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10-0579

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

1. PARTIES

A. Address

THIS AGREEMENT FOR SOFTWARE AND HARDWARE TECHNICAL SUPPORT AND MAINTENANCE SERVICES FOR THE CITY'S AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM ("Agreement") is made on the Countersignature Date between the CITY OF HOUSTON, TEXAS ("City"), a home rule city of the State of Texas, and COGENT INC., D/B/A COGENT SYSTEMS, INC. ("Contractor"), a company doing business in Texas.

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

City

Chief, Houston Police Department
City of Houston
P.O. Box 1562
Houston, Texas 77251

Contractor

Cogent Inc., d/b/a Cogent Systems, Inc.
209 Fair Oaks Avenue
South Pasadena, CA 91030

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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EXHIBITS

- A. Scope of Service
- B. List of Equipment Being Added To City’s AFIS System
- B-1 Contractor’s Hourly Rates For Services At Time And Materials
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- D. MWBE Subcontract Terms
- E. Drug Policy Compliance Agreement
- F. Drug Policy Compliance Declaration
- G. Certification of no safety impact positions
- H. Form POP 2 - Certification of Agreement to Comply With Pay or Play Program

C. Parts Incorporated

The above described exhibits are incorporated into this Agreement.

D. Controlling Parts

If a conflict among the sections and exhibits arises, the sections control over the exhibits.

D. Controlling Parts

If a conflict among the sections and exhibits arises, the sections control over the exhibits.

E. Signatures

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

COGENT INC., D/B/A COGENT SYSTEMS, INC.

CITY OF HOUSTON, TEXAS

Signed by:

By: [Signature]
Name: JAMES XIE
Title: VP INTEGRATION

By: [Signature]
Mayor [Signature]

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

ATTEST/SEAL:



[Signature]
City Secretary

[Signature]
Chief, Houston Police Department

APPROVED AS TO FORM:

COUNTERSIGNED BY:

[Signature]
Assistant City Attorney
L.D. No. 0371000042001

[Signature]
City Controller [Signature]

DATE COUNTERSIGNED:

7/20/10

II. DEFINITIONS

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

“Account Management” or “Support Management” shall mean Contractor’s consultants who provide support services to City outside normal business hours.

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

“Automated Fingerprint Identification System” or “AFIS” shall mean the system provided and implemented by Contractor for the City at the Houston Police Department under City’s contract #4600007606 with Contractor and the system for which Contractor is providing technical support and maintenance services under this Agreement.

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

"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 on the signature page of this Agreement.

"Director" means the Chief of the Houston Police Department, or the person he or she designates.

“Documents” mean notes, manuals, notebooks, plans, computations, databases, 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.

“Documentation” shall mean the technical manual for Contractor’s proprietary software on

the City's AFIS System, describing how such software is supposed to work on the system.

"Hardware" means the hardware on the City's AFIS system purchased by City through Contractor under contract #4600007606 and additional hardware listed in Exhibit "B" for which Contractor is providing technical support and maintenance under this Agreement.

"Include" and "including", and words of similar import, shall be deemed to be followed by the words "without limitation".

"Installation Site(s)" means the City's facility located at 1200 Travis, Houston, TX 77002, where the City's Automated Fingerprint System is housed.

"Maintenance Releases" shall mean software releases provided by Contractor to City whenever it provides such releases to its customers.

"Notice to Proceed" means a written communication from the Director to Contractor instructing Contractor to begin performance.

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

"Senior Software Engineer" means Contractor's staff member to whom Contractor's Support Engineer escalates problems when he or she is unable to resolve a hardware problem reported by City Technical Contacts.

"Software" means Contractor's Cogent Archive software program licensed by Contractor to City under contract #4600007606 for use on the City's AFIS system and third party software programs titled Web Access, Mug Shot Input and AFIS Input licensed by City to run on its AFIS system under contract #4600007606.

