=s satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation of the City.

To effect final termination, the Director must notify Contractor in writing, with a copy of the notice to the CPO. 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.

VI. MISCELLANEOUS

A. Independent Contractor

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

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. 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 Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

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 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, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

G. Caption

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

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.

I. Inspections and Audits

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

J. Enforcement

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

K. 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.

L. Survival

Each Party shall remain obligated to the other 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.

M. Publicity

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

N. Parties In Interest

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 Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

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

Q. 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.

R. Contractor Debt

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, HE/SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR.

CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

Signatures

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

CONTRACTOR:

WITNESS:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____
Tax Identification No. _____

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

Director, Finance Department

City Controller

Chief Procurement Officer

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

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

EXHIBIT "A"

SCOPE OF SERVICES

I. Sales and Use Tax Audit (SUTA Services)

- 1) In providing SUTA services to the City, Contractor shall:
 - Meet with City's designated staff to review service objectives, scope, procedures, coordination of effort, work plan schedule, public relations, and logistical matters.
 - Establish an appropriate liaison with the City's coordinator and define logical checkpoints for reviewing progress.
 - Review the City's sales and use tax ordinances for included provisions, coverage, and classification definitions.
 - Provide and maintain compliance with the City's sales and use taxes by:
 - Determining whether the business is remitting the sales and use tax due the City to the state correctly. Specifically, Contractor shall make this determination by reviewing the payment data available to the City from the Comptroller's Office and generating three main reports to be used for generating the leads:
 - **Top 100 Report** – The top 100 sales tax revenue generating businesses in the City complete with payment history.
 - **Significant Anomalies Report** – A customizable report designed to discover monthly sales tax anomalies, based on preset dollar value thresholds, that may have been skipped, underreported, or misallocated to an incorrect jurisdiction.
 - **Negative Fund Transfers Report** – A report that will track all occurrences of a business filing a refund, amended return, prepaid tax credit, state audit, or an incorrect misallocation.
 - Having Contractor's sales & use tax analyst resolve all leads generated from the above 3 reports by contacting each taxpayer in order to confirm the nature of any questionable tax periods.
 - Performing physical canvassing to ensure the accuracy of businesses that have nexus within the City limit.
 - Providing documentation to businesses mistakenly reporting the tax to another jurisdiction to facilitate a correction of the registration information. Assist the business, as necessary, in filing of returns and making payments for all open tax periods.
 - Provide documentation to the state to secure the transfer of funds to the City that was reported in error to another jurisdiction.

2) Progress Reports

Contractor will provide quarterly progress reports to City in the form of status updates. These progress reports will also indicate areas in which City staff may further assist and improve the sales tax compliance review activities provided hereunder. Contractor's progress reports will identify errors/omissions detected, documented and corrected, and report on other services of benefit to the City for the time period covered under this Agreement.

3) The parties agree that City and/or the State Comptroller retain exclusive authority and responsibility to administer, interpret and enforce the City's sales and use tax, recognizing that Contractor's role is limited to employing its unique expertise and proprietary tools for: i) detecting and documenting errors/omissions by taxpayers in the application, calculation, collection, and/or remittance of sales and use taxes and, ii) providing City with technical assistance, without assuming or being delegated the authority or responsibility of City to administer, interpret, and enforce its sales and use taxes.

II. Sales/Use Tax Analysis & Reporting Service (STARS Services)

Deliverables – STARS Package:

- 1) **Quarterly Stars Digest.** Contractor shall provide the City with quarterly updated STARS Digests. Contractor will provide one paper, bound copy of the quarterly STARS Digest and one electronic copy of the quarterly STARS Digest on CD. City may request additional paper, bound copies of the STARS Digests for an additional fee as provided in Exhibit "G" Compensation.
- 2) **Support Service.** With the STARS Package, Contractor will provide the City with a maximum of 2 hours per quarter of telephonic STARS Digest support. Telephonic STARS Digest support consists of teleconferences with a MuniServices representative who will explain the STARS Digest and answer questions about the STARS Digest.
- 3) **Monthly Cash Report.** Included with the STARS package is a Monthly Cash Report (MCR) that will be provided to the City by email within 5 business days after the end of each month or receipt of the data from TCPA. The historical length of the report depends on history available from TCPA.
- 4) **Sales Tax Forecast.** Included with the STARS package is a 3-year forecast based upon previous current economic conditions and trends.
- 5) **Quarterly Sales Tax Capture Leakage ("STCL") Analysis.** For each calendar quarter, Contractor will provide City with an updated STCL Analysis in the form of one paper bound copy and one electronic copy on a CD.
- 6) **Geo Area Reports.** As part of the STARS package, Contractor will include Geo Area Reports for 20 Geo Areas.

