

SAMPLE CONTRACT

**AGREEMENT FOR ALCOHOL AND
CONTROLLED SUBSTANCE TESTING SERVICES**

ARTICLE 1.

PARTIES

THIS AGREEMENT FOR ALCOHOL AND CONTROLLED SUBSTANCE TESTING SERVICES (this “Agreement”) is made between the **CITY OF HOUSTON, TEXAS** (the “City” or “Employer), a home-rule city of the State of Texas principally situated in Harris County and _____ (“Contractor”), a _____ (*state of incorporation*) _____ (*type of legal entity*) doing business in Texas.

1.01 ADDRESS

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

City

Contractor

Director or Designee
Human Resources Department
City of Houston
P. O. Box 1562
Houston, Texas 77251

Attention: _____

The Parties agree as follows:

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1.02.1 This Agreement consists of the following sections:

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- “A” SCOPE OF SERVICES
- “B” FEES AND COSTS
- “C” DRUG POLICY COMPLIANCE AGREEMENT
- “D” CERTIFICATION OF NO SAFETY IMPACT POSITIONS
- “E” DRUG POLICY COMPLIANCE DECLARATION
- “F” HIPAA BUSINESS ASSOCIATE AGREEMENT

1.03 **PARTS INCORPORATED**

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

1.04 **CONTROLLING PARTS**

1.04.1 If a conflict between the sections or exhibits arises, the sections control over the exhibits.

[SIGNATURE PAGE FOLLOWS]

1.05 **SIGNATURES**

The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

CONTRACTOR:

By: _____

Name: _____

Title: _____

Federal Tax ID Number: _____

APPROVED:

Director
Human Resources Department

Chief Procurement Officer

APPROVED AS TO FORM:

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

CITY OF HOUSTON, TEXAS

Signed by:

Mayor

ATTEST/SEAL:

City Secretary

COUNTERSIGNED BY:

City Controller

DATE COUNTERSIGNED:

ARTICLE 2.

DEFINITIONS

- 2.01 In addition to the words and terms defined elsewhere in this Agreement, the following terms have the meanings set out below. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural. The word “shall” is always mandatory and not merely permissive.
- 2.01.1 “Agreement” means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
- 2.01.2 “City” is defined in the preamble of this Agreement and includes its successors and permitted assigns.
- 2.01.3 “Chief Procurement Officer” (“CPO”) means the Chief Procurement Officer of the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.
- 2.01.4 “Contractor” is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.01.5 “Countersignature Date” means the date shown as the date countersigned on the signature page of this Agreement.
- 2.01.6 “Director” means the Director of the City of Houston Human Resources Department or such other person as he or she designates.
- 2.01.7 “Documents” mean notes, manuals, notebooks, plans, computations, computer databases and diskettes, software, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.
- 2.01.8 “Effective Date” means the date as set out in section 5.01 of the Agreement.
- 2.01.9 “Notice to Proceed” means a written communication from the Director or the CPO to Contractor instructing Contractor to begin performance.
- 2.01.10 “Party” or “Parties” means one or all of the entities set out in the Preamble who are bound by this Agreement.

DUTIES OF CONTRACTOR

3.01 SCOPE OF SERVICES

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

3.02 COORDINATE PERFORMANCE

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

3.03 TIME EXTENSIONS

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

3.03.2 If the Director requests an extension of time to complete Contractor's performance, then the CPO may, upon consultation with the Director involved, extend the time so long as the extension does not exceed 90 calendar days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

3.04 REPORTS

3.04.1 Contractor shall submit all reports and progress updates required by the Director or CPO.

3.05 PAYMENT OF SUBCONTRACTORS

3.05.1 IN ACCORDANCE WITH THE TEXAS PROMPT PAYMENT ACT, CONTRACTOR SHALL MAKE TIMELY PAYMENTS TO ALL PERSONS AND ENTITIES THAT CONTRACTOR HAS HIRED TO SUPPLY LABOR, MATERIALS, OR EQUIPMENT FOR THE PERFORMANCE OF THIS AGREEMENT. CONTRACTOR SHALL

DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS REGARDLESS OF WHETHER THE FAILURE TO PAY IS CAUSED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), OR GROSS NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), STRICT LIABILITY, INTENTIONAL ACTS, OR OTHER CONDUCT OR LIABILITY OF THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES.

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

3.06 RELEASE

3.06.1 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. CONTRACTOR HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.

3.07 INDEMNIFICATION

3.07.1 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:

3.07.1.1 CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

3.07.1.2 THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND

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

3.07.2 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.