"Support Engineer" shall mean Contractor's technical staff to whom a call from City Technical Contact for hardware support is escalated by Contractor's Telephone Support Team

whenever they are unable to resolve the hardware problem reported by the City on Contractor's toll-free telephone support line.

"Support Services" shall mean the services set out in Exhibit "A" to be provided by Contractor under this Agreement to support and maintain both the hardware and software of the City's AFIS system, implemented by Contractor under contract #4600007606 with City.

"System" or "AFIS System" shall mean the City's automated fingerprint identification system, defined above.

"Technical Contact" means a person designated by the Director to contact Contractor in the manner set out in Exhibit "A" to report hardware and software problems and to access support services from Contractor for the City's AFIS system under this Agreement.

"Telephone Support Team" shall mean Contractor's technical staff who respond to a call from a City Technical Contact for hardware support on its toll-free telephone support line.

III. DUTIES OF CONTRACTOR

A. Scope of Services

Services in General

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

B. Coordinate Performance

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.

C. Payment of Subcontractors

Contractor shall make timely payments to all persons and entities supplying 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. Contractor shall submit disputes relating to payment of MWBE subcontractors to arbitration in the same manner as any other disputes under the MWBE subcontract.

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.

F. INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD

HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

G. INDEMNIFICATION - SUBCONTRACTOR'S INDEMNITY

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.

H. 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 10 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 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 10 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.

I. Insurance

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

- (1) Commercial General Liability insurance including Contractual Liability insurance:
 - \$500,000 per occurrence; \$1,000,000 aggregate
- (2) Workers' Compensation including Broad Form All States endorsement:
 - Statutory amount
- (3) Professional Liability

- \$1,000,000 per occurrence; \$1,000,000 aggregate
- (4) Automobile Liability insurance
- \$1,000,000 combined single limit

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

All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City. Contractor shall give 30 days' written notice to the Director if any of its insurance policies are cancelled, materially changed or non-renewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or nonrenewed so as to maintain in effect the required coverage. 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.

J. 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.

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

- (i) that all items are free of defects in title, design, material and workmanship,
- (ii) 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,

(iii) that each replacement item is new or if repaired is in like new condition, 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

(iv) that no item or its use infringes any patent, copyright, or proprietary right.

K. 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.

L. Use of Work Products - City May Use All Documents

(1) The City may use all notes, plans, computations, databases, tabulations, exhibits, photographs, reports, underlying data and other work products (collectively, the "Documents") that Contractor prepares or obtains under this Agreement.

(2) Contractor warrants that it owns the copyright to the Documents.

(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.

M. Licenses and Permits

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

N. Compliance with Laws

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

O. Compliance with Equal Opportunity Ordinance

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

P. 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 "E," together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "G."

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 "F." 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.

Q. Minority and Women Business Enterprises

It is the City's policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide Percentage Goals for contracting with MWBEs, are incorporated into this Agreement.

Contractor shall make good faith efforts to award subcontracts or supply agreements in at least _____% of the value of this Agreement to MWBEs. The City's policy does not require Contractor to in fact meet or exceed this goal, but it does require Contractor to objectively demonstrate that it has made good faith efforts to do so. To this end, Contractor shall maintain records showing

- (1) subcontracts and supply agreements with Minority Business Enterprises,
- (2) subcontracts and supply agreements with Women's Business Enterprises, and
- (3) specific efforts to identify and award subcontracts and supply agreements to MWBEs. Contractor shall submit periodic reports of its efforts under this Section to the Affirmative Action Director in the form and at the times he or she prescribes.

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

R. Pay or Play

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement. Contractor shall complete and submit to the Director Exhibit "H," POP-2 Form prior to the execution of this Agreement.

S. Adherence to HPD's Security Addendum

Contractor shall adhere to HPD's security addendum as mandated by State and Federal requirements.

T. Notice of System Software Upgrade

Contractor shall notify the Director in writing, one year in advance of any upgrades it makes to the System software in order to give HPD the time required to upgrade in-house applications that affect the System. Contractor shall provide Support Services on a time and materials basis at hourly rates listed in Exhibit "B-1" in the event it decides to discontinue Support Services under this Agreement.

