

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

03-0529
55019

I. PARTIES

A. Address

THIS AGREEMENT FOR PROFESSIONAL AUDIT SERVICES ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation, and **DELOITTE & TOUCHE LLP** ("Auditor"), a Delaware registered limited liability partnership 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
Director of Finance and Administration
or Designee
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

Auditor
DELOITTE & TOUCHE LLP
333 Clay Street, Suite 2300
Houston, Texas 77002-4196

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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EXHIBITS

- A. Equal Employment Opportunity
- B. MWBE Subcontract Terms
- C. Drug Policy Compliance Agreement
- D. Auditor's Certification of No Safety Impact Positions
- E. Drug Policy Compliance Declaration

C. Parts Incorporated

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

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.

ATTEST/SEAL (if a corporation):

DELOITTE & TOUCHE LLP

Auditor

By: _____

Name:

Title:

By: Ross T. Johnson

Name: Ross T. Johnson

Title: Director

TAX ID NO. 13-3891517

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

Signed by:

[Signature]

City Secretary

[Signature]

Mayor

APPROVED:

[Signature]

Director, Finance and Administration
Department

COUNTERSIGNED BY:

[Signature]
[Signature]

City Controller

APPROVED AS TO FORM:

[Signature]

Assistant City Attorney

L.D. File No. 0340300040001

DATE COUNTERSIGNED:

6/18/03

II. DEFINITIONS

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

"Allocated Funds" is defined in Section IV(E).

"Annual Maximum Fee" is defined in Section IV(A).

"Auditor" is defined in the preamble of this Agreement, which definition includes its successors and assigns.

"Audit Committee" means the F & A Director and the City Controller or an audit committee as established by the Houston City Council.

"Basic Services" is defined in Section III(A).

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

"City Controller" shall mean the City Controller of the City of Houston.

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

"Director" means the Director of the Finance and Administration department of, or the person he or she designates.

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

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

"Generally Accepted Accounting Principles" means accounting principles generally accepted in the United States of America.

"Generally Accepted Auditing Standards" means auditing standards generally accepted in the United States of America.

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

"Out-of-Pocket Costs" means the ordinary and reasonable costs of copying, printing, postage, messengers and delivery services incurred by the Auditor in the course of its performance of services under this Contract. Out-of-pocket cost includes the ordinary and reasonable cost of travel and per diem expenses for travel authorized by the Director.

"Special Services" is defined in Section III(B).

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

III. DUTIES OF AUDITOR

Auditor's performance under this Agreement is divided into 2 categories of services as set out below. The Scope of Services also includes the matters set out in this section. In consideration of the payment specified in this Agreement, Auditor shall provide all labor, materials, and supervision necessary to perform the Basic Services and, if requested and agreed to by Auditor, the Special Services.

A. BASIC SERVICES

1. **Task 1: Audit of Comprehensive Annual Financial Report (CAFR)**
Commencing with fiscal year ending June 30, 2003, Auditor shall conduct three consecutive financial audits of the City's basic financial statements. This task shall be performed in accordance with generally accepted auditing standards; standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget ("OMB") Circular A-133, *Audits of States, Local Governments and Non-profit Organizations*.

The Auditor shall plan and perform the audit to obtain reasonable

assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud, and shall perform tests of the City's compliance with certain provisions of laws, regulations, contracts, and grants. However, because of the characteristics of fraud, particularly those involving concealment and falsified documentation (including forgery), a properly planned and performed audit may not detect a material misstatement. Therefore, an audit conducted in accordance with generally accepted auditing standards is designed to obtain reasonable, rather than absolute, assurance that the financial statements are free of material misstatement. An audit is not designed to detect error or fraud that is immaterial to the financial statements or to detect immaterial instances of noncompliance.

As part of our audit, the Auditor shall consider the City's internal control and assess control risk, as required by generally accepted auditing standards and *Government Auditing Standards*, for the purpose of establishing a basis for determining the nature, timing, and extent of auditing procedures necessary for expressing an opinion on the financial statements, and not to provide assurance on the City's internal control or to identify reportable conditions.

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, the audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

The auditing procedures shall include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, creditors, and financial institutions. The Auditor shall make audit inquiries and request written responses from the City's attorneys as part of the engagement, and they may bill the City for responding to this inquiry.

As part of the audit of compliance with the requirements of major federal programs, the Auditor shall obtain an understanding of the City's internal control related to administering major federal programs and the Auditor shall assess risk as required by OMB Circular A-133 for the purpose of establishing the nature, timing, and extent of auditing procedures necessary for expressing an opinion concerning compliance with laws and

regulations related to major federal award programs.