3.08 SUBCONTRACTOR'S INDEMNITY

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

3.09 INDEMNIFICATION PROCEDURES

3.09.1 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:

3.09.1.1 a description of the indemnification event in reasonable detail;

3.09.1.2 the basis on which indemnification may be due; and

3.09.1.3 the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis

for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 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.

3.09.2 Defense of Claims

3.09.2.1 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 Attorney. Contractor shall then control the defense and any negotiations to settle the claim, subject to the City Attorney’s consent or agreement to the settlement, which consent or agreement shall not unreasonably be withheld. 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.

3.09.2.2 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.

3.10 INSURANCE

3.10.1 **Risks and Limits of Liability.** Contractor shall maintain the following insurance coverages in the following amounts:

<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers’ Compensation	Statutory for Workers’ Compensation
Employer’s Liability	<ul style="list-style-type: none"> • Bodily Injury by Accident \$500,000 (each accident) • Bodily Injury by Disease \$500,000 (policy limit) • Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$2,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit for: (i) Any Auto; or (ii) All Owned, Hired, and Non-Owned

	Autos
Professional Liability (if applicable)	\$1,000,000 per occurrence; \$2,000,000 aggregate
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	\$1,000,000
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

3.10.2 **Insurance Coverage.** At all times during the term of this Agreement and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Agreement requirements. Prior to beginning performance under the Agreement, at any time upon the Director’s request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay: (i) all premiums; and (ii) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

3.10.3 **Form of insurance.** The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never: (i) excuse non-compliance with the terms of this Section; or (ii) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall: (i) have a Certificate of Authority to transact insurance business in Texas; or (ii) 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 Best’s Key Rating Guide.

3.10.4 **Required Coverage.** The City shall be an Additional Insured under this Agreement, and all policies, except Professional Liability and Worker’s Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Agreement provisions. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor’s insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers’ Compensation and Professional Liability, must also 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. If professional liability coverage is written on a “claims made” basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Agreement with a duration of two years after substantial completion. All certificates of insurance submitted by Contractor shall be accompanied by endorsements for: (i) Additional Insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and (ii) Waivers of Subrogation in favor of the City for Commercial General Liability, Automobile Liability and Workers’ Compensation/Employers’ Liability policies. The Director will consider all other forms on a case-by-case basis.

3.10.5 Notice. CONTRACTOR SHALL GIVE 30 DAYS’ ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED. Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

3.10.6 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.

3.11 WARRANTIES

3.11.1 Contractor warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

3.11.2 With respect to any equipment, parts and goods it furnishes, Contractor warrants:

3.11.2.1 that all items are free of defects in title, design, material, and workmanship,

3.11.2.2 that each item meets or exceeds the manufacturer’s specifications and requirements for the equipment, structure, or other improvement in which the item is installed,

3.11.2.3 that each replacement item is new, in accordance with original equipment manufacturer’s specifications, and of a quality at least as good as the

quality of the item which it replaces (when the replaced item was new),
and

3.11.2.4 that no item or its use infringes any patent, copyright, or proprietary right.

3.12 **CONFIDENTIALITY**

3.12.1 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.

3.13 **USE OF WORK PRODUCTS**

3.13.1 The City may use all Documents that Contractor prepares or obtains under this Agreement.

3.13.2 Contractor warrants that it owns the copyright to the Documents.

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

3.14 **LICENSES AND PERMITS**

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

3.15 **COMPLIANCE WITH LAWS**

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

3.16 **COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY ORDINANCE**

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

3.17 **DRUG ABUSE DETECTION AND DETERRENCE**

3.17.1 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 (the "Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

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

3.17.2.1 a copy of its drug-free workplace policy;

3.17.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "C", together with a written designation of all safety impact positions; and

3.17.2.3 if applicable (*e.g.*, no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "D".

3.17.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "E". 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.

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

3.17.5 Contractor shall require that its subcontractors comply with the Executive Order,

and Contractor shall secure and maintain the required documents for City inspection.

3.18 **CONFLICTS OF INTEREST**

3.18.1 If an actual or potential conflict arises between the City’s interests and the interests of other clients Contractor represents, Contractor shall immediately notify the Director by fax transmission or telephone. If the Director consents to Contractor's continued representation of the other clients, he or she shall notify Contractor in writing. If the Director does not issue written consent within 3 business days after receipt of Contractor's notice, Contractor shall immediately terminate its representation of the other client whose interests are or may be in conflict with those of the City.