IV. DUTIES OF THE CITY

A. Payment Terms

- 1) Subject to all the terms and conditions of this Agreement, City shall pay and Contractor shall accept the annual System Support Services fee of \$128, 106.36 for the Support Services year beginning July 1, 2010 and ending June 30, 2011.
- 2) Subject to the allocation of funds as set out in Section IV, (E) below, City shall pay and Contractor shall accept the annual System Support Services fee of \$171,632.16 for the Support Services year beginning July 1, 2011 and ending June 30, 2012.
- 3) Subject to the allocation of funds as set out in Section IV, (E) below, City shall pay and Contractor shall accept the annual System Support Services fee of \$176,771.47 for the Support Services year beginning July 1, 2012 and ending June 30, 2013.
- 4) Subject to the allocation of funds as set out in Section IV (E) below, City shall pay and Contractor shall accept the annual System Support Services fee of \$182,074.62 for the

Support Services year beginning July 1, 2013 and ending June 30, 2014.

- 5) Subject to the allocation of funds as set out in Section IV (E) below and in the event the City adds, other than the equipment set out in Exhibit "B," hardware to the System at any during the term of this Agreement, then, the Director may issue Contractor a written notice to provide Support Services set out in Exhibit "A" for the additional hardware. For the purposes of this section, the "Effective Date" means the date on which Contractor receives the written notice from the Director. As of the Effective Date, each item of hardware added by the Director is subject to this Agreement, as if it had originally been a part of this Agreement, but the charges for Support Services for the additional hardware starts to accrue only after the Effective Date.

The total charges for additions to this Agreement must never exceed \$200,000.

- 6) At any time during the term of this Agreement, the Director may issue Contractor a written notice to delete Support Services for items of System hardware or software. On receiving the Director's written notice, Contractor shall discontinue providing Support Services for the items of System hardware or software identified by the Director in the written notice effective the day Contractor receives the notice or the date stated in the notice. Contractor shall refund a percentage of the City's advance payment equal to the percentage of the prepaid period remaining after the Director's written notice deleting Support Services for System hardware or software. Contractor shall refund such fees to City within 30 days of the Director's written notice.
- 7) The City is paying Contractor the annual Support Services fee in advance at the beginning of each year to lock in the rate for that year.

- 8) The City may audit all payments made to Contractor at a later date. Contractor shall refund any overpayments uncovered in the audit. If this Agreement is terminated before the end of the period for which payment has been made in advance, Contractor shall refund a percentage of the City's advance payment equal to the percentage of the prepaid period remaining after termination. This refund must be made within 30 days of the termination of this Agreement.
- 9) In the event Contractor decides to discontinue Support Services under this Agreement, then, subject to the allocation of funds and if the Director requests Contractor in writing to provide Support Services on a time and materials basis, Contractor shall provide Support Services at hourly rates set out in Exhibit "B-1."

B. 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.

C. Method of Payment

The City shall pay on the basis of monthly invoices submitted by Contractor and approved by the Director, showing the services performed and the attendant fee. The City shall pay Contractor within 30 days of the receipt and approval of the invoices.

D. Method of Payment - Disputed Payments

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the

remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

E. Limit of Appropriation

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

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$128,106.36 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

(3) The City makes a Supplemental Allocation by issuing to 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.

\$ _____

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

F. Access to Site

Contractor may enter and leave the premises at all reasonable times without charge. Contractor and its employees may use the common areas and roadways of the premises where it is to perform the services together with all facilities, equipment, improvements, and services provided in connection with the premises for common use. 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.

V. TERM AND TERMINATION

A. Contract Term

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

B. Renewals

If the Director, at his or her sole discretion, makes a written request for renewal to Contractor at least 30 days before expiration of the then-current term and if sufficient funds are allocated, then, upon expiration of the initial term, this Agreement is renewed for two successive one-year terms upon the same terms and conditions.

