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08-0895

THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

**1. PARTIES**

**A. Address**

**THIS AGREEMENT FOR FORENSIC DNA CONSULTING SERVICES** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a Texas home rule city principally located in Harris County, and **CHARLOTTE J. WORD** and **ROBIN W. COTTON** ("Consultant" or "Consultants"), doing business as a Joint Venture 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**

**Consultants**

City Purchasing Agent for Director/Chief  
of the Police Department  
P.O. Box 1562  
Houston, Texas 77251

Charlotte J. Word, Ph.D.  
**FORENSIC DNA CONSULTANT**  
P.O. Box 5207  
Gaithersburg, MD 20882

Robin W. Cotton, Ph.D.  
**FORENSIC DNA CONSULTANT**  
4615 Chestnut St.  
Bethesda, MD 20814

The Parties enter into this Agreement consisting of the following Sections:

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## **EXHIBITS**

- A. Scope of Service
- B. Equal Employment Opportunity
- C. MWBE Subcontract Terms
- D. Drug Policy Compliance Agreement
- E. Drug Policy Compliance Declaration
- F. Certification of No Safety Impact Positions
- G. Fee Schedule
- H. Insurance Certificates

### **C. Parts Incorporated**

The above described exhibits are incorporated into this Agreement.

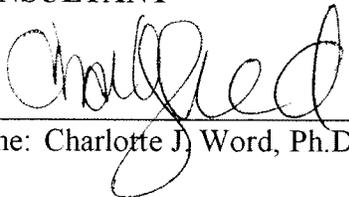
### **D. Controlling Parts**

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

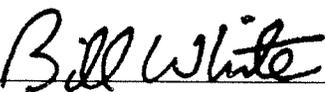
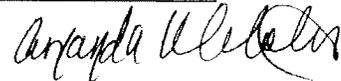
**E. Signatures**

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

**CONSULTANT**

By:   
Name: Charlotte J. Word, Ph.D.

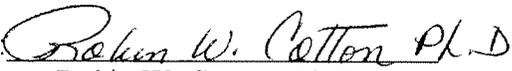
**CITY OF HOUSTON, TEXAS**

By:   
Mayor 

**WITNESS (if not a corporation)**

By: \_\_\_\_\_  
Name:  
Title:

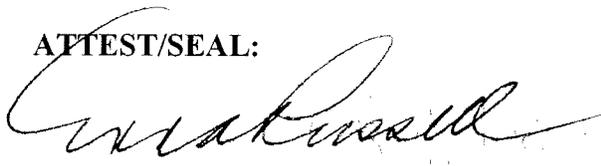
**CONSULTANT**

By:   
Name: Robin W. Cotton, Ph.D.

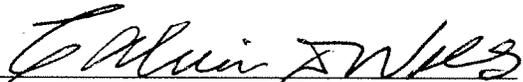
**WITNESS (if not a corporation)**

By: \_\_\_\_\_  
Name:  
Title:

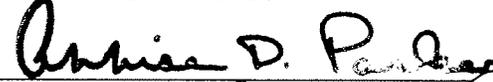
**ATTEST/SEAL:**

  
City Secretary

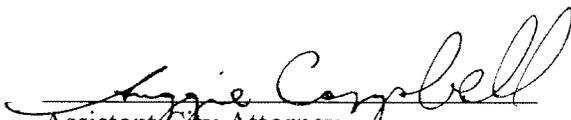
**APPROVED:**

  
Calvin D. Wells  
City Purchasing Agent

**COUNTERSIGNED BY:**

  
City Controller 

**APPROVED AS TO FORM:**

  
Assistant City Attorney  
L.D. No. 0620800814001  
G:\CONTRACT.ALC\FORENSIC DNA CONSULTANT.DOC

**DATE COUNTERSIGNED:**

10/9/2008

## II. DEFINITIONS

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

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

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

"Consultant" 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.

"Deliverables" mean the deliverables listed in Exhibit "A".

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

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

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

## III. DUTIES OF CONSULTANTS

### A. Scope of Services

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

### B. Coordinate Performance

Consultants shall be jointly and individually responsible for coordination of performance with the Director and other persons that the Director designates. Consultants shall

promptly inform the Director and other person(s) of all significant events relating to this Agreement.

C. Reports - (Progress Updates)

Consultants shall submit all reports and progress updates required by the Director.