3.19 **PAY OR PLAY**

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

3.20 **MWBE COMPLIANCE**

3.20.1 Contractor shall comply with the City’s Minority and Women Business Enterprise (“MWBE”) programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least **11%** of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City’s Office of Business Opportunities (“OBO”) and will comply with them.

3.20.2 Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

<p>[Name of 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 Office of Business Opportunity Director (the “Director”).</p> <p>[Name of MWBE subcontractor] shall permit representatives of the City of Houston, at all reasonable times, to perform: (i) audits of the books and records of the subcontractor; and (ii) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least 4 years after the end of its</p>
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performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

Within five Business Days of execution of this subcontract, Contractor and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

Any controversy between the Parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract may be submitted to the Director. The Director may prescribe procedures to provide dispute resolution by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

3.21 **ADDITIONS AND DELETIONS**

3.21.1 **Additional Products and Services.** Subject to the allocation of funds, the Director or CPO may add similar supplies, services, or locations, within the scope of this Agreement, to the list of supplies, services, or locations to be performed or provided by giving written notification to Contractor. For purposes of this Section, the “Effective Date” means the date specified in the notification from the Director or CPO. As of the Effective Date, each item added is subject to this Agreement, as if it had originally been a part, but the charge for each item starts to accrue only on the Effective Date.

3.21.2 **Exclusion of Products and Services.** If a deliverable or service that is subject to this Agreement is deleted, lost, stolen, destroyed, damaged, sold, replaced, or otherwise disposed of, the Director or CPO may exclude it from the operation of this Agreement by notifying Contractor in writing. The notice takes effect immediately on its receipt by Contractor. More than one notice may be given. When a notice is received, Contractor shall delete the charge for the excluded deliverable or service from the sum(s) otherwise due under this Agreement.

3.22 **ANTI-BOYCOTT OF ISRAEL**

3.22.1 Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

3.23 **ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES**

3.23.1 The requirements and terms of the City of Houston’s Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as

revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of the Countersignature Date. Contractor shall notify the CPO, City Attorney, and the Director of any information regarding possible violation by Contractor or its subcontractors providing services or goods under this Agreement within 7 days of Contractor becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

3.24 **PRESERVATION OF CONTRACTING INFORMATION**

3.24.1 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that this Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Agreement, then for the duration of this Agreement (including the initial term, any renewal terms, and any extensions), Contractor shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Contractor shall provide any Contracting Information related to this Agreement that is in the custody or possession of Contractor. Upon the expiration or termination of this Agreement, Contractor shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this Agreement that is in the custody or possession of Contractor, or (b) preserve the Contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or City policy.

3.24.2 If Contractor fails to comply with any one or more of the requirements of this Section, Preservation of Contracting Information, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Contractor and may terminate this Agreement. 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.

3.25 **HIPAA BUSINESS ASSOCIATE AGREEMENT**

The parties acknowledge that Contractor will be exposed to protected health information and electronic protected health information as those terms are defined in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended, and Subtitle D of the Health Information Technology for Economic and Clinical Health (“HITECH”) Act in performing its duties under this Agreement. Therefore, Contractor shall execute a HIPAA Business Associate Agreement in the form of the attached Exhibit “F” with Contractor’s execution of this Agreement.

ARTICLE 4.

DUTIES OF CITY

4.01 **PAYMENT TERMS**

4.01.1 Subject to all terms and conditions of this Agreement, the City agrees to pay for the services described in Exhibit “A” that are rendered by Contractor based upon monthly invoices showing the number of individual tests results reported to the City and related services that occur in the invoicing month at the rates set forth in Exhibit “B”. City’s payments to Contractor for services are subject to the allocation of funds and all fees and expenses may only be paid from the Allocated Funds, as provided in Section 4.04 below.

Contractor shall provide the City with detailed billing information on all specimens collected/tested in such a manner as to allow the internal billing to each department its share of the overall billing program. Contractor shall not invoice the City and the City shall not pay for tests that are not completed because of a procedural or technical error in the collection or testing process. Contractor shall not submit invoices for test results that are later than 30 days from the date of collection service.

4.01.2 Early Payment Discount. The City of Houston’s standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tex. Gov’t Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from Contractor as follows:

Payment Time - 10 Days: 2% Discount
Payment Time - 20 Days: 1% Discount

4.01.3 If the City fails to make a payment according to the early payment schedule above, but does make the payment within the time specified by the Prompt Payment Act, the City shall not receive the discount, but shall pay no other penalty. When the payment date falls on a Saturday, Sunday, or official holiday when City offices are closed and City business is not expected to be conducted, payment may be made on

the following Business Day.