At the end of the second successive one-year term, if the Director extends this Agreement to permit Contractor to complete its performance, then, the Director may in his or her sole discretion extend the time so long as such extension does not exceed 90 days. The 90-day extension of time does not require an amendment of the Agreement and Contractor is not entitled to damages for delay(s) regardless of the cause of such delay(s).

C. Termination for Convenience by City

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

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. Contractor shall refund prorate advance Support Services fees paid for the period remaining after the termination of this Agreement in the manner set out in Section IV, A.

TERMINATION OF THIS AGREEMENT 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 IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM CITY'S TERMINATION FOR CONVENIENCE.

D. 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 by 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. 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 is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Contractor's performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors

for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all workers' compensation benefits coverage.

B. Force Majeure

1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or 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.

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

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

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

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

5. If the Force Majeure continues for more than 10 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.**

C. 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.

D. 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.

E. 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.

F. 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.

E. Notices

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

H. Captions

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

I. 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.

J. Inspections and Audits

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

K. 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.

L. 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.

M. Survival

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.

N. 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.

O. Risk of Loss

Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for each Product passes from Contractor to the City upon acceptance by the City.

P. Parties In Interest

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

Q. 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.

R. 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.

S. 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.

T. 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, 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

1. Contractor shall provide Support Services for the City's AFIS System provided by Contractor under contract #4600007606 with the City, which shall include access to Contractor's trained and experienced technical support staff for System Hardware and Software Support Services in the manner detailed below.
2. Contractor warrants that it can provide all Support Services to support City System Hardware and Software as set out in this Exhibit "A" for a total annual cost of \$128,106.36 for July 1, 2010 to June 30, 2011; \$171,632.16 for July 1, 2011 to June 30, 2012; \$176,771.47 for July 1, 2012 to June 30, 2013; and \$182,074.62 for July 1, 2013 to June 30, 2014, with the increased fees in the last two years reflecting the additional cost of providing Support Services for equipment listed in Exhibit "B" being added to the System.
3. **SYSTEM HARDWARE TECHNICAL SUPPORT AND MAINTENANCE**
 - a. Contractor shall repair or replace without charge to City any part of the System Hardware found to be faulty by reason of defective material, design or workmanship.
 - b. City will follow the procedure set out below to access Hardware support from Contractor:
 - i. HPD's Technical Contact will report Hardware problems to Contractor via:

- ii. Contractor's toll-free tech support telephone number 1-866-500-2347 (Contractor shall provide Director with 30 days' written notice of change in the above telephone number); or
 - iii. Contractor's support website: Helpdesk@CogentSystems.com;
 - iv. Contractor's designated Account Management and Support Management staff during off hours (which means, other than during normal business hours of 8:00 A.M. to 5:00 P.M.); and
 - v. Contractor's toll-free tech support number 1-866-500-2347 with request for call back from management, whenever such support is needed by City.
- c. HPD's Technical Contacts will follow up a Hardware support call with a report to Contractor containing sufficient information about the Hardware problem to enable Contractor to determine the cause of the Hardware problem reported;

Contractor's Response To Hardware Problems Reported By City

- d. Contractor shall respond to Hardware problems reported by City Technical Contacts in the manner set out below:
- i. Contractor shall acknowledge receipt of each problem reported via telephone, facsimile transmission or email to the City Technical Contact who reported the problem;
 - ii. Contractor shall use commercially reasonable efforts consistent with the severity of the problem to repair or replace the Hardware;

- iii. By determining in its sole discretion whether an on-site visit by its technician is necessary and obtain access from HPD to System Hardware for its on-site technician's visit; and
- iv. Contractor shall pay all shipping costs required to ship faulty Hardware from City to Contractor's repair facility and back to City.