As required by OMB Circular A-133, the audit of compliance shall also include tests of transactions related to federal award programs for compliance with applicable laws and regulations. However, because of the concept of reasonable assurance and because the Auditor shall not perform a detailed examination of all transactions, there is a risk that material errors, fraud, or illegal acts may exist and not be detected by the Auditor. The Auditor shall advise the City, however, of any matters of that nature that come to the Auditor's attention, and shall include such matters in the reports required for an audit in accordance with OMB Circular A-133. The Auditor's responsibility as auditors is limited to the period covered by the audit and does not extend to matters that arise during any subsequent periods for which the Auditor has not been engaged as auditors or for which the Auditor has performed no substantive auditing procedures.

The objective of an audit carried out in accordance with the standards described above is (1) the expression of an opinion concerning whether the financial statements present fairly, in all material respects the financial position, results of operations, and cash flows of the City in conformity with Generally Accepted Accounting Principles, (2) reporting on the internal control relevant to an audit of the financial statements, (3) reporting on the City's compliance with laws and regulations, which could have a material effect on the financial statements, (4) reporting on whether the schedule of expenditures of federal and state awards is fairly stated in all material respects when considered in relation to the basic financial statements taken as a whole, (5) the reporting on the Auditor's determination as to whether the City's internal control provides reasonable assurance of compliance with federal laws and other laws and regulations, (6) the expression of an opinion on whether the City complied with specific terms and conditions of its major federal programs, and (7) preparation of a schedule of findings and questioned costs to summarize the results of the audit in accordance with the requirements of OMB Circular A-133.

The report on the Auditor's understanding of the City's internal control and the assessment of control risk made as part of the City's financial statement audit shall include (1) the scope of our work in obtaining an understanding of the City's internal control and in assessing the control risk and (2) the reportable conditions, including the identification of material weaknesses identified as a result of the Auditor's work in understanding and assessing the control risk.

In addition, the Auditor shall render a report on illegal acts depending on the results of the Auditor's audit procedures.

The Auditor shall complete and sign one copy of the auditor's information section of the Data Collection Form. City management must prepare all other sections of the form and sign the form prior to its submission to the Federal Bureau of the Census.

The Auditor's ability to express an opinion and render those reports, and the wording of the Auditor's opinion and reports, will, of course, be dependent on the facts and circumstances at the date of such reports. If, for any reason, the Auditor is unable to complete the audit or is unable to form or has not formed an opinion, the Auditor may decline to express an opinion or decline to issue a report as a result of this engagement. If the Auditor is unable to complete the audit or if our auditors' reports require modification, Auditor shall discuss the reasons with the Director.

The Auditor understands that the Auditor's reports on the City's internal control, as part of the financial statement audit and on compliance with laws and regulations, are intended for the information of the management, and others within the City and applicable federal and state granting organizations.

The Auditor shall advise the City Controller as the City Controller prepares and compiles the Comprehensive Annual Financial Report (CAFR) in accordance with Governmental Accounting and Financial Reporting Standards published and issued by the Governmental Accounting Standards Board (GASB) and all eligibility requirements of the Government Finance Officers Association (GFOA) Certificate of Achievement for Excellence in Financial Reporting Program.

The Auditor shall determine and issue reports including opinions on :

- a. The financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the City of Houston, which collectively comprise the City's basic financial statements as of the year end, and the respective changes in financial position and cash flows, where applicable, thereof for the year then ended.

b. The financial statements of the Houston Airport System as of the year end, and the changes in financial position and cash flows thereof for the year then ended.

c. Whether the City is in substantial compliance with the significant financial and accounting requirements of ordinances pertaining to the revenue bonds associated with the various enterprise funds. The documents requiring opinions are:

Convention & Entertainment Facilities Department

- Schedule of Pledged Revenues, and Debt Service Requirements.

Airport

- Schedule of Overhead and Direct Charges;

- Schedule of Gross Revenues, Net Revenues, and Debt Service Requirements

Water and Sewer

- Schedule of Gross Revenues, Net Revenues and Debt Service Requirements

- Requests for opinions pertaining to other such Documents shall be performed under terms outlined in the Special Services section.

d. Whether the City meets the financial assurance requirements of the Texas Natural Resource Conservation Commission (TNRCC)

AKA the Texas Commission on Environmental Quality (TCEQ)

e. The Auditor shall prepare a management recommendation letter.

The letter may communicate to the City opportunities to improve the economy and efficiency of the financial management practices of the City that come to the Auditor's attention during the course of the audit. The letter shall contain the responses from the responsible City Department Directors. Prior to issuance, the Auditor shall review the proposed draft letter in its entirety with the Director of Finance and Administration and the City Controller. Subsequent to issuance, the Auditor shall review the final letter with the Mayor and City Council if requested to do so.

At the request of the City and, within 90 days after the issuance of the management recommendation letter, the Auditor shall evaluate the quality of the implementation of all agreed to recommendations and submit to the Director of Finance and Administration and the City Controller a report on the status and condition of implementation.