4.02 **TAXES**

4.02.1 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.

4.03 **METHOD OF PAYMENT**

4.03.1 Subject to all terms and conditions of this Agreement, the City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director showing (1) a description of the services performed during the period covered by the invoice, the number of individual tests results reported to the City and related services, and (2) the amount the Contractor requests for payment. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice, unless the parties agree to the payment time under the Early Payment Discount in section 4.01.2. All fees due to Contractor under this Agreement shall only be payable from certain Allocated Funds, as provided in Section 4.04.

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

4.04 **LIMIT OF APPROPRIATION**

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

4.04.2 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 during the City's current fiscal year (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds (each a "Supplemental Allocation" and collectively, the "Supplemental Allocations") for this Agreement, but they are not obligated to do so. Therefore, the Parties have agreed to the following procedures and remedies:

4.04.2.1 The City has not allocated supplemental funds or made a Supplemental Allocation for this Agreement unless the City has issued 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 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.

\$ _____

4.04.2.2 The Original Allocation plus all Supplemental Allocations are the “Allocated Funds.” The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor’s only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

4.05 **ACCESS TO SITE**

4.05.1 Contractor may enter and leave the premises at all reasonable times without charge. Contractor and its employees may use the common areas and roadways of the premises where it is to perform the services together with all facilities, equipment, improvements, and services provided in connection with the premises for common use. This excludes parking for Contractor’s personnel. Contractor shall repair any damage caused by it or its employees as a result of its use of the common areas.

4.06 **ACCESS TO DATA**

4.06.1 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.

4.06.2 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.

4.06.3 For any raw data created, assembled, used, maintained, collected, or stored by Contractor for or on behalf of the City, Contractor shall provide the City either the raw data itself or the ability to extract the raw data in a format mutually agreed upon by both Parties at no additional cost to the City.

ARTICLE 5. TERM AND TERMINATION

5.01 AGREEMENT TERM

5.01.1 This Agreement is effective on _____, 2021 and shall remain in effect for three (3) years, unless sooner terminated under this Agreement (the "Initial Term").

5.02 NOTICE TO PROCEED

5.02.1 Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the CPO or Director.

5.03 RENEWALS

5.03.1 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two (2) successive one-year terms on the same terms and conditions. If the Director chooses not to renew this Agreement, he or she shall notify Contractor and the CPO of non-renewal at least 30 days before the expiration of the then-current term.

5.04 TERMINATION FOR CONVENIENCE BY CITY

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

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

5.04.3 RECEIPT OF PAYMENT FOR SERVICES RENDERED IS CONTRACTOR'S ONLY REMEDY 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.

5.05 **TERMINATION FOR CAUSE BY CITY**

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

5.05.1.1 Contractor fails to perform any of its material duties under this Agreement;

5.05.1.2 Contractor becomes insolvent;

5.05.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or

5.05.1.4 a receiver or trustee is appointed for Contractor.

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

5.05.3 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.

5.06 **TERMINATION FOR CAUSE BY CONTRACTOR**

5.06.1 Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date. The date must be at least 30 days after the Director receives the notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date

ARTICLE 6.

MISCELLANEOUS

6.01 **INDEPENDENT CONTRACTOR**

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

6.02 **FORCE MAJEURE**

6.02.1 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 Contractor. 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 Contractor, riots, strikes, court orders, and the acts of superior governmental or military authority, and which the affected Party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn, or other factors of general application, or an event that merely makes performance more difficult, expensive, or impractical. Force Majeure does not entitle Contractor to extra reimbursable expenses or payment.

6.02.2 This relief is not applicable unless the affected Party does the following:

6.02.2.1 uses due diligence to remove the effects of the Force Majeure as quickly

as possible and to continue performance notwithstanding the Force Majeure; and

6.02.2.2 provides the other Party with prompt written notice of the cause and its anticipated effect.

6.02.3 The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the Director is final. If Contractor disagrees with the Director's decision, then the Contractor is permitted to pursue any alleged breach of this Agreement in accordance with its remedies available at law.

6.02.4 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.

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

6.03 **SEVERABILITY**

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

6.04 **ENTIRE AGREEMENT**

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

6.05 **WRITTEN AMENDMENT**

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

Agreement.

6.06 **GOVERNING LAW AND VENUE**

6.06.1 This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

6.07 **NOTICES**

6.07.1 All notices to either Party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, 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 Article 1 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.