Escalation Procedures For City System Hardware Problems Reported

- e. Contractor shall follow the procedure set out below to escalate City System Hardware problems reported by City Technical Contacts:
 - i. have its Telephone Support Team handle initial call from City Technical Contact;
 - ii. if Telephone Support Team is unable to solve the problem reported by City, then escalate City System Hardware problem to its Support Engineer;
 - iii. if Contractor's Support Engineer is unable to solve the problem, then escalate the matter to its Senior Software Engineer at its headquarters; and
 - iv. HPD has the option to escalate System Hardware problems it encounters to management by calling Contractor's toll-free number 1-866-500-2347, ask to speak to Contractor's management team to escalate a problem and have Contractor's

management team work with HPD until the System Hardware problem is resolved to the satisfaction of the Director.

Hardware Maintenance – Contractor’s Limitations

4. Contractor shall not be required to replace any City System Hardware that Contractor, in its sole and reasonable discretion, determines that the Hardware requires such repair or replacement to the extent arising from: (a) any changes or modifications to the System Hardware or Software included on the Hardware, in each case that were not made by Contractor; (b) damage to the Hardware (other than normal wear and tear); (c) the failure of computer hardware, equipment, or software that was not supplied by Contractor; (d) the negligence of City or any third party caused the problem reported; (e) attempted maintenance was made by unauthorized persons; or (f) City’s use or improper use of the Hardware, or merging or combining the Hardware with any hardware or software not authorized by Contractor to be so merged or combined.

SYSTEM SOFTWARE SUPPORT SERVICES

5. City will follow the procedure set out below to access Software Support Services from Contractor:
 - i. HPD’s Technical Support will report Software errors to Contractor via:
 - ii. Contractor’s toll-free tech support telephone number 1- 866-500-2347 (Contractor shall provide Director with 30 days’ written notice of change in the above telephone number);
 - iii. HPD’s Technical Contacts will follow up a call for Software Support Services with a report containing sufficient information about the Software problem to enable Contractor to determine the cause of the Software error reported;

- iv. Based on HPD Technical Contact's report, Contractor shall assign severity levels to the Software error reported and respond within the response times set out in the table below for the severity levels assigned to the reported Software errors:

SEVERITY LEVEL	DESCRIPTION OF SEVERITY LEVEL	RESPONSE TIMES FOR EACH SEVERITY LEVEL ERROR	HPD's RIGHTS
Severity Level One	Severity Level One is defined as critical System down, where a business-critical hardware or software component is inoperable or a critical interface has failed, resulting in a critical impact on operations. As a result, System is usable, but use is severely limited.	Contractor shall respond within 4 hours of a call from HPD Technical Contact to provide a workaround within 8 hours, and a fix within 72 hours of the initial call from HPD's Technical Contact.	
Severity Level Two	Severity Level Two is defined as a major impact on the System, where a hardware or software component is severely restricted in its use, causing significant business impact. The System is useable, but use is severely limited.	Contractor shall respond by the end of the next business day from the day it received the initial call from HPD's Technical Contact, and provide a workaround within the next business day. Contractor must provide a fix for the System Software error reported within 72 hours of the initial call from HPD's Technical Contact.	HPD, at the sole discretion of its AFIS Manager reserves the right to immediately escalate initial call to Level One, even though classified by Contractor as Level Two
Software problems	All other System Software errors reported, not classified as Severity Level One or Two.	Contractor shall respond within 3 days of receiving the initial call from HPD's Technical Contact.	HPD, at the sole discretion of its AFIS Manager, reserves the right to immediately escalate any software problem to Level One status.

- v. In addition to contacting Contractor's technical support consultants via Contractor's toll-free number as set out above, the Director has the option to request Contractor to provide emergency on-site support. In response to the

Director's request, Contractor shall make such on-site support available by sending its on-site technician to correct the System Software error reported within the response time mutually agreed to by the Director and Contractor.

Maintenance Releases

- vi. During the term of this Agreement, Contractor shall provide the City with Maintenance Releases whenever it commercially releases such Maintenance Releases and makes them generally available to its customers who purchase Support Services for Contractor's System Software as the City has under this Agreement. When Contractor provides a Maintenance Release to City, it shall also provide the City with the modified Documentation for the System Software resulting from such a Maintenance Release.

System Software Technical Support Services – Contractor's Limitations

- vii. Contractor is not obligated to provide Support Services under this Agreement in the following situations:
 - a. the System Software has been changed, modified, or damaged (excluding modifications made by Contractor);
 - b. the Support Services are necessary due to: (1) failure of computer hardware, equipment, or software not supplied by Contractor; (2) the negligence of City or any third party; (3) a cause or causes beyond the reasonable control of Contractor; or (4) attempted maintenance by unauthorized persons;
 - c. the Support Services are necessary due to City's use or improper use of the System Software, or merging or combining the System Software with any hardware or software not authorized by Contractor to be so merged or combined;

- d. City has failed to install or implement any error corrections, upgrades and/or Maintenance Releases provided by Contractor; or
- e. City has not paid Contractor its fees for Support Services provided under this Agreement.

6. In consultation with the Director, Contractor shall, at no charge to City, provide for two HPD attendees from HPD to attend its annual conference.

City's Responsibilities

7. a. City is responsible for allowing Contractor to implement all error corrections, upgrades, and/or Maintenance Releases furnished by Contractor and for paying all shipping costs for items shipped to City in connection with upgrades or Maintenance Releases;

b. City acknowledges that all System Software, error Corrections, upgrades and Maintenance Release provided by Contractor are subject to the conditions of the license agreement the City has for licensing the software, and City agrees to comply with the conditions of the licenses for the System Software; and

c. City will cooperate and assist Contractor in providing Support Services under this Agreement by allowing full and free access, including, but not limited to remote access, to relevant City System Hardware, Software, and other information it reasonably requires to perform such services.

EXHIBIT "B"

LIST OF EQUIPMENT BEING ADDED TO CITY'S AFIS SYSTEM

Category	Item Description	Quantity
HPD-BIS System Hardware		
Cogent Equipment Rack	Dell Rack with UPS	1
Network Hardware	Cisco PIX 506e Dell PowerConnect 2716 H08 FIBRE SW 8 PORTS SW SFP Transceiver - 4 Pack Fiber Cable LC/LC 5M Multimode H08 Full Fabric Activation	1
Cogent AFIS Core Server HW & SW	PowerEdge 2850 CAFIS Server License Cogent NIST Server License Cogent WSQ License Cogent Mobile AFIS Host License Solaris 9 License Oracle RDMBS License AFIS Input License	2
Cogent Interface & Region Server	PowerEdge 1950	2
Cogent Secondary Matcher	PowerEdge 1950	1
Cogent Cogent PMA	IBM x3650 Server Cogent PMA Elite Card	3
Cogent Web Archive/Webserver HW & SW	PowerEdge 1950 Cogent Web Archive Software License Cogent Web ID Software License	1
Cogent Mugshot Core Server HW & SW	PowerEdge 2800	2
Cogent Mobile ID Server HW & SW	PowerEdge 1950 Cogent Mobile ID Server License	1
Livescans		

Cogent Livescan Workstation	Dell Optiplex GX520 or equiv Cogent CLS1 Livescan Cabinet CLScan 1000ppi optical block Keyboard and Mouse Ruggedized Cabinet with 17" 1280x1024 resolution color monitor UPS Device Modem for remote support Xerox Phaser 4500 Sony EVI D70 Camera Mugshot Light System	18
Cogent Portable Livescan	Notebook with min of 40 GB IDE hard disk, 512 RAM, 10/100 NIC CLScan 1000 Canon Powershot Camera Ruggedized Pelican case UPS for power backup Keyboard and Mouse Xerox Phaser 4500 Printer	5
Multi-purpose Workstation with Input		
Cogent MultiPurpose Workstation	Dell Optiplex GX520 Two 20" Flat Panel Displays per workstation UPS Epson Perfection 4990 CAFIS Multi-Purpose License (Input)	3
Cogent Multi-Purpose Workstation - No Input/Output (for QA/Verification - No Scanner, Printer, Input)		
Cogent Multi Function Workstation	HP Workstation Two 20" Flat Panel Displays CAFIS Multi-Purpose License (No Input)	3
Latent Workstation		
Cogent Latent Workstation	Dell Optiplex GX520 20" Flat Panel Displays Epson Perfection 4990 Latent Camera Kit Sony XCD710 Nikon Lens Model NIKO 1987 Power Lite II 110V Light Source Cogent Camera Mount/Stand	2
LiveID Workstation (2 finger identification)		

Cogent LiveID Workstation	Dell Optiplex GX520 20" Flat Panel Displays GB Ethernet Kybd Optical Mouse LiveID License Cogent CSD 301 Optical Sensor	3
Cogent Mobile Identification Units and Software		
Cogent BlueCheck Device and SW	Bluecheck with WebID License	77
Cogent Mobile ID Device	MobileIdentII Handheld Units	37
Cogent Other Hardware and Software		
Cogent Printers	Xerox Phaser 4510	2

	Maintenance Amount
Maintenance Year 1 (7/1/10 - 6/30/11)	\$128,106.36
Maintenance Year 2 (7/1/11 - 6/30/12)	\$171,632.16
Maintenance Year 3 (7/1/12 - 6/30/13)	\$176,771.47
Maintenance Year 4 (7/1/13 - 6/30/14)	\$182,074.62

EXHIBIT B-1

CONTRACTOR'S HOURLY RATES FOR SERVICES AT TIME AND MATERIALS

1. The hourly rate for Support Services performed between the hours 9:00 A.M. and 5:00 P.M. shall be \$200.00.
2. The hourly rate for Support Services performed during hours other than those set out in subsection 1, above, and on Contractor's holidays shall be \$300.00.
3. The minimum billable time period for each Support Service call and for all work performed pursuant to subsections 1 and 2 above, in conjunction with such Support Service calls shall be four hours. City is not entitled to credit for any unused time during a call and Contractor shall not carry over such unused time to any previous or subsequent Support Service calls provided to City.
4. City shall pay travel time and a mileage rate of \$0.585 per mile in addition to the rates set out in subsections 1 and 2 above.
5. Contractor may only charge Other Direct Costs (ODCs) that it specifically identifies in advance and for which it obtains advance authorization from City.
6. Other Direct Materials – Contractor may include reasonable and allocable material handling costs or general and administrative expenses in the charge for materials/ODCs when such costs have been approved in advance by City and to the extent Contractor has clearly excluded such

costs from its hourly rates set out in subsections 1 and 2 above.

Contractor's material handling costs must comprise indirect costs, including, when appropriate, general and administrative expenses allocated to direct materials in accordance with Contractor's usual accounting practices.

EXHIBIT "C"

EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

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

EXHIBIT "D"

MWBE SUBCONTRACT TERMS

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

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

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

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

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

- a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
- b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with American Arbitration Association on file in the Office of the City's Affirmative Action Division.
- c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
- d. If the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.
- e. All arbitrations shall be conducted in Houston, Texas unless the parties agree to another location in writing.

EXHIBIT "E"
DRUG POLICY COMPLIANCE AGREEMENT

I, JAMES XIE, VP INTEGRATION as an owner or officer of
(Name) (Print/Type) (Title)
COGENT, INC (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 Consultants (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.

6/16/10
Date

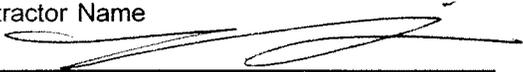
COGENT INC
Contractor Name

Signature
VP INTEGRATION
Title

EXHIBIT "H"
FORM POP 2
CERTIFICATION OF AGREEMENT TO COMPLY WITH
PAY OR PLAY PROGRAM

Available at <http://www.houstontx.gov/aacc/payorplay/pop2.pdf>