D. Schedule of Performance

Consultants shall begin and complete their obligations in accordance with either (1) the Project Schedule contained in Exhibit "B" or (2) the detailed Project Schedule developed after the City and Consultant begin performance, whichever the Director specifies. Consultants shall perform their obligations under this Agreement diligently.

E. Time Extensions

If Consultants request an extension of time to complete performance, then the Director may, in his or her sole discretion, extend the time so long as the extension does not exceed 30 days. The extension must be in writing but does not require amendment of this Agreement. Consultants are not entitled to damages for delay(s) regardless of the cause of the delay(s).

F. Prompt Payment of Subcontractors

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

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

H. RELEASE

**CONSULTANTS AGREE 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.**

I. INDEMNIFICATION

**CONSULTANTS AGREE 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) CONSULTANTS' AND/OR THEIR 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 CONSULTANTS' ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND
- (3) THE CITY'S AND CONSULTANTS' ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

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

**J. RELEASE AND INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT**

CONSULTANTS AGREE TO AND SHALL RELEASE AND 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 BY ANY PARTY, INCLUDING

CONSULTANTS, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONSULTANTS FURNISH DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONSULTANTS SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

CONSULTANTS 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, CONSULTANTS SHALL, AT THEIR 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 CONSULTANTS SHALL REFUND THE PURCHASE PRICE.

**K. INDEMNIFICATION – (SUBCONTRACTOR'S INDEMNITY)**

CONSULTANTS SHALL REQUIRE ALL OF THEIR 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.**

**L. INDEMNIFICATION - PROCEDURES**

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

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

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30 day period, it does not waive any right to indemnification except to the extent that Consultants are prejudiced, suffer loss, or incur expense because of the delay.

(2) Defense of Claims

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

(b) Continued Participation. If Consultants 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. Consultants 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 Consultants do 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.

M. Insurance

Consultants 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. Consultants 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, 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, Consultants 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 Consultants do not comply with this requirement, the Director, at his or her sole discretion, may

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

N. Warranties

Consultants' 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 Consultants provide under this Agreement.

O. Confidentiality - Protection of City's Interest

Consultants, their 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. Consultants, their agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it

in writing. Consultant shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section.

P. 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 Consultants prepare or obtain under this Agreement.

(2) Consultants warrant that they own the copyright to the Documents.

(3) Consultants shall deliver the original Documents to the Director on request. Within 5 working days after this Agreement terminates, Consultants shall deliver to the Director the original Documents, and all other files and materials Consultants produce or gather during its performance under this Agreement.

Q. Licenses and Permits

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

R. Compliance with Laws

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

S. Compliance with Equal Opportunity Ordinance

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

T. Minority and Women Business Enterprise

The City grants the Consultants a waiver from the MWBE Program under Chapter 15, Article V, Section 15-83 of the City of Houston Code of Ordinances because Consultants do not intend to subcontract work under this Agreement.

U. Drug Abuse Detection and Deterrence

Consultants have read and shall comply with Executive Order No. 1-31 ("Order"). Consultants shall ensure that they maintain a drug and alcohol free work environment. Section 4.3 of the Order exempts contractors with less than 15 employees during any 20 week period from the administrative requirements of the Order. If Consultants increase the number of employees over 15 during any twenty week period, Consultant shall comply with all requirements of the Order.

V. Consultants' Performance

Consultants shall ensure the execution and formats of assignments, reports, and other projects yield similar results regardless of which Consultant accomplishes the task.

W. Conflicts of Interest - Terminate Representation

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

X. Pay or Play Policy

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. Consultants have 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.

#### **IV. DUTIES OF THE CITY**

A. Payment Terms – Hourly Rate

The City shall pay Consultants for their services at the hourly rates set forth in Exhibit "A".

B. Price Increase - Annual

Price Increases shall be made in accordance with Exhibit "A".

C. Expenses and Reimbursement

1. The City shall pay Consultants for reimbursable expenses, not including travel, on receipt of Consultant's itemized invoice.

2. Consultants shall propose a maximum amount for each Reimbursable Expense at the time that services requiring such expenses are requested by the Director. The Director must approve Reimbursable Expenses before Consultants incur them. The compensation for Reimbursable Expenses shall never exceed this agreed-upon maximum amount. Reimbursable Expenses are the actual expenditures Consultants and their subcontractors make while performing services for the project requested by the Director. They do not include travel costs outside the City and its extraterritorial jurisdiction (not to exceed the amounts established under the City's then-current travel reimbursement policy for its employees) or living expenses in connection with out-of-town travel, long distance communications. They do include fees paid for securing approval of authorities having jurisdiction over the project.

D. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Consultants' 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 Consultants if requested.

E. Method of Payment - Hourly Rates

The City shall pay Consultants on the basis of invoices submitted by Consultants and approved by the Director. Invoices should detail any reimbursable expenses, the hours worked in the preceding month, associated case names and numbers, the corresponding hourly rates, and the Consultant entitled to payment. The City shall make payments to the individual Consultant entitled to payment at the appropriate address for notices within 30 days of receipt of an approved invoice. Consultants shall be solely responsible for ensuring that payment between Consultants is correctly distributed.

F. Method of Payment - Disputed Payments

If the City disputes any items in an invoice Consultants submit 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 Consultants of the dispute and request remedial action. After the dispute is settled, Consultants shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

G. Limit of Appropriation

(1) The City's duty to pay money to Consultants 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 \$225,000.00 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 Consultants 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. Consultants must assure themselves that sufficient allocations have been made to pay for services they provide. If Allocated Funds are exhausted, Consultants' only remedy is suspension or termination of its performance under this Agreement, and Consultants have no other remedy in law or in equity against the City and no right to damages of any kind.

H. Suspension of Performance

The Director may suspend Consultants' performance under this Agreement, with or without cause, by notifying either Consultant in writing. Consultants 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 Consultants' 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 non-compliance of Consultants or their subcontractors with any requirement of this Agreement.

I. Access to Site

Consultants may enter and leave the Houston Police Department Crime Lab and associated facilities ("premises") at all reasonable times without charge. Consultants may use the common areas and roadways of the premises together with all equipment, improvements, and services provided in connection with the premises for common use. This excludes parking for Consultants' personnel. Consultants shall repair any damage caused by it or its employees as a result of its use of the common areas.

J. Access to Data

The City shall, to the extent permitted by law, allow Consultants to access and make copies of documents in the possession or control of the City or available to it that are reasonably necessary for Consultants to perform under this Agreement.

The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Consultants' use.

K. Liquidated Damages

(1) **Understanding:** Consultants and the City agree that the Forensic DNA Consulting Services should be provided in a timely, effective and efficient manner to ensure that the requested services provided to the public are satisfactory and the best use of public funds. If Consultants fail to deliver any service in compliance with the terms stipulated in this Agreement, Consultants shall pay to or offset the City in accordance with terms below. Consultants and City agree these terms and corresponding amounts are fair and reasonable forecasts of just compensation for harm to the City. Consultants and the City also agree that an assessment of liquidated does not relieve Consultants of their obligation to conform to the terms of this Agreement.

(2) **Procedures:** Failure by Consultants to comply with the requirements of this Agreement, especially those listed in Exhibit "A", may result in two types of conditions: correctable and non-correctable.

(a) **Correctable Conditions:** The Director may send either Consultant a written notice with instructions to correct non-compliant services when City has suffered no readily ascertained monetary loss.

(i) **Notice of Failure to Comply:** The City may notify Consultants of a non-compliant service by telephone, email, in person, or any other reasonable method deemed appropriate by the Director. This notice will include information on whether the condition is correctable or non-correctable.

(ii) **Correction:** Consultant shall have 24 hours upon receipt of written notice to correct the non-compliant service or respond in writing with a proposal on correction of services. If the Director accepts in writing

Consultant's corrections or proposal on correction of services, Consultant shall not be liable for liquidated damages.

(b) **Non-Correctable Conditions:** In all other cases of non-compliant conditions by Consultant, regardless of whether monetary loss is readily ascertainable, the Director shall send either Consultant written notice that the City intends to collect liquidated damages. Consultants shall have an opportunity to respond in writing. The Director shall collect liquidated damages from Consultants at the Director's discretion.

(c) **Repeat Conditions:** Upon the third occurrence of non-compliance for any correctable condition, in a 90 day period, liquidated damages will be assessed at the time of notice to Consultants without the benefit of the correction period.

(3) **Inspection Rights:** The City reserves the right to inspect Consultants' facilities, procedures, personnel performance, or compliance with any requirement of this Agreement. The City may enforce inspection rights and collect multiple liquidated damage assessments for non-compliant services until Consultants corrects services to the satisfaction of the Director.