6.08 **CAPTIONS**

6.08.1 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.

6.09 **NON-WAIVER**

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

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

6.10 **INSPECTIONS AND AUDITS**

6.10.1 City representatives may perform, or have performed: (i) audits of Contractor's books and records; and (ii) 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 years after this Agreement terminates. If the books and records are located outside of Harris County, Texas, Contractor

agrees to make them available in Harris County, Texas. This provision does not affect the applicable statute of limitations.

6.11 **ENFORCEMENT**

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

6.12 **AMBIGUITIES**

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

6.13 **SURVIVAL**

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

6.14 **PUBLICITY**

6.14.1 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.

6.15 **PARTIES IN INTEREST**

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

6.16 **SUCCESSORS AND ASSIGNS**

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

6.17 **BUSINESS STRUCTURE AND ASSIGNMENTS**

6.17.1 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 under Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the Director and CPO 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.

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

6.18 **REMEDIES CUMULATIVE**

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

6.19 **CONTRACTOR DEBT**

6.19.1 IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, HE OR 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.

EXHIBIT "A"
SCOPE OF SERVICES

EXHIBIT B
FEES AND COSTS

EXHIBIT "C"

DRUG POLICY COMPLIANCE AGREEMENT

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

as an owner or officer of _____ (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 "D"

**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 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 "E"

DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or officer of _____ (Contractor)
 (Name) (Print/Type) (Title) (Name of Company)
 have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 20____.

_____ A written Drug Free Workplace Policy has been implemented and employees 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
 (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
 Initials 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 “F”

HIPAA BUSINESS ASSOCIATE AGREEMENT

This **HIPAA BUSINESS ASSOCIATE AGREEMENT** (the “BAA”) is made and entered into by and between _____ (“Business Associate” or “Contractor”) and the **CITY OF HOUSTON, TEXAS**, a home rule city of the State of Texas (“Covered Entity” or the “City”) in connection with the services provided by Contractor under the *Agreement for Alcohol and Controlled Substance Testing Services*. This BAA supersedes and replaces any existing Business Associate Agreement between Covered Entity and Business Associate.

The purpose of this BAA is to comply with the provisions applicable to the confidentiality and security of individual health records as required under the Health Insurance Portability and Accountability Act of 1996, as codified at 45 C.F.R. Parts 160 and 164, as amended (“HIPAA”) and any current and future regulations promulgated hereunder, including, without limitation, the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (“Federal Privacy Regulations”), the federal security standards contained in 45 C.F.R. Part 160, 162 and 164 (“Federal Security Regulations”), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 142, 160 and 162 (the “Federal Electronic Transaction Regulations”), as applicable; the Health Information Technology for Economic and Clinical Health Act (“HITECH”) contained in Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, as applicable, all as may be amended from time to time, and TEX. HEALTH & SAFETY CODE ANN. §§81.046, as amended, 181.001 *et seq.*, as amended, 241.151 *et seq.*, as amended, and 611.001 *et seq.*, as amended, all as may be amended from time to time, and all collectively referred to herein as “HIPAA Privacy and Security Requirements”, to protect the privacy and security of Protected Health Information (PHI) and Electronic Protected Health Information (EPHI) data created or received by Business Associate from or on behalf of the City.

A. Definitions.

1. “Confidential Information” is information that has been deemed or designated confidential by law (*i.e.*, constitutional, statutory, regulatory, or by judicial decision).
2. “Protected Health Information” (“PHI”) is defined in 45 C.F.R. § 160.103 and is limited to information created or received by Contractor from or on behalf of the City.
3. “Electronic Protected Health Information” (“EPHI”) shall mean individually identifiable health information that is transmitted by or maintained in electronic media.

4. “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of Confidential Information, including, but not limited to, PHI and EPHI, or interference with the systems operations in an information system, including, but not limited to, information systems containing EPHI. This definition includes, but is not limited to, lost or stolen transportable media devices (*e.g.*, flash drives, CDs, PDAs, cell phones, and cameras), desktop and laptop computers, photographs, and paper files containing Confidential Information, including, but not limited to, PHI and EPHI.