1. Quarterly STARS Digest.

1.1 Contents. The quarterly STARS Digest contains the following reports, subject to the availability of Data:

- **Historical Collections Analysis** - Components of allocation payments by payment activity.
- **Top 100 Historical** - Historical performance of the top 100 accounts comparing current benchmark year ranking and sales tax produced with that of prior years.
- **Top 100 Detail** – Sales tax performance of the City’s top 100 sales tax accounts is shown in order of sales tax produced with the results for the most recent five quarters prominently displayed. The proportion of City sales tax produced is also shown by each account.
- **Economic Category Performance** – An analysis of the changes that occurred by economic category and segment with the specific businesses responsible for the significant changes delineated.
- **Business Classification Code**- This report shows the business classification codes assigned by Contractor based on the NAICS codes provided by TCPA and the accounts assigned those codes in order of sales tax produced. Five quarters of sales tax data are shown for each significant account.
- **Historical Economic Composition** - Data are summarized by economic category and segment by quarters and benchmark years. Percentage of total sales tax generated by each category and segment is also shown to indicate trends in sales tax composition as well as performance.
- **Cross-Reference Reports** - These reports allow the user to look up any of the significant accounts shown in the STARS Digest by name or address.
- **Geo-Area Reports**– This report tracks sales tax performance within designated geo-areas of the City (e.g., key shopping centers, business parks, and downtown/business districts, etc.). Charts and printed reports are included for each geo-area. The City may designate geo-areas and include the Geo-Area Reports in the STARS report for the fee set forth in Exhibit “G”, subject to the allocation of funds. This report is contingent upon the City providing Contractor with the geo-area address ranges in electronic format that meets the following requirements:
 - XLS, DBF, or Comma Delimited Formats per Contractor’s requirements;
 - and the components of the address range per Contractor’s requirements.

(The City shall contact Contractor for the details of the above requirements)

To provide the optional Geo-Area reports, Contractor will standardize the street names in the permit file by:

- Parsing the addresses to the United States Postal Service (USPS) standard.
- Comparing the parsed addresses to the Texas’ USPS file for standardization and manually verifying it.

Contractor is not responsible for verifying the accuracy of the addresses in the permit file.

All of the reports listed in the above subsection 1.1 provide data that are based on the date on which the transaction took place and not on the date on which the payment was transferred to the City.

1.2 Excluded businesses. The STARS Digest does not include any information on taxpayers that is not provided by the State Comptroller to the City.

1.3 Accuracy. The STARS Digest relies on information provided by the Texas Comptroller of Public Accounts (“TCPA”). Contractor has no obligation to verify the data provided by TCPA. Only if the City elects to receive the Geo area reports will Contractor clean or standardize the data received from TCPA. Contractor may also rely on information provided by third parties. City acknowledges that Contractor has no obligation to verify, remove redundancies, or otherwise clean or standardize the information provided by third parties. Contractor will provide a list of all third parties and identify the information provided by each.

1.4 Timing. Contractor’s obligation to provide the STARS Digest is conditioned on City’s delivery of required signed documentation to the Contractor to access the proper data from the State of Texas Comptroller’s Office.

1.5 License of Electronic Version. Contractor hereby grants City a non-exclusive license to print unlimited copies of the STARS Digest from the electronic copy of the STARS digest, if:

- a. the copies are for internal City use only; and
- b. the copies do not remove the confidentiality statements contained in the reports.

2. Business Classifications and Business Names Standardization (optional). If City elects in writing to receive this service, and if the parties mutually agree in writing on the price, and if sufficient funds are allocated, Contractor will standardize the business classification codes and business names in the permit file for major accounts through the computer matching process, augmented with verification by calling taxpayers directly. After this standardization process, all the basic reports should display the standardized names and classifications.

3. Monthly Cash Report (MCR). The MCR is a monthly report that details the cash portion of sales tax data. The three reports that make up the MCR are sales tax permit summary, business classification summary, and a comparison of the current quarter year compared to same quarter last year. This report is most often paired with the Sales Tax Analysis & Reporting Service to create a comprehensive overview to keep clients up-to-date on the performance of businesses in the area.