**(4) Damages for Correctable Conditions:**

(a) Correctable conditions shall include, but are not limited to, failure by Consultants to submit to the Director all case reviews within 48 hours from submission time.

(b) Upon expiration of the submission time of any case review or correctable condition, Consultants shall pay \$200.00 in liquidated damages for any delay less than 4 hours.

(c) For any delay over 4 hours, Consultants shall pay \$50.00 for each additional hour until the report is received by the Director.

(5) **Damages for Non-Correctable Conditions:** Non-correctable conditions include, but are not limited to, failure by Consultant to submit to the Director a plan and analytical report on validation studies prior to the agreed-upon submission time. Upon the expiration of the submission time a non-correctable condition, Consultant shall pay \$1,000.00 in liquidated damages per incident.

L. Joint and Several Liability

Consultants shall be joint and severally liable for any debt or obligation they incur under the terms of this Agreement.

## V. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and remains in effect for 3 years unless sooner terminated under this Agreement.

B. Notice to Proceed

Consultants shall not be under any obligation to perform any task under this agreement without a Notice to Proceed from the Director, unless the parties agree to an alternative arrangement in writing.

C. Renewals - Director's Option

If the Director, at his or her sole discretion, makes a written request for renewal to Consultants 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 Consultants. 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, Consultants 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, Consultants 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 Consultants for services actually performed, but not already paid for, in the same manner as prescribed in Section IV, A unless the fees exceed the allocated funds remaining under this Agreement.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONSULTANTS' ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONSULTANTS WAIVE ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT SPECIFIED IN THIS SECTION), THEY 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 by Consultants

Consultants 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 Consultants wish to terminate the Agreement, then Consultants 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. Consultants, at their 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 Consultants may terminate their performance under this Agreement on the termination date.

F. Termination for Cause - Termination by City for Health and Safety

If City Council determines that the public health, safety, and welfare of the City require termination of this Agreement, then the Agreement is terminated immediately upon that determination by City Council.

G. Termination for Cause - Mutual Termination

The Director and Consultants may agree in writing to terminate this Agreement. A termination under this provision is without further obligation to either party.

## VI. MISCELLANEOUS

A. Independent Contractors

Consultants are independent contractors 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 Consultants' performance under this Agreement. All personnel Consultants use or provide are their employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Consultants are solely responsible for the compensation of their 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 Consultants. 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 Consultants, 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 Consultants 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 concerning a Force Majeure that directly impacts the City or Consultants 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 either Consultant. This termination is not a default or breach of this Agreement. **CONSULTANTS WAIVE 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 Consultants. 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 to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service.

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

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 Consultants' 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 Consultants' books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement.

Consultants shall keep their 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. Consultants shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Consultants' 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

Consultants shall jointly and individually 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

Consultants 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. Parties In Interest

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

Consultants shall not assign this Agreement at law or otherwise or dispose of all or substantially all of their 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, Consultants 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.

Consultants shall not delegate any portion of their 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. CONSULTANT DEBT

IF CONSULTANTS, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCUR A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, THEY SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT EITHER CONSULTANT HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONSULTANT IN WRITING. IF CONSULTANTS DO 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 CONSULTANT UNDER THIS AGREEMENT, AND CONSULTANTS WAIVE ANY RECOURSE THEREFOR.

**EXHIBIT "A"**

**SCOPE OF SERVICES  
CITY OF HOUTON CONTRACT FOR PROFESSIONAL SERVICES  
FORENSIC DNA CONSULTING SERVICES**

1. **General:** Consultants shall provide professional services as described in the Contract and as further defined by this Exhibit "A", Scope of Services.

1.1 **Description of Project:** This Project generally is described as follows:  
[RFP No. 22741] – Forensic DNA Consulting Services.

1.2 **Review of Existing Information:** Consultants and public may readily access existing information. The Director shall provide access to such information. The Consultant is responsible for physically gathering this information from all available sources. The Consultant shall review applicable existing information and develop independent recommendations from information from all relevant sources. Consultant shall not duplicate previous crime lab review efforts, except as included in this Scope of Services.

1.3 **"Biology Section"** means the City of Houston Police Department Crime Lab Biology Section.

1.4 **"Crime Lab"** means the City of Houston Police Department Crime Lab.