B. General.

1. Contractor agrees to hold all PHI and EPHI confidential except to the extent that disclosure is required by Federal or State law, including the Texas Public Information Act, TEX. GOV’T CODE ANN. §§ 552.001 *et seq.*, as amended.
2. Contractor agrees to be bound by and comply with all applicable Federal and State of Texas licensing authorities’ laws, rules, and regulations regarding records and governmental records, including the HIPAA Privacy and Security Requirements. Compliance with this paragraph is at Contractor’s own expense.
3. Contractor agrees to cooperate with state and federal agencies and to make appropriate personnel available for interviews, consultation, grand jury proceedings, pre-trial conferences, hearings, trials, and any other process, including investigations, required as a result of Contractor’s services to the City. Compliance with this paragraph is at Contractor’s own expense.
4. The terms used in this BAA shall have the same meaning as those terms in the HIPAA Privacy and Security Requirements.

C. Representation. Contractor represents that it is familiar with and is in compliance with the Privacy and Security Requirements, which include Federal and State of Texas requirements governing PHI and EPHI relating to the services performed by Contractor under the *Agreement for Alcohol and Controlled Substance Testing Services*.

D. Business Associate. Contractor is a “Business Associate” of the City as that term is defined under the HIPAA Privacy and Security Requirements. Contractor specifically agrees to abide by all requirements of the HIPAA Privacy Rule and Security Rule made applicable to Business Associate under HITECH as if Business Associate were a covered entity under HIPAA.

1. *Nondisclosure of PHI and EPHI.* Contractor agrees not to use or disclose PHI and EPHI received from or on behalf of the City or created, compiled, or used by

Contractor pursuant to this Agreement other than as permitted or required by this BAA, or as otherwise required by law.

2. *Limitation on Further Use or Disclosure.* Contractor agrees not to further use or disclose PHI or EPHI received from or on behalf of the City or created, compiled, or used by Contractor pursuant to this BAA in a manner that would be prohibited by the HIPAA Privacy and Security Requirements if disclosure was made by the City, or if either Contractor or the City is otherwise prohibited from making such disclosure by any present or future State or Federal law, regulation, or rule.
3. *Safeguarding PHI.* Contractor agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this BAA or as required by State or Federal law, regulation, or rule.
4. *Safeguarding EPHI.* Contractor agrees to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains, or transmits on behalf of the City. These safeguards shall include the following:
 - a) Encryption of EPHI that Contractor stores and transmits;
 - b) Implementation of strong access controls, including physical locks, firewalls, and strong passwords;
 - c) Use of updated antivirus software;
 - d) Adoption of contingency planning policies and procedures, including data backup and disaster recovery plans; and
 - e) Conduct of periodic security training.
5. *Reporting Security Incidents.* Contractor agrees to report to the City any Security Incident **immediately** upon becoming aware of such. Contractor further agrees to provide the City with the following information regarding the Security Incident as soon as possible, but no more than five (5) business days after becoming aware of the Security Incident: (1) a brief description of what happened, including the dates the Security Incident occurred and was discovered; (2) a reproduction of the PHI or EPHI involved in the Security Incident; and (3) a description of whether and how the PHI or EPHI involved in the Security Incident was rendered unusable, unreadable, or indecipherable to unauthorized individuals either by encryption or otherwise destroying the PHI or EPHI prior to disposal. If Contractor determines that it is infeasible to reproduce the PHI or EPHI involved in the Security Incident,

the Contractor agrees to notify the City in writing of the conditions that make reproduction infeasible and any information the Contractor has regarding the PHI or EPHI involved.

Contractor agrees to cooperate in a timely fashion with the City regarding all Security Incidents reported to the City.

The City will review all Security Incidents reported by Contractor.

Contractor will take the following steps in response, to the extent necessary or required by law, including, but not limited to, (1) notifying the individual(s) whose PHI or EPHI was involved in the Security Incident, either in writing, via telephone, through the media, or by posting a notice on the City's website, or through a combination of those methods, of the Security Incident; and (2) providing the individual(s) whose PHI or EPHI was involved in the Security Incident with credit monitoring services for a period of time to be determined by the City, at no cost to the individuals.

The City, to the extent necessary or required by law, will provide notice of the Security Incident, as required by law, to the Secretary of the United States Department of Health and Human Services ("HHS").

Contractor agrees to reimburse the City for all expenses incurred as a result of Contractor's Security Incidents, including, but not limited to, expenses related to the activities described above. Contractor agrees that the City will select the Contractors and negotiate the contracts related to said expenses.