3.1 Sales Tax Permit Summary

3.1.1 Identifies and categorizes changes by economic category, segment and major businesses

- 3.1.2 Explains current trends, counter-trend performance and major business changes in an easy-to-read format
- 3.1.3 Delivered as in printable format
- 3.1.4 Confidential report

3.2 Business Classification Summary

- 3.2.1 An up-to-24-month analysis report showing historical performance and comparisons for major businesses
- 3.2.2 Distinguishes between changes in List Filers and Local Filers in every business grouping
- 3.2.3 Delivered as a spreadsheet grid for client's internal analysis
- 3.2.4 Confidential report

3.3 Cash Analysis by Business Groupings

- 3.3.1 An up-to-24-month analysis report showing historical performance and comparisons for business groupings
- 3.3.2 Identifies expected trend and counter-trend performance in every business grouping
- 3.3.3 Distinguishes between changes in List Filers and Local Filers in every business grouping
- 3.3.4 Delivered as a spreadsheet grid for client's internal analysis
- 3.3.5 Confidential report

4. Sales Tax Forecasting. Contractor provides a two-to-five year forecast to its clients every quarter. Forecasts include:

4.1 Summary Page

- 4.1.1 Chart identifying historical sales tax and projected sales tax for pessimistic, most likely and optimistic scenarios.
- 4.1.2 Table identifying historical, current and future growth rates by scenario.

4.2 Detail Page for Each Fiscal Year

- 4.2.1 Identifies changes by economic category and segment
- 4.2.2 Identifies potential threats of sales tax loss
- 4.2.3 Identifies projected sales tax from businesses opening in the future
- 4.2.4 Accounts for abnormal variations in cash flow
- 4.2.5 Projects sales tax by scenario
- 4.2.6 Identifies total fiscal year sales tax depending on the final month in the Client's fiscal year (accrual scenarios)

4.3 Cash Flow

- 4.3.1 Identifies historical, current and future monthly cash flows by cash payment component.
- 4.3.2 Components include gross payment, amounts reserved at State, administration fees, net payment, etc.

In preparing the forecast, Contractor will analyze and adjust all major business accounts in accordance with market trends, individual business knowledge, expected corrections and changes in threats from business competitors or State law changes.

The bottom-up approach allows Contractor to account for individual business changes while also accounting for changes in the local, regional, state, national and world economies.

5. Sales Tax Capture Leakage Analysis Service (STCL). The STCL analysis shows how much potential sales tax revenue is being lost by residents shopping outside the City. The analysis provides:

- An analysis of sales tax revenue;
- Economic strengths and weaknesses in the local economic base; and
- Priority rankings by targeted industry clusters.

5.1 Contents. The quarterly STCL Analysis shows the capture/leakage by economic segment for the current year-ended quarter. Subject to data availability, the quarterly STCL Analysis contains the following information:

5.1.1 *Actual Sales Tax* - Provides sales tax by economic category, economic segment and business code.

5.1.2 *Potential Sales Tax* – Provides actual sales tax multiplied by its effective buying income divided by the region's effective buying income. In other words, the potential sales tax from your residents' income when following the regions buying patterns.

5.1.3 *Sales Tax Capture & Gap Analysis* - Provides an overview of how well the City is capturing potential sales tax based on its residents' effective buying income (disposable income) compared to purchasing habits in the region.

5.1.4 *Sales Tax Capture Leakage (“STCL”) Analysis* – Provides a comparison of the actual sales tax with the expected sales tax, negative variance indicating amount of leakage, and positive variance indicating amount of capture.

5.2 Accuracy and Limits. The STCL Analysis relies on information provided by TCPA. Consequently, if TCPA does not provide information about a taxpayer, that taxpayer's information will not be included in the analysis. Contractor may also rely on information provided by third parties. City acknowledges that Contractor has no obligation to verify, remove redundancies, or otherwise clean or standardize the information provided by third parties or TCPA. If TCPA doesn't provide to the City or the City does not provide the data to Contractor that is needed for the STCL analysis in the timeframe specified by Contractor, Contractor will have no obligation to provide the City an STCL analysis for that quarter.

5.3 Timing. Contractor will provide the STCL Analysis only after the City delivers to Contractor the signed documents required to access the proper data from TCPA.

5.4 License of Electronic Version. Contractor hereby grants the City a non-exclusive license to print unlimited copies of the STCL Analysis from the electronic copy of the STCL Analysis, if:

- 5.4.1 the copies are for the City's internal use only; and
- 5.4.2 the copies do not remove the confidentiality statements contained in the Analysis.

5.5 Change in Legislation. If there is a change in Texas law that increases the scope of information available from TCPA compared to the scope of information available from TCPA on the date this Agreement is signed, both parties will negotiate an amendment to this Agreement. If data becomes unavailable, Contractor may terminate this Agreement with 10 business-days written notice to the City.

5.6 Data: In order for Contractor to provide the STCL, the City will need to deliver to Contractor the signed documents required to access the proper data from TCPA.

6. Confidentiality.

Subject to the Texas Public Information Act, the information provided to the City in the STARS Digest is confidential. The City shall not distribute the STARS Digest to any person unless that person is legally entitled to access to the information in the STARS Digest, or except as may otherwise be required by law or court order.

EXHIBIT "B"

DRUG POLICY COMPLIANCE AGREEMENT

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

(Name of Company) (Contractor)

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 "C"

**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 Human Resources if any safety impact positions are established to provide services in performing this City Contract.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "D"
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____.

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

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

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

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

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

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

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

_____ I affirm that falsification or failure to submit this declaration timely in accordance with
 Initials 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 "E"

COMPENSATION FOR STARS SERVICES

Sales/Use Tax Analysis & Reporting Services (STARS Services)

In exchange for Contractor performing STARS Services under this Agreement, the City shall pay Contractor as follows:

1) For the STARS Package, City shall pay Contractor an annual fixed fee of \$_____ **per year** ("Annual Fee"). City shall pay the Annual Fee in four equal quarterly payments of \$_____ each. Included in the Annual Fee are the Quarterly STARS Digest, the Monthly Cash Report, the Sales Tax Forecast, the Quarterly STCL Analysis, and 10 Geo Area Reports.

Contractor will invoice the quarterly payments on the first month of each calendar quarter. The City shall pay the quarterly payment within 30 days of receipt of an approved invoice, even if Contractor does not provide a STARS Digest for a quarter because of TCPA's failure to provide data. If this Agreement is terminated for any reason, then the City remains obligated to pay Contractor the quarterly payments of the Annual Fee for the quarters before the effective date of termination, and for one quarter after the effective date of termination.

2) **Additional Geo Area reports.** Upon City's request and subject to the allocation of funds, Contractor will provide additional Geo Area reports for a **one-time set-up fee of \$_____ per geo area and \$_____ annual fee per Geo Area**. At any time, the City may request changes in the geo areas for an additional one-time fee of \$_____ per Geo Area. If the addresses in the permit file have not been standardized thru Contractor's expanded SUTA service, City shall pay an additional one-time setup fee of \$750 for address standardization. Contractor will invoice the City any applicable set-up fees along with the next invoice for the quarterly installment of the Annual Fee. Those set-up fees are due and payable within 30-days of the receipt of an approved invoice.

3) **Additional Copies.** Contractor shall provide City additional paper, bound copies of the STARS Digest upon City's request at the rate of \$_____ annually per additional copy, payable by City in quarterly installments of \$_____ per additional copy, subject to the allocation of funds.

4) **Adjustments.** The Annual Fee, the fee for Additional Copies, and the annual fee per Geo Area shall each be adjusted at the beginning of each calendar year by the percentage change in the Consumer Price Index – South Urban (CPI-SU) as reported by the Bureau of Labor Statistics. The initial Consumer Price Index used for the first CPI adjustment will be the CPI-SU for the month in which the agreement is fully signed with the first adjustment to occur at the beginning of the Calendar year following the first full

calendar year of service. The adjustments thereafter will be based on the CPI-SU from December of the prior calendar year. Each Annual Fee adjustment shall not be less than two percent (2%) or greater than ten percent (10%).

. **Additional Consulting Services.**

If requested by the Director in writing, Contractor shall provide the additional consulting services on a time and materials basis. Depending on the personnel assigned to perform the work, standard hourly rates range from \$_____ per hour to a maximum rate of \$_____ per hour, approved by the Director and subject to the allocation of funds.

Contractor shall invoice the City for actual time and expenses incurred with regard to these additional consulting services on a monthly basis, listing the actual hours worked and applicable rates, and the City shall pay Contractor within 30 days of receipt of an invoice approved by the Director, subject to the allocation of funds.