2. Task 2: Single Audit of Federal Financial Awards Programs

In conjunction with the CAFR financial audit, the Auditor shall perform an audit of federal awards under the Single Audit Act of 1996, as amended, Office of Management and Budget (OMB) Circular A-133 dated 1997 and any amendments or supplements thereto. Successor publications will also apply. In addition to the audit requirements of OMB Circular A-133, the Auditor shall perform the following tasks:

- a. The Auditor shall assist up to 20 hours the City in its efforts to obtain acceptance of the Plan for Corrective Action by the Federal Cognizant Agency.
- b. At the request of the Director, the Auditor shall conduct follow-up on corrective actions taken by the City ninety (90) days after issuance of the final audit report, evaluate the City's progress in correcting the problems and report separately findings to the Director of Finance and Administration and the City Controller.
- c. At the request of the Director, the Auditor shall follow-up on single audit findings and recommendations to ascertain that resolution has been achieved. The Auditor shall, by the end of each month, submit to the Director and City Controller a report in such form as to provide information as to the quality and timeliness of individual resolution decisions.

3. Task 3: State of Texas Single Audit/Uniform Grant Management standards

In conjunction with the CAFR audit, the Auditor shall also perform auditing procedures on the City's state programs in accordance with the provisions of the state of Texas Uniform Grant Management Standards.

- a. Prior to the City's publication of the State Single Audit Report, the Auditor shall review and evaluate proposed Plan for Corrective Action.
- b. The Auditor shall, up to 20 hours, assist the City in its efforts to obtain acceptance of the Plan for Corrective Action by the State Cognizant Agency.
- c. At the request of the Director, the Auditor shall conduct follow-up on corrective actions taken by the City ninety (90) days after issuance of the final audit report, evaluate the City's progress in correcting the problems and report separate findings to the Director of Finance and Administration and the City Controller.

- d. At the request of the Director, the Auditor shall be responsible for follow up on State single audit findings and recommendations to ascertain that resolution has been achieved. The Auditor shall, by the end of each month, submit to the Director and City Controller a report in such form as to provide assurance of the quality and timeliness of individual resolution decisions.

B. SPECIAL SERVICES

1. The Auditor shall not be obligated to perform any Special Services, nor shall the City be obligated to pay for any Special Services unless such Special Services are requested in a written notice signed by the Mayor or his designee and City Council has allocated sufficient funds to pay for these services. Rates for Special Services shall be negotiated at the time of the request and included in the engagement letter.
2. The Auditor may be requested, but the Auditor is not obligated to provide the following Special Services:
 - a. Review and Audit of Houston Airport System Annual Report (including financials).
 - b. Selected Audits/Reviews/Corrective Action Plans. The auditor may be requested to conduct various financial audits, and /or corrective action plans, reviews of City activities and funds.
 - c. Other Audits. Furnish all services and materials necessary or proper for the performance of financial and compliance audits of any fund, department, or division operations of the City not included in the Scope of Services for Basic Services.
 - d. Travel. Journey to places outside the Harris County, Texas in connection with any Special Services.
 - e. Expert Witness. The Auditor may be requested to assist the City as an expert witness in litigation with third parties or administrative proceedings.
 - f. Special Investigations or Studies. Conduct special investigations or studies within the Auditor's expertise, but not specified as a Basic Service.
 - g. Bond and Note Offerings. Furnish all services and materials necessary to render consents, down to date reviews or other requested services for use in connection with the sale of bonds, notes, etc.; prepare and submit written reports with respect to such funds; advise and assist the City in connection with such work and in connection with the preparation of various officials statements relating thereto.

- h. Conference. Attend periodic conferences with City officials and regulatory officials.
- i. Quality Control Review (QCR). Review and evaluate the work of other CPA firms engaged by the City. Such QCR will be provided for in the other CPA firm's contract with the City and may be performed in conjunction with members of the City Auditor's or federal cognizant audit agency staffs.
- j. Governmental Accounting Standards Board. Furnish services and materials necessary or proper for the performance in reviewing the City's planning, preparation and implementation of GASB pronouncements.
- k. Any other services related to the scope of this Agreement.

C. COORDINATE PERFORMANCE

Auditor shall coordinate its performance with the Director and other persons that the Director designates.

D. REPORTS

Auditor shall provide progress updates as requested by the Director.

E. SCHEDULE OF PERFORMANCE - GENERAL

1. Time of Performance

Auditor's services shall commence upon the date specified in a written Notice to Proceed from the Director, shall be diligently performed thereafter, and shall be complete within the following specified times unless an extension of time is agreed to by the Director in writing as specified below.

2. Due Dates

Due dates for subtasks and deliverables are given in the table below. Dates are the same for each Fiscal Year that the Auditor provides Basic Services and assumes that the City's personnel provide the underlying reporting documents based on an agreed upon timetable that allows ample time for the Auditors to complete their work.