6. *EPHI and Subcontractors.* Contractor shall require any agent to whom it provides PHI or EPHI, including a subcontractor, to agree to implement reasonable and appropriate safeguards to protect such PHI or EPHI. Further, Contractor agrees to give the City at least sixty (60) days advance notice of its intent to provide PHI or EPHI to an agent located outside of the United States.
7. *Subcontractors and Agents.* Contractor shall require any subcontractor or agent to whom Contractor provides PHI or EPHI received from or on behalf of the City or created, compiled, or used by Contractor pursuant to this BAA, to agree to the same restrictions and conditions that apply to Contractor with respect to such PHI and EPHI.
8. *Reciprocal Disclosures.* The Parties agree that the Parties may reciprocally disclose and use PHI or EPHI for initial and continuing eligibility and compliance determinations related to the provision of benefits, for auditing and legal compliance purposes, and for compliance with laws, regulations, and rules related to the *Agreement for Alcohol and Controlled Substance Testing Services* the

Agreement for Alcohol and Controlled Substance Testing Services between the City and Contractor.

Contractor agrees:

- a) to be bound by these provisions with regard to PHI or EPHI received from the City;
 - b) to take disciplinary action against any employee whose willful act violates these provisions and results in an unlawful disclosure of PHI or EPHI.
9. *Mitigation.* Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI or EPHI by Contractor, or by a subcontractor or agent of Contractor, resulting from a violation of this BAA, including violations of the HIPAA Privacy and Security Requirements stated herein. Contractor also agrees to inform the City in advance of its actual mitigation and of the details of its mitigation plan, unless doing so would cause additional harm.
10. *Notice – Access by Individual.* Contractor agrees to notify the City in writing within three (3) business days of any request by an individual for access to the individual’s PHI or EPHI and, upon receipt of such request, direct the individual to contact the City to obtain access to the individual’s PHI. Upon request by the City, Contractor agrees to make available PHI and EPHI to the City or, as directed by the City, to an individual in accordance with 45 C.F.R. § 164.524.
11. *Notice – Request for Amendment.* Contractor agrees to notify the City in writing within three (3) business days of any request by an individual for an amendment to the individual’s PHI or EPHI and, upon receipt of such request from the individual, direct the individual to the City to request an amendment of the individual’s PHI or EPHI. Contractor agrees to make available upon request PHI and EPHI for amendment and to incorporate any amendments to PHI and EPHI agreed to or directed by the City in accordance with 45 C.F.R. § 164.526.
12. *Notice – Request for Accounting.* Upon receipt of any request from an individual for an accounting of disclosures made of the individual’s PHI or EPHI, Contractor agrees to notify the City in writing within three (3) business days of any such request, and upon receipt of such request from the individual, direct the individual to the City for an accounting of the disclosures of the individual’s PHI or EPHI. Contractor agrees to make available upon request the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528. Pursuant to 45 C.F.R. § 164.528(a), an individual has a right to receive an accounting of certain disclosures of PHI or EPHI in the six (6) years prior to the date on which the accounting is requested.

13. *HHS Inspection.* Upon written request, Contractor agrees to make available to HHS or its designee, Contractor's internal practices, books, and records relating to the use and disclosure of PHI and EPHI received from, or created or received on behalf of, the City in a time or manner designated by HHS for purposes of HHS determining the City's compliance with the HIPAA Privacy and Security Requirements.
14. *City Inspection.* Upon written request, Contractor agrees to make available to the City and its duly authorized representatives during normal business hours Contractor's internal practices, books, records and documents relating to the use and disclosure of confidential information, including, but not limited to, PHI and EPHI received from, or created or received on behalf of, the City in a time and manner designated by the City for the purposes of the City determining compliance with the HIPAA Privacy and Security Requirements. Contractor agrees to allow such access until the expiration of four (4) years after the services are furnished under the contract or subcontract or until the completion of any audit or audit period, whichever is later. Contractor agrees to allow similar access to books, records, and documents related to contracts between Contractor and organizations related to or subcontracted by Contractor to whom Contractor provides confidential information, including, but not limited to, PHI and EPHI received from, or created or received on behalf of, the City.
15. *PHI or EPHI Amendment.* Contractor agrees to incorporate any amendments, corrections, or additions to the PHI or EPHI received from or created, compiled, or used by the City pursuant to this BAA when notified by the City that the PHI or EPHI is inaccurate or incomplete, or that other documents are to be added as required or allowed by the HIPAA Privacy and Security Requirements.
16. *Documentation of Disclosures.* Contractor agrees to document disclosure of PHI or EPHI and information related to such disclosures as is necessary for the City to respond to a request by an individual for an accounting of disclosures of PHI or EPHI in accordance with 45 C.F.R. § 164.528, as amended.
17. *Termination Procedures.* Upon termination of this BAA for any reason, Contractor agrees to deliver all PHI or EPHI received from the City or created, compiled, or used by Contractor pursuant to this BAA within thirty (30) days from the date of termination, or, if specially requested to do so by the City in writing, to destroy all PHI or EPHI within the time frame determined by the City, which will be no less than thirty (30) days from the date of the notice of termination. This provision applies when Contractor maintains PHI or EPHI from the City in any form. If Contractor determines that transferring or destroying the PHI or EPHI is infeasible, Contractor agrees:
 - a) to notify the City of the conditions that make transfer or destruction infeasible;
 - b) to extend the protections of this BAA to such PHI or EPHI; and