2. **Budget and Cost of Services**

2.1 **Hourly Rates:** The City agrees to pay Consultants to perform all Basic Services at the hourly rates listed below:

2.1.1 **Off-Site Consultation:** Consultant shall receive \$200.00 per hour for consultation and case review performed by Consultant (or an Affiliate approved by the Director) away from Houston Police Department Facilities. Consultant may increase this rate to \$215.00 for the second and third year. After the third year, Consultants may increase their rates at the beginning of each term by the lesser of 7.5% per year or the latest annual, average percentage increase in the Consumer Price Index ("CPI") for Greater Houston as published by the U.S. Department of Labor.

2.1.2 **On-Site Consultation:** Consultant shall receive \$300.00 per hour for on-site consultation and case review performed by Consultant (or an Affiliate

approved by the Director) at or en route to Houston Police Department Facilities. Consultant may increase this rate to \$335.00 for the second year and to \$350.00 for the third year. After the third year, Consultants may increase their rates at the beginning of each term by the lesser of 7.5% per year or the latest annual, average percentage increase in the Consumer Price Index ("CPI") for Greater Houston as published by the U.S. Department of Labor.

2.1.3 **Rush Fee:** Consultant shall receive an additional \$50.00 per hour for (1) consultation and case review that requires immediate action within 24 hours of receipt, or (2) unexpected travel approved by the Director.

2.2 **Travel and Expenses:** Consultants agree that they shall bear all costs associated with travel and expenses. The City agrees to pay Consultant at the On-Site Consultation rate for all quality work performed by Consultant during travel time.

2.3 **Budget:** The Original Allocation for this Agreement is \$225,000.00 for the first year. Supplemental allocations may be obtained by the Director in accordance with Section IV(G) of this Agreement.

3. **Basic Services:** The Basic Services under the terms of this Agreement shall consist of the following services:

3.1 **Technical Review:** Consultants should personally perform the technical review of all cases reported by the Crime Lab that involve forensic DNA analysis.

3.1.1 Consultants shall not outsource or subcontract such technical review without prior, written approval from the Director.

3.1.2 Consultants shall review cases from the Crime Lab and return a written report to the Director for each case within 48 hours. The Director may stipulate the format and contents of these reports. Submission Time: no more than 48 hours after either Consultant receives all necessary case materials or as otherwise agreed by the parties in writing.

3.1.3 Consultants shall deliver reports and case notes via email unless otherwise instructed or such information is sensitive and not suitable for distribution over the internet.

3.1.4 If Consultants refuse to review a case, Consultants shall contact the Director immediately and state the reason for refusal and any steps that the Crime Lab may take to allow Consultants to complete their review.

- 3.1.5 Consultants will conform with Section IV(C) of this Agreement for all expenses related to copying and shipping fees.
- 3.1.6 Consultants shall identify each case by name and pertinent identification numbers in all reports, invoices, and other communications.
- 3.2 **Mentoring:** Consultants shall mentor the Biology Section's supervisors in the technical review process.
  - 3.2.1 Consultants shall respond promptly to communications, such as email and telephone calls, from Biology Section supervisors and staff concerning case matters.
  - 3.2.2 At least one Consultant shall appear for on-site visits every 90 days. Consultants shall be responsible for coordinating on-site visits with the Director and Biology Section supervisors.
  - 3.2.3 During on-site visits, Consultants shall conduct training in conjunction with case reviews and other Basic Services.
  - 3.2.4 Within 30 days of an on-site visit, Consultants shall present a mentoring objectives report to the Director that (1) assesses the current skill sets of the Biology Section's supervisors and staff; (2) sets out areas for common and individual improvement; (3) includes the contents and materials for training conducted; and (4) recommends areas for future improvement. Submission Time: 30 days from the final day of the preceding on-site visit.
- 3.3 **Supervisor Guidance:** Consultants shall provide guidance to the Biology Section supervisors in the technical review process and mentoring related to DNA analysis and technical and administrative reviews.
  - 3.3.1 Upon request, Consultants will review Biology Section supervisors' training presentations and administrative reviews within 30 days. Submission Time: 30 days from the final day from submission of the presentation.
  - 3.3.2 When available, Consultants will watch and provide a written critique of presentations by Biology Section supervisors.
- 3.4 **Validation Studies:** Consultants shall provide input and guidance to the Biology Section in performing and analyzing validation studies, and shall be responsible for the following:

- 3.4.1 Preparing an initial review of Crime Lab standard operating procedures and validation studies for all phases of DNA testing. The Biology Section's technical leader and Quality Assurance Manager will review and approve this report.
- 3.4.2 Recommending validation studies to be performed on existing instruments use of existing test systems. Submission Time: 90 days after the beginning of each term of the Agreement or as otherwise agreed by the parties in writing.
- 3.4.3 Upon the instruction of the Director, conducting or assisting on extensive validation studies to assess
  - .1 any changes to the DNA analysis software's current stutter filter settings that may be appropriate at each locus tested.
  - .2 optimal extraction methods for common sample types submitted by the Crime Lab for analysis.
  - .3 any other change in methodology, equipment, or test systems.
- 3.4.4 Preparing final analytical reports on validation studies. The Biology Section's technical leader and Quality Assurance Manager will review and approve this report. Submission Time: 60 days after the completion of the validation study or as otherwise agreed by the parties in writing.
- 3.5 **DNA Reports:** Consultants shall work with the Biology Section supervisors to improve the clarity and precision of the DNA reports issued by the Crime Lab.
  - 3.5.1 Consultants shall prepare an initial review of Crime Lab standard operating procedures for DNA reporting. The Biology Section's technical leader and Quality Assurance Manager will review and approve this report. Submission Time: 60 days after the beginning of each term of the Agreement or as otherwise agreed by the parties in writing.
  - 3.5.2 Consultants shall, from time to time, review and comment on reports from supervisors and staff via email and in person. The goal of these reviews and comments will be to improve the clarity and precision of reporting. Consultants shall compile these reviews and comments and submit this compilation to the Director at the end of each term. Submission Time: 10 days after the end of each term of the Agreement or as otherwise agreed by the parties in writing.

- 3.5.3 Consultants shall develop and update templates and standard language to assist in the drafting of future reports. Submission Time: Submission Time: 60 days after the beginning of each term of the Agreement or as otherwise agreed by the parties in writing.
- 3.6 **Section Review:** Consultants shall review the Biology Section with respect to (1) training programs; (2) the Crime Lab's related Quality Assurance and Quality Control programs; and (3) standard operating procedures not already addressed in Exhibit "A".
- 3.6.1 Consultants shall develop and implement additional training for all new and modified procedures.
- 3.6.2 Consultants shall ensure that Biology Section training standards are consistent with applicable standards from the field, ASCLD/LAB and FBI Quality Assurance Standards.
- 3.6.3 Consultants shall compile all new and modified procedures and submit a report to the Director detailing how the changes affect compliance with applicable standards. Submission Time: 10 days after the end of each term of the Agreement or as otherwise agreed by the parties in writing.
- 3.7 **Schedule of Services:** Consultants shall submit a schedule of services to the Director, which shall be approved by the Director and amended in accordance with the terms of this Agreement. This schedule of services will contain general and specific submission times for Basic Services. High volume reports, similar to case reviews, will have submission times expressed in terms of hours of receipt. Larger reports, such validation studies, will have submission times expressed in terms of a specific date and time. Submission Time: 30 days after the beginning of each term of the Agreement or as otherwise agreed by the parties in writing.
- 3.8 **Billing of Time:** Consultants shall reference all the service categories that a time entry on an invoice may represent and shall not bill twice for work that occurred during the same period.
- 3.9 **Work Requirements:** Consultants shall be available to perform at least 960 hours of work per year as detailed throughout this Agreement. Unless Consultants obtain prior written approval from the Director, Consultants shall perform all work at the Off-Site Consultation Rate. Consultant shall be available for On-Site Consultation at least 2 days during any 45 day period within the current term of this Agreement. Consultants shall not perform work during travel without prior written approval from the Director. Consultants may charge the City at the On-Site Consultation Rate for approved work performed during travel time.

4. **Added Items:**

- 4.1 Added items shall conform with requirements for similar services in this Agreement, and charges for those items shall be at the same rates for similar items listed in the fee schedule.
- 4.2 In the event that the added items are not identical to the items already under contract, Consultant and the Director may agree on usual and customary charges and rates for each item.

5. **Estimated Quantities Not Guaranteed:**

- 5.1 The City does not guarantee any particular quantity of services during the term of this Contract. The quantities may vary according to the needs of the Department, and quantities listed in this Agreement are good faith estimates of usage during the term of this Contract.
- 5.2 The City shall not be liable for any contractual agreements/obligations the Consultants enter into based on quantities listed by the City in this Agreement.

6. **Subcontractors and Affiliates:**

- 6.1 Consultants warrant that they, their employees, affiliates and subcontractors have obtained and shall maintain all necessary registration and licenses under the laws of any authority having jurisdiction.
- 6.2 Consultants' personnel or affiliates to be employed in the Project shall not change except with prior written consent from the Director. Such consent shall not be unreasonably withheld. If the Director does not approve of an individual, Consultants shall propose an alternate individual reasonably acceptable to the Director.
- 6.3 Consultants shall not award subcontracts or other agreements based on cost plus a fee without the prior consent of the Director.
- 6.4 Consultant shall require its subcontractors and affiliates who have not competitively bid to disclose to City their markups (both overhead and profit), estimates, and costs calculated in their bids or incurred or expected in sub-subcontracts and the Work performed, including any Change Order Work.

**EXHIBIT "B"**  
**MWBE SUBCONTRACT TERMS**

Consultant 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 the books and records of the subcontractor, 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 five 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. 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 "C"**  
**EQUAL EMPLOYMENT OPPORTUNITY**

1. The Consultant, 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 Consultant, 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 Consultant, 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 Consultant, 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 Consultant, 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 Consultant'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 Consultant, 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 Consultant Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

5. The Consultant, 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 Consultant, subcontractor, vendor, supplier, or lessee.

6. In the event of the Consultant'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 Consultant, 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 Consultant 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 Consultant 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 Consultant becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

8. The Consultant 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 Consultant and each subcontractor.

**EXHIBIT "D"**  
**DRUG POLICY COMPLIANCE AGREEMENT**

I, Charlotte J. Word & Robin W. Cotton as an owner or officer of  
(Name) (Print/Type) (Title)

Charlotte J. Word & Robin W. Cotton (Consultant)  
(Name of Company)

have authority to bind Consultant 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 Consultant 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 Consultant 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 Consultant 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.

8/19/08  
Date

Charlotte J. Word & Robin W. Cotton  
Consultant Name  
Charlotte J. Word Robin Cotton  
Signature  
sole proprietor  
Title

**EXHIBIT "E"**  
**DRUG POLICY COMPLIANCE DECLARATION**

I, Charlotte J. Word & Robin W. Cotton as an owner or officer of  
 (Name) (Print/Type) (Title)

same (Consultant)  
 (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  
 Initials notified. 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  
 Initials Mayor's Drug Detection and Deterrence Procedures for Consultants, Executive Order No. 1-31.  
 Employees have been notified of such procedures.

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

\_\_\_\_\_ Appropriate safety impact positions have been designated for employee  
 Initials positions 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)

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

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

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

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

\_\_\_\_\_  
(Date)

Charlotte J. Word & Robin W. Cotton

(Typed or Printed Name)

Chad Reed      Robin Cotton  
(Signature)

sole proprietor  
(Title)

EXHIBIT "F"

CONSULTANT'S CERTIFICATION  
OF NO SAFETY IMPACT POSITIONS  
IN PERFORMANCE OF A CITY CONTRACT

Sole Proprietors, Charlotte J. Word & Robin W. Cotton (Name)  
(Title)

as an owner or officer of Charlotte J. Word & Robin W. Cotton (Consultant)  
(Name of Company)

have authority to bind the Consultant with respect to its bid, and hereby certify that Consultant has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved in performing RFP 529-T 22741.  
(Project)

Consultant 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.

8/19/08  
(Date)

Charlotte J. Word & Robin W. Cotton  
(Typed or Printed Name)

Charlotte J. Word Robin Cotton  
(Signature)

sole proprietor  
(Title)

**EXHIBIT “G”**

**FEE SCHEDULE**

**FORENSIC DNA CONSULTING SERVICES**

Line Item	Description	Unit	Unit Rate
01	Year 1 Off-Site Consultation Rate—Dr. Charlotte J. Word	Hour	\$200.00
02	Year 1 Off-Site Consultation Rate—Dr. Robin W. Cotton	Hour	\$200.00
03	Year 1 On-Site Consultation Rate—Dr. Charlotte J. Word	Hour	\$300.00
04	Year 1 On-Site Consultation Rate—Dr. Robin W. Cotton	Hour	\$300.00
05	Year 1 Off-Site Consultation Rush Rate—Dr. Charlotte J. Word	Hour	\$250.00
06	Year 1 Off-Site Consultation Rush Rate—Dr. Robin W. Cotton	Hour	\$250.00
07	Year 1 On-Site Consultation Rush Rate—Dr. Charlotte J. Word	Hour	\$350.00
08	Year 1 On-Site Consultation Rush Rate—Dr. Robin W. Cotton	Hour	\$350.00
09	(Blank)		
10	(Blank)		
11	Year 2 Off-Site Consultation Rate—Dr. Charlotte J. Word	Hour	\$215.00
12	Year 2 Off-Site Consultation Rate—Dr. Robin W. Cotton	Hour	\$215.00
13	Year 2 On-Site Consultation Rate—Dr. Charlotte J. Word	Hour	\$335.00
14	Year 2 On-Site Consultation Rate—Dr. Robin W. Cotton	Hour	\$335.00
15	Year 2 Off-Site Consultation Rush Rate—Dr. Charlotte J. Word	Hour	\$265.00
16	Year 2 Off-Site Consultation Rush Rate—Dr. Robin W. Cotton	Hour	\$265.00
17	Year 2 On-Site Consultation Rush Rate—Dr. Charlotte J. Word	Hour	\$385.00
18	Year 2 On-Site Consultation Rush Rate—Dr. Robin W. Cotton	Hour	\$385.00
	(Blank)		
	(Blank)		
21	Year 3 Off-Site Consultation Rate—Dr. Charlotte J. Word	Hour	\$215.00
22	Year 3 Off-Site Consultation Rate—Dr. Robin W. Cotton	Hour	\$215.00
23	Year 3 On-Site Consultation Rate—Dr. Charlotte J. Word	Hour	\$350.00
24	Year 3 On-Site Consultation Rate—Dr. Robin W. Cotton	Hour	\$350.00
25	Year 3 Off-Site Consultation Rush Rate—Dr. Charlotte J. Word	Hour	\$265.00
26	Year 3 Off-Site Consultation Rush Rate—Dr. Robin W. Cotton	Hour	\$265.00
27	Year 3 On-Site Consultation Rush Rate—Dr. Charlotte J. Word	Hour	\$400.00
28	Year 3 On-Site Consultation Rush Rate—Dr. Robin W. Cotton	Hour	\$400.00

For all fiscal years under this Agreement after Year 3, the Director may increase rates in accordance with Exhibit “A”. Exhibit “A” stipulates that rate increase may not exceed the LESSER of 7.5% OR the latest Consumer Price Index adjustment for Greater Houston (“CPI”).

At the time this Agreement was drafted, the CPI was available at <http://www.bls.gov/cpi/>.

**EXHIBIT "H"**  
**INSURANCE CERTIFICATES**

# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID PM  
CHARL-3

DATE (MM/DD/YYYY)  
09/19/08

**PRODUCER**  
Santucci & Associates  
3 College Ave., Suite 6  
Frederick MD 21701  
Phone: 301-668-8500 Fax: 301-668-8900

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW

**INSURED**  
  
Charlotte Word, Ph.d.  
P.O. Box 5207  
Gaithersburg MD 20882

**INSURERS AFFORDING COVERAGE** NAIC #  
INSURER A The Hartford  
INSURER B  
INSURER C  
INSURER D  
INSURER E

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. A GGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

INSR ADD'L TR	INSURER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	<b>GENERAL LIABILITY</b> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	30 SBA RP6254	07/10/08	07/10/09	EACH OCCURRENCE \$ 1000000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100000 MED EXP (Any one person) \$ 5000 PERSONAL & AUTO INJURY \$ 1000000 GENERAL AGGREGATE \$ 2000000 PRODUCTS - COM/CP AGG \$ 2000000
A	X	<b>AUTOMOBILE LIABILITY</b> ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS	30SBARP6254	07/10/08	07/10/09	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY AGG \$
		<b>GARAGE LIABILITY</b> ANY AUTO				
		<b>EXCESS/UMBRELLA LIABILITY</b> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS OTHER \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - FA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A		<b>OTHER</b> Business Pers Prop	30SBARP6254	07/10/08	07/10/09	Property 11,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**  
City of Houston is named as Additional Insured on the General Liability policy. Waiver of Subrogation applies to the General Liability.

## CERTIFICATE HOLDER

CITYOFH  
City of Houston, Finance & Administration, SPD  
P O Box 1562  
Houston TX 77251

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT  
  
AUTHORIZED REPRESENTATIVE  
*Patricia A. Mackenry*