- a. Task 1 - Audit of Comprehensive Annual Financial Report (CAFR) for preceding Fiscal Year
 - i. CAFR (Including Schedules of Federal and State Financial Assistance)
 - Draft Report: October 1
 - Issue Final Report: On or before October 31
 - iii. Houston Airport System CAFR
 - Draft Report: October 15
 - Issue Final Report: On or before November 15

- iii. Adjusting Journal Entries
 - Proposed: Submit to City Controller for review and approval prior to Draft CAFR
- iv. Opinion on Bond Compliance
 - Issue Final Report: On or before November 15
- v. Management Recommendation Letters
 - Draft Final Letter: On or before December 1
 - Issue Final Letter: On or before February 1
- b. Task 2 and Task 3 (Single Audit for preceding Fiscal Year):
 - i. Preparation of Schedules of Federal/State Financial Assistance for inclusion in CAFR
 - Completion: Same as CAFR dates
 - ii. Accountant's Reports - OMB Circular A-133
 - Draft Reports: Prepare and hold exit conference with Departments by November 1
 - Draft Reports: Prepare and hold exit conference with Director of Finance and Administration and City Controller by November 10
 - iii. Follow-up 90 days after issuance of the Single Audit
 - Issue Report: February 28.

3. **Time Extensions**

Upon written request of the Auditor, the Director shall grant time extensions:

- a. to the extent of any delays caused by the City or other agencies with whom the work must be coordinated and over whom the Auditor has no control (but only to the extent that the exercise of due diligence and care on the part of the Auditor within the scope of its work under this Contract could not have avoided such delays), and
- b. to the extent of any delays caused by Force Majeure as that term is defined herein.

F. PAYMENT OF SUBCONTRACTORS

Auditor's Duty to Pay

Auditor shall make timely payments to all persons and entities supplying labor, materials or equipment for the performance of this Agreement. AUDITOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS. AUDITOR shall submit disputes

relating to payment of MWBE subcontractors to arbitration in the same manner as any other disputes under the MWBE subcontract.

G. PERSONNEL OF THE AUDITOR

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

H. RELEASE

AUDITOR 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 BY THE AUDITOR IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE BY THE AUDITOR 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.

I. INSURANCE

Auditor 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. Auditor 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 claim; \$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 (except for Professional Liability) must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, and that it shall give 30 days written notice to the City before they may be canceled, materially changed, or nonrenewed. Within the 30 day period, Auditor shall secure 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 Auditor does not comply with this requirement, the Director, at his or her sole discretion, may

- (1) immediately suspend Auditor 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 Auditor under this Agreement.

J. Warranties

Auditor's performance shall conform to the generally accepted auditing standards; standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget ("OMB") Circular A-133, *Audits of States, Local Governments and Non-profit Organizations*.

K. Confidentiality - Protection of City's Interest

(1) Auditor, 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 confidence. Except in the performance of services hereunder or in accordance with the terms of this Agreement, Auditor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. This obligation of confidentiality shall not apply to information that (i) is or becomes publicly available by other than a breach hereof (including, without limitation, any information filed with any governmental agency and available to the public); (ii) is required to be disclosed by order of a court of competent jurisdiction, administrative agency or governmental body, or by subpoena, summons or other legal process, or by law, rule or regulation, or by applicable regulatory or professional standards, provided that prior to such disclosure by the Auditor, the City is given reasonable advance notice of such order and an opportunity to object to such disclosures; or (iii) is disclosed by the Auditor in connection with any judicial or other proceeding involving the City and Auditor (or any

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

2) Auditor shall carry out its obligations in this Agreement using the same degree of care that it uses in protecting its own confidential information, but at least a reasonable degree of care.

L. Use of Work Products

Subject to the terms hereof, the City may internally use all notes, plans, computations, databases, tabulations, exhibits, photographs, reports, underlying data and other work products (collectively, the "Documents") that Auditor prepares or obtains under this Agreement for delivery to the City. However, any Documents that identify an underlying source shall not be submitted or reviewed by the City unless Auditor can to its satisfaction redact all information from such Documents that identifies the source(s) of the information.

In addition, the Auditor shall provide the City Controller with detailed supporting schedules, flow charts or other analysis reasonably necessary to understand the reported findings and recommendations. Generally, this information is attached as exhibits to the final report, however the use of work products or Documents does not apply to the Auditor's workpapers, which are considered the proprietary information of the Auditor.

M. Licenses and Permits

Auditor 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. Auditor shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license having a material adverse effect on the performance under this Agreement.

N. Compliance with Laws

Auditor 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.

O. Compliance with Equal Opportunity Ordinance

In the performance under this Agreement, Auditor shall comply with City's Equal Employment Opportunity Ordinance as set out in Exhibit "A".

P. MWBE Compliance

In the performance under this Agreement, Auditor 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. Auditor shall make good faith efforts to award subcontracts or supply agreements in at least 24% of the value of this Agreement to MWBEs. Auditor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them in the performance under this Agreement.

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

Q. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Auditor 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, Auditor 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 "C," 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 "D."

If Auditor 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." Auditor 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 Auditor begins work under this Agreement.

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

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

R. Conflicts of Interest

Except as set forth below, Auditor may represent existing or new clients in any matter that is not substantially related to its services under this Agreement, even if the interests of such clients in those unrelated matters are directly adverse to the City. However, the Auditor's personnel performing services hereunder shall not represent any other client in any matter that would constitute a conflict of interest under the conflict of interest rules of the American Institute of Certified Public Accountants.

S. OTHER COMMUNICATIONS ARISING FROM THE AUDIT

In connection with the planning and the performance of the audit, generally accepted auditing standards and *Government Auditing Standards* require that certain matters be communicated to the Audit Committee. The Auditor shall report directly to the Audit Committee any fraud of which the Auditor becomes aware that involves senior management and any fraud (whether caused by senior management or other employees) of which the Auditor become aware that causes a material misstatement of the financial statements. The Auditor shall report to senior management any fraud perpetrated by lower level employees of which the Auditor becomes aware that does not cause a material misstatement of the financial statements; however, the Auditor shall not report such matters directly to the Audit Committee, unless otherwise directed by the Audit Committee.

The Auditor shall inform the appropriate level of management of the City and determine that the Audit Committee is adequately informed with respect to illegal acts that have been

detected or have otherwise come to the Auditor's attention in the course of the audit, unless the illegal act is clearly inconsequential.

If, after determining that the Audit Committee has been adequately informed of an illegal act that has been detected or which has otherwise come to the Auditor's attention in the course of the audit, the Auditor concludes that (1) the illegal act has a material effect on the financial statements; (2) senior management has not taken, and the Audit Committee has not caused senior management to take, timely and appropriate remedial actions with respect to the illegal act; and (3) the failure to take appropriate remedial actions is likely to result in a departure from the standard auditors' report or warrant the Auditor's resignation from the audit engagement, the Auditor shall directly report the Auditor's conclusions to the Audit Committee and take such actions as are required by state or federal law to report such matters to funding agencies and appropriate legal authorities.

The Auditor shall also report directly to City management and the Audit Committee matters coming to the Auditor's attention during the course of the audit that the Auditor believes are reportable conditions. Reportable conditions are significant deficiencies in the design or operation of internal control that could adversely affect the City's ability to record, process, summarize, and report financial data consistent with the assertions of City management in the financial statements.

In addition, the Auditor shall communicate to the Audit Committee, or determine that the Audit Committee is informed, about certain other matters relating to the conduct of

the audit, including, when applicable:

- The Auditor's responsibility as auditors under generally accepted auditing standards, *Government Auditing Standards*, and OMB Circular A-133
- Significant accounting policies
- Management judgments and accounting estimates
- Audit adjustments
- Other information in documents containing audited financial statements
- Disagreements with management
- Consultation by management with other accountants on significant matters
- Difficulties encountered in performing the audit
- Major issues discussed with management prior to City retention of Auditor.

The Auditor may also have other comments for management on matters Auditor observes and possible ways to improve the efficiency of the City's operations or other recommendations concerning internal control.

With respect to these other communications, the Auditor shall discuss all comments, if appropriate, with the level of City management responsible for the matters, prior to their communication to senior management and/or the Audit Committee.

T. ACCESS TO WORKING PAPERS BY REGULATORS

In accordance with the requirements of *Government Auditing Standards* and the Single Audit Act Amendments of 1996, the Auditor is required to provide access to the Auditor's working papers and photocopies thereof to a federal agency or the Comptroller General of the United States upon their request for their regulatory oversight purposes. If such a request is made, the Auditor shall inform the City prior to providing such access. The working papers for this engagement are the property of the Auditor and constitute confidential information. Access to the requested working papers shall be provided to representatives of the United States General Accounting Office or other appropriate government audit staffs under the supervision of the Auditor personnel and at a location designated by the Auditor. If photocopies are requested, the Auditor shall mark all information as confidential and maintain control over the duplication of all information. The working papers relating to this audit shall be retained by the Auditor for a minimum of three years from the date of the reports issued, or such longer period as may be required to satisfy legal and administrative requirements.

IV. DUTIES OF CITY

A. Basic Services Fees; Method of Payment

(a) The Maximum Fees for the Basic Services for the following Fiscal Years shall be as

follows:

Audit Services Relating To

FY ending June 30, 2003	\$550,000
FY ending June 30, 2004	\$550,000**

FY ending June 30, 2005	\$550,000**
FY ending June 30, 2006 (option year)	\$550,000**
FY ending June 30, 2007 (option year)	<u>\$550,000**</u>
	\$2,750,000

** Auditor may increase its Maximum Fee by no more than five percent each year on the anniversary date of the Countersignature date; provided, however, that, if there are changes in the scope of the audit as a result of regulatory or professional standard requirements, then, upon the mutual agreement of the parties, the Maximum Fee may be increased by an amount consistent with the effect of such changes. If the Auditor and the Director fail to agree as to the amount of such increase, then beginning 365 days after Countersignature date, the Auditor may terminate this agreement upon 180 days written notice to the Director.

(b) The total actual annual Basic Services Fee billed to the City shall be the Annual Maximum Fee shown in Section IV (A)(a) for the related Fiscal Year.

(c) Progress Billing

- (i) City shall pay Auditor monthly for Basic Services rendered by auditor pursuant to this Contract, on the basis of invoices submitted by the Auditor and approved by the Director. To be effective each invoice must include: (1) a summary progress report that measures results to date against the Auditor's work plan, (2) a summary of the Basic Services performed during the period covered by the invoice ("the Billing Period") expressed as a percentage of the total Basic Services, and (3) the amount Auditor requests for payment. Auditor shall structure all invoices so as to enable the City to charge or to allocate audit fees among the General Fund, specific enterprise funds, financial assistance funds or individual financial assistance programs.
- (ii) Payments to Auditor shall be calculated by multiplying the Annual Maximum Fee by a percentage equal to the percentage of Basic Services completed by Auditor during the Billing Period.

(iii) Payment to Auditor shall be made by the City within 30 days from receipt and approval of such an invoice by the Project Manager. If any of the items in any invoices submitted by the Auditor are disputed by the City for any reason, including lack of supporting documentation, the City shall temporarily delete the dispute item and pay the remaining amount of the invoice. The City shall promptly notify the Auditor of the dispute and request clarification and/or remedial action. After the dispute has been settled, the Auditor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

B. Special Services Fee: Method of Payment

(a) If the City requests any Special Services, the Auditor shall provide the Director with a written estimate of the fees it will charge to provide such services. Upon written approval of the Director and allocation of City funds therefore, Auditor shall proceed with the Special Services. Auditor shall bill the City at the following rates for Special Services:

LEVEL	Rate per Hour(*)
Partner/Director	\$255
Manager	\$195
Supervisory Staff	\$140
Staff	\$95

The above fees represent those that shall be in effect for the full term of the Agreement, including renewal periods.

(b) The Fees for the Special Services for the following Fiscal Years are estimated as follows:

Special Services Relating To

FY beginning July 1, 2003	\$80,000
FY beginning July 1, 2004	\$80,000
FY beginning July 1, 2005	\$80,000
FY beginning July 1, 2006 (option year)	\$80,000
FY beginning July 1, 2007 (option year)	\$80,000

(c) The total actual Special Service Fee billed to the City may exceed the estimate, but shall be no more than \$240,000 for the initial term and \$160,000 for the optional years as shown in Section IV(B)(b).

(d) According to the estimate, Auditor shall request payment for Special Services by submitting an invoice to the City in the month following the performance of corresponding services. Invoices shall include an itemization justifying the fees charged for each task. The Special Services Fees shall be paid by the City on or about 30 days after receipt of an invoice submitted by the Auditor and approved by the Director and City Controller. The City agrees that it shall not unreasonably delay or withhold payment or approval for any invoice.

C. Taxes

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

D. Method of Payment - Disputed Payments

If the City disputes any items in an invoice Auditor 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 Auditor of the dispute and request remedial action. After the dispute is settled, Auditor 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 Auditor 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 \$550,000 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

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

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Auditor]

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

DATE: [Date of notice]

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

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$ _____, upon the request of the below-signed Director, has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

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

SIGNED:

(Signature of the City Controller)
City Controller of the City

REQUESTED:

(Signature of the Director)
Director

(4) The Original Allocation plus all supplemental allocations are the Allocated Funds.

The City shall never be obligated to pay any fees under this Agreement in excess of the Allocated Funds. Auditor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Auditor'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. Suspension of Performance

The Director may suspend Auditor's performance under this Agreement, with or without cause, by notifying Auditor in writing. Auditor shall resume work when directed to do so by the Director. The parties may negotiate and mutually agree in writing to a plan to reduce Auditor's stand-by costs during the suspension period. The City shall not grant any compensation or extension

of time under this Section if the suspension results from material non-compliance of Auditor or its subcontractors with any material requirement of this Agreement.

G. City Assistance

The City Controller's Central Financial Reporting and Accounting staff shall be available to render all possible assistance and shall respond promptly to verbal or written requests for information, provide all necessary books and records, detailed trial balances, supporting schedules, account reconciliations, and account analyses and shall provide the necessary coordination with the Information Services Division of Finance and Administration to obtain computer support and selective access to computer files. The City Controller's Internal Audit Division shall assist the Auditor to the degree negotiated by both parties. Workpapers and reports on completed internal control evaluations shall be made available to the Auditor upon a written request to the City Controller.

H. Reproduction Services and Workspace

The City shall provide reasonable on-site reproduction services and clerical support. Costs of special or extensive reproduction shall be the responsibility of the Auditor.

The City shall provide reasonable working space to the Auditor in locations maintained by the Finance and Administration Department or Controller's Office or other City facilities.

I. Representation Letter

The Director shall cause the City Attorney to issue on request of the Auditor a representation letter concerning the status of lawsuits, litigation in the discovery stage to various levels of appeal of findings both for and against the City, and other actual or contingent liabilities.

J. Financial Statements

The financial statements are the responsibility of the City's management. In this regard, City management has the responsibility for, among other things, (1) establishing and maintaining effective internal control over financial reporting, (2) properly recording transactions in the accounting records, (3) adjusting the financial statements to correct material misstatements, (4) making appropriate accounting estimates, (5) safeguarding assets, (6) the overall accuracy of the financial statements and their conformity with generally accepted accounting principles, and (7) making all financial records and related information available to the Auditor. City management is also responsible for compliance with laws, regulations, contracts, and grants, and for establishing and maintaining effective internal control to ensure such compliance with those requirements applicable to its activities. The Auditor shall advise the City about accounting principles and their application and shall assist in the preparation of the City financial statements, but the responsibility for the financial statements remains with the City.

The Auditor shall make specific inquiries of City management about the representations embodied in the financial statements. As part of the Auditor's audit procedures, the Auditor shall request that management provide the Auditor with a representation letter acknowledging City management's responsibility for the preparation of the financial statements and for compliance with laws and regulations applicable to federal award programs and affirming City management's belief that the effects of any uncorrected financial statement misstatements aggregated by the Auditor during the current audit engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken

as a whole. The Auditor shall also request that City management confirm certain representations made to the Auditor during the Auditor's audit. The responses to those inquiries and related written representations of City management required by generally accepted auditing standards are part of the evidential matter that the Auditor will rely on as auditors in forming the Auditor's opinion on the City's financial statements. Because of the importance of City management's representations, the City agrees to release and indemnify the Auditor, to the extent allowed by law, the Auditor and its personnel from all claims, liabilities, and expenses relating to the Auditor's services under this engagement letter attributable to any misrepresentation by City management.

If the City intends to publish or otherwise reproduce any document in the Auditor's report on the City's financial statements, or otherwise make reference to the Auditor in a document that contains other information in addition to the audited financial statements (e.g., in a periodic filing with a regulator, in a debt or equity offering circular or in a private placement memorandum), the City agrees that prior to making any such use of the Auditor's report, or reference to the Auditor, the Director may decide at his or her sole discretion to provide the Auditor with a draft of the document to read and obtain consent from the Auditor for the inclusion or incorporation by reference of the Auditor's report, or the reference to Auditor, in such document before the document is printed and distributed. The inclusion or incorporation by reference of the Auditor's report in any such document may require the reissuance of the Auditor's report, as to be determined by the Auditor and the Director. At that point, the Director may, at his election, either request Auditor to reissue its report or the Director shall include a

notice in the publication stating clearly that the Auditor's report has not been updated to accurately reflect the City's current financial position as of the then current date. The City also agrees that City management will notify the Auditor prior to including the Auditor's report on an electronic site.

The engagement to perform the services described above does not constitute the Auditors agreement to be associated with any such documents published or reproduced by or on behalf of the City. In the event that the City elects not to obtain the Auditor's consent, the City agrees to include a disclosure in such document that the City has not requested the Auditor to reissue its audited financial statement and that the Auditor has not performed any procedures in connection with the document. The provisions of this paragraph shall survive the expiration or termination of this agreement. The estimated fees outlined herein do not include any services that would need to be performed in connection with any such request to make use of the Auditors report, or reference to the Auditor; fees for such services (and their scope) would be covered under the Special Services provision (Section III-B) of this contract and subject to the City's and Auditor's mutual agreement at such time as the Auditor is engaged to perform the services and would be described in a separate engagement letter.

V. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and remains in effect until June 30, 2006 unless sooner terminated under this Agreement.

B. Notice to Proceed

Auditor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the Director.

C. Renewals

If the Director, at his or her sole discretion, makes a written request for renewal to Auditor 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.

D. Termination for Convenience by City

The Director may terminate this Agreement at any time by giving 30 days written notice to Auditor. 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, Auditor 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, Auditor 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 Auditor for services actually performed, but not already paid for, in the same manner as prescribed in Section IV unless the fees exceed the allocated funds remaining under this Agreement.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE AUDITOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR

BREACH OF THIS AGREEMENT. AUDITOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

E. Termination for Cause

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

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

If a default occurs and the Director determines that the City wishes to terminate the Agreement, then the Director shall deliver a written notice to Auditor describing the default and the proposed termination date. The date must be at least 30 days after Auditor receives notice. The Director, at his sole option, may extend the termination date to a later date. If Auditor cures the default before the proposed termination date, then the proposed termination is ineffective. If Auditor 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 Auditor in writing. After receiving the notice, Auditor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

F. Termination for Cause by Auditor

Auditor 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 Auditor wishes to terminate the Agreement, then Auditor 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. Auditor, 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 Auditor may terminate its performance under this Agreement on the termination date.

G. Resignation by Auditor

Beginning 365 days from Countersignature Date, Auditor may resign as the City's Auditor and terminate this Agreement at any time provided the Auditor gives the Director 180 days notice of the Auditor's intent to resign.

VI. MISCELLANEOUS

A. Independent Contractor

Auditor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. Except as set forth herein, the City has no control or supervisory powers over the manner or method of Auditor's performance under this Agreement. All personnel Auditor

uses or provides are its personnel, employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. It is understood and agreed that neither party is, nor shall be considered to be, an agent, distributor, partner, fiduciary or representative of the other. Neither party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other. Auditor 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 worker's compensation benefits coverage.

B. Force Majeure

1. Neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.

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

- (a) uses due diligence to remove the Force Majeure as quickly as possible;
- (b) provides the other party with prompt written notice of the cause and its anticipated effect (unless the Force Majeure prevents such party from providing such notice); and
- (c) provides the other party with written notice describing the actual delay or non-performance incurred within 7 days after the Force Majeure ceases.

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

4. If the Force Majeure continues for more than ten days, the Director may terminate this Agreement by giving 7 days' written notice to Auditor. This termination is not a default or breach of this Agreement. AUDITOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.

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

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 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.

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 Auditor. 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.

G. Notices

All notices required or permitted by this Agreement must be in writing and are deemed delivered on the date actually received 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 Auditor'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 has the right to perform, or have performed (1) audits of Auditor's books and records to the extent reasonably necessary to substantiate payments made hereunder, and (2) inspections of all places where work is undertaken in connection with this Agreement. Any records available to the City under this paragraph may be redacted by the Auditor to the extent necessary to protect its proprietary and confidential information and to avoid any invasion of personal privacy. Auditor shall keep its books and records available for this purpose for at least three 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. Auditor shall provide to the City Attorney all documents and records reasonably related to the Auditor's performance under this Agreement that the City Attorney requests to assist in determining Auditor's compliance with this Agreement, with the exception of (i) working papers, (ii) 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

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

N. Publicity

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

O. Parties In Interest

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

P. 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.

Q. Business Structure and Assignments

Auditor 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 §9.31(c) of the Texas Business & Commerce Code. In the case of such an assignment, under Section 9.102 of the Code, Auditor 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.

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

R. 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.

S. Limitation of Liability

Auditor shall not be liable for any amounts representing loss of profit, loss of business or special, consequential, incidental, indirect, exemplary or punitive damages. Furthermore, Auditor and its personnel shall not be liable to the City for any claims, liabilities, or expenses relating to this Agreement for an aggregate amount in excess of \$4,558,642.50.

EXHIBIT "A"

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 "B"
MWBE SUBCONTRACT TERMS

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

1. _____ (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director").
2. _____ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of subcontractor's books and records, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep its books and records available for inspection for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall change the time for bringing a cause of action.
3. Within 5 business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given under Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of the agent.
4. Any controversy between the parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract must, upon the written request of one party served upon the other or upon notice by the Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 -- "the Act"). Arbitration must be conducted according to the following procedures:
 - a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within 30 days or the matter may be referred to arbitration.
 - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with the American Arbitration Association on file in the City's Affirmative Action Division Office.
 - c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
 - d. If the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.
 - e. All arbitrations shall be conducted in Houston, Texas unless the parties agree to another location in writing.

EXHIBIT "C"

DRUG POLICY COMPLIANCE AGREEMENT

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

_____ (Contractor)
(Name of Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that Contractor be bound by and agree to designate appropriate safety impact positions for company employee positions [D&T: WHAT IS THIS?], 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 [D&T: LET'S DISCUSS] 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). [D&T: DO WE HAVE THESE DOCUMENTS? PLEASE PROVIDE]
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. [D&T: LET'S DISCUSS]
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. [D&T: LET'S DISCUSS]
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 §5.17 of Executive Order No. 1-31, that will be involved

in performing _____
(Project)

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

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "E"

DRUG POLICY COMPLIANCE DECLARATION

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

(Contractor)
(Name of Company)

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

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

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

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

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

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

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

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
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er Employees Tested

er Employees Positive

nt Employees Positive

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

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

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

(Date)

(Typed or Printed Name)

(Signature)

(Title)