- c) to limit any further uses and disclosures of such PHI or EPHI to those purposes that make the return, or transfer to the City, or destruction infeasible.

18. *Notice-Termination.* Upon written notice to Contractor, the City may terminate any portion of the Agreement under which Contractor maintains, compiles, or has access to PHI or EPHI. Additionally, upon written notice to Contractor, the City may terminate the entire Agreement to which this BAA is attached to, if the City determines, at its sole discretion, that Contractor has repeatedly violated a HIPAA Privacy or Security Requirement.

E. Survival of Privacy Provisions. Contractor’s obligations with regard to PHI and EPHI shall survive termination of this BAA and the Agreement.

F. Amendment Related to Privacy and Security Requirements. The Parties agree to take such action as is necessary to amend this BAA if the City, in its reasonable discretion, determines that amendment is necessary for the City to comply with the HIPAA Privacy and Security Requirements or any other law or regulation affecting the use or disclosure of PHI or EPHI. Any ambiguity in this BAA shall be resolved to permit the City to comply with the HIPAA Privacy and Security Requirements.

G. **INDEMNIFICATION.** **CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS OFFICERS, EMPLOYEES, AND AGENTS (INDIVIDUALLY AND COLLECTIVELY “INDEMNITEES”) AGAINST ANY AND ALL LOSSES, LIABILITIES, JUDGMENTS, PENALTIES, AWARDS, AND COSTS (INCLUDING COSTS OF INVESTIGATIONS, LEGAL FEES, AND EXPENSES) ARISING OUT OF OR RELATED TO:**

1. **A BREACH OF THIS BAA RELATING TO THE HIPAA PRIVACY AND SECURITY REQUIREMENTS BY CONTRACTOR; OR**
2. **ANY NEGLIGENT OR WRONGFUL ACTS OR OMISSIONS OF CONTRACTOR OR ITS EMPLOYEES, DIRECTORS, OFFICERS, SUBCONTRACTORS, OR AGENTS, RELATING TO THE HIPAA PRIVACY AND SECURITY REQUIREMENTS, INCLUDING FAILURE TO PERFORM THEIR OBLIGATIONS UNDER THE PRIVACY AND SECURITY REQUIREMENTS.**

H. Electronic Mail Addresses. Contractor affirmatively consents to the disclosure of its e-mail addresses that are provided to the City, including any agency or department of the City. This consent is intended to comply with the requirements of the Texas Public Information Act, TEX. GOV’T CODE ANN. § 552.137 *et seq.*, as amended, and shall survive termination of this BAA. This consent shall apply to e-mail addresses provided by

Contractor and agents acting on behalf of Contractor and shall apply to any e-mail address provided in any form for any reason whether related to this BAA or otherwise.

- I. Except as otherwise limited in this BAA, Contractor may use or disclose Protected Health Information it creates or receives from or on behalf of the City to provide the services to or on behalf of the City set out in the Agreement.
- J. This BAA survives the termination of the Agreement and expires when all of the PHI provided by the City to Contractor is destroyed or returned to the City.
- K. **Notices** - All notices to either party to the BAA 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 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.

Covered Entity:

Business Associate:

City of Houston

P.O. Box 1562

Houston, Texas 77251

Attention: Director

Attention: _____

Or Designee

Department of Human Resources

- L. **Governing Law and Venue.** This Agreement is subject to the laws of the State of Texas, 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 disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

Signatures:

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

(BUSINESS ASSOCIATE)

Name

By: _____

Name: _____

Title: _____

Tax Identification No. _____

APPROVED:

Human Resources Director

APPROVED AS TO FORM:

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

(COVERED ENTITY)

CITY OF HOUSTON, TEXAS

Signed by:

Mayor

ATTEST/SEAL:

City Secretary

COUNTERSIGNED BY:

City Controller

DATE COUNTERSIGNED:
