

## City of Houston - Contracts

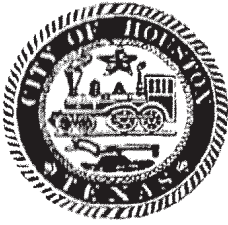
**Contract #:** C62248  
**Vendor Name:** AMERICAN TRAFFIC SOLUTIONS, INC  
**Ordinance #:** 2006-0567



#Name?

**EXHIBIT**

**B**



CITY OF HOUSTON  
City Secretary

62248

Interoffice

Correspondence

To: Ms. Annise Parker  
City Controller

From: Anna Russell  
City Secretary

Dept: POLICE (10)

Date: June 27, 2006

FUND: N/FUNDING

Subject: Contract

Attn:

Dear Ms. Parker: Term: Effec. CS date and remains in  
The following are sent to you for handling to completion: effect for one (5) year  
4 Letter Agreements relating to Section 3.1 of the Photo Red Light Camera Enforcement Term,  
Agreement and copy of memo from Susan Taylor. Unless sooner terminated.  
4 Agreements Renewal Term: Director may extend the original term  
Between City and American Traffic Solutions, Inc. for (1) 5-year renewal w/30  
for Photo Red Light Camera Enforcement System and Services days written notice.

Authorized by Ordinance 2006-0567

Passed on May 31, 2006

Executed by Mayor June 27, 2006

Vendor # \_\_\_\_\_

Tax ID # \_\_\_\_\_

Yours Truly,

Anna Russell  
City Secretary

CS= 4-28-06

AR:og  
cc: Chief Hurtt  
06 JUN 27 AM 10:53  
CONTROLLER'S

3 COPIES PICKED UP.  
BY   
DEPT REPRESENTATIVE  
DATE 6/29/06

62248

City of Houston, Texas Ordinance No. 2006-567

**AN ORDINANCE APPROVING AND AUTHORIZING A CONTRACT BETWEEN THE CITY AND AMERICAN TRAFFIC SOLUTIONS, INC. FOR A PHOTO RED LIGHT CAMERA ENFORCEMENT SYSTEM AND SERVICES; CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.**

\* \* \* \*

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

Section 1. The City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

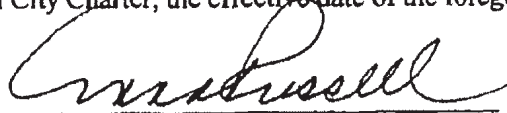
Section 4. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 31st day of May, 20 06.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JUN 06 2006.

  
 City Secretary

(Prepared by Legal Dept. John K. Lagore)  
 (LKH:pr 5/17/06) Senior Assistant City Attorney  
 (Requested by Chief of Police, HPD)  
 (L.D. File No. \_\_\_\_\_)  
 H:\LKH\ORDN\CATSred.wpd

AYE	NO	
✓		MAYOR WHITE
••••	••••	COUNCIL MEMBERS
	✓	LAWRENCE
✓		JOHNSON
✓		CLUTTERBUCK
	✓	EDWARDS
	✓	WISEMAN
✓		KHAN
	✓	HOLM
✓		GARCIA
✓		ALVARADO
		ABSENT OUT OF CITY CITY COUNCIL
✓		BROWN
		LOVELL
	✓	SEKULA-GIBBS
✓		GREEN
	✓	BERRY
CAPTION	ADOPTED	

MAY 017 Rev.104

CAPTION PUBLISHED IN DAILY COURT  
 REVIEW  
 DATE: JUN 06 2006

THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

**I. PARTIES**

A. Address

THIS AGREEMENT FOR A PHOTO RED LIGHT CAMERA ENFORCEMENT SYSTEM AND SERVICES ("Agreement") is made by and between the CITY OF HOUSTON, TEXAS ("City"), a municipal corporation, and AMERICAN TRAFFIC SOLUTIONS, INC. a Kansas corporation doing business in Texas ("Contractor").

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

City  
  
City of Houston  
Chief, Houston Police Department  
P. O. Box 1562  
Houston, Texas 77054

Contractor  
  
American Traffic Solutions, Inc.  
14861 North Scottsdale Road  
Suite 109  
Scottsdale, Arizona 85254

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

**TABLE OF CONTENTS**

	Page No.
<b>I. PARTIES.....</b>	<b>1</b>
A. Address.....	1
B. Table of Contents.....	1
C. Signatures.....	4
<b>II. DEFINITIONS.....</b>	<b>5</b>
<b>III. DUTIES OF CONTRACTOR.....</b>	<b>6</b>
A. Scope of Services.....	6
B. RELEASE.....	8
C. INDEMNIFICATION.....	8
D. INDEMNIFICATION PROCEDURES.....	9
E. Insurance.....	10
F. Licenses and Permits.....	14
G. Compliance with Laws.....	14
H. Compliance with Equal Opportunity Ordinance.....	14
I. MWBE Compliance.....	14
J. Drug Abuse Detection and Deterrence.....	15
K. Performance Bond.....	16
L. Ownership of System.....	18
M. Confidentiality of City Information.....	18
<b>IV. DUTIES OF CITY.....</b>	<b>19</b>
A. Payment Terms.....	19
B. Limit of Appropriation.....	20
C. Taxes.....	20
D. Access to Data.....	21
<b>V. TERM AND TERMINATION.....</b>	<b>21</b>
A. Term.....	21
B. Renewal Term.....	21
C. Termination for Convenience by City.....	21
D. Termination for Cause.....	22
E. Effect of Termination.....	23
<b>VI. MISCELLANEOUS.....</b>	<b>23</b>
A. Independent Contractor.....	23
B. Severability.....	23
C. Entire Agreement.....	23
D. Applicable Laws.....	23
E. Notices.....	24
F. Non-Waiver.....	24



**American Traffic Solutions**

480.368.0900 • Fax: 480.607.0901 • www.atsol.com • 14861 North Scottsdale Road • Suite 109 • Scottsdale, AZ 85254

C62248

06-0567

June 6, 2006

Mr. Frank Rodriguez  
Purchasing Agent  
City of Houston  
City Hall Annex  
90 Bagby  
Houston, TX 77002

**Re: Amendment to ATS Agreement for a Photo Red Light Camera Enforcement System and Services**

Dear Mr. Rodriguez:

This letter is to confirm our agreement to modify the pricing terms of the above-referenced agreement. Specifically, Section 3.1 of Exhibit "G" should be modified to reflect a reduction in the monthly minimum of citations issued per month from 750 to 500. Section 3.1 should therefore be replaced with the following paragraph:

**3.1 Minimum Fee:**

*The minimum fee the City shall pay Contractor during the initial term shall be equal to the sum of the fixed fees for equipment and maintenance costs plus the monthly citation processing costs based on a systemwide average of 500 issued citations per month.*

Please feel free to contact me if you have any questions, or require further clarification.

Sincerely,


American Traffic Solutions, Inc.

A handwritten signature in black ink, appearing to read 'J. Tuton', is written over the name of the sender.

James D. Tuton  
President


ats contract amendment no 1

ATTEST/SEAL:

  
\_\_\_\_\_  
City Secretary

CITY OF HOUSTON, TEXAS


Signed by:

  
\_\_\_\_\_  
Mayor

COUNTERSIGNED BY:

  
\_\_\_\_\_  
City Controller 

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sr. Assistant City Attorney  
L.D. File No.

DATE COUNTERSIGNED:

\_\_\_\_\_  
6-28-06



THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

**I. PARTIES**

A. Address

**THIS AGREEMENT FOR A PHOTO RED LIGHT CAMERA ENFORCEMENT SYSTEM AND SERVICES ("Agreement") is made by and between the CITY OF HOUSTON, TEXAS ("City"), a municipal corporation, and AMERICAN TRAFFIC SOLUTIONS, INC. a Kansas corporation doing business in Texas ("Contractor").**

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

City  
  
City of Houston  
Chief, Houston Police Department  
P. O. Box 1562  
Houston, Texas 77054

Contractor  
  
American Traffic Solutions, Inc.  
14861 North Scottsdale Road  
Suite 109  
Scottsdale, Arizona 85254

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

**TABLE OF CONTENTS**

	Page No.
<b>I. PARTIES.....</b>	<b>1</b>
<b>A. Address.....</b>	<b>1</b>
<b>B. Table of Contents .....</b>	<b>1</b>
<b>C. Signatures .....</b>	<b>4</b>
<b>II. DEFINITIONS.....</b>	<b>5</b>
<b>III. DUTIES OF CONTRACTOR.....</b>	<b>6</b>
<b>A. Scope of Services .....</b>	<b>6</b>
<b>B. RELEASE .....</b>	<b>8</b>
<b>C. INDEMNIFICATION .....</b>	<b>8</b>
<b>D. INDEMNIFICATION PROCEDURES.....</b>	<b>9</b>
<b>E. Insurance .....</b>	<b>10</b>
<b>F. Licenses and Permits .....</b>	<b>14</b>
<b>G. Compliance with Laws .....</b>	<b>14</b>
<b>H. Compliance with Equal Opportunity Ordinance.....</b>	<b>14</b>
<b>I. MWBE Compliance .....</b>	<b>14</b>
<b>J. Drug Abuse Detection and Deterrence .....</b>	<b>15</b>
<b>K. Performance Bond .....</b>	<b>16</b>
<b>L. Ownership of System .....</b>	<b>18</b>
<b>M. Confidentiality of City Information .....</b>	<b>18</b>
<b>IV. DUTIES OF CITY.....</b>	<b>19</b>
<b>A. Payment Terms .....</b>	<b>19</b>
<b>B. Limit of Appropriation .....</b>	<b>20</b>
<b>C. Taxes.....</b>	<b>20</b>
<b>D. Access to Data.....</b>	<b>21</b>
<b>V. TERM AND TERMINATION .....</b>	<b>21</b>
<b>A. Term .....</b>	<b>21</b>
<b>B. Renewal Term .....</b>	<b>21</b>
<b>C. Termination for Convenience by City.....</b>	<b>21</b>
<b>D. Termination for Cause .....</b>	<b>22</b>
<b>E. Effect of Termination .....</b>	<b>23</b>
<b>VI. MISCELLANEOUS.....</b>	<b>23</b>
<b>A. Independent Contractor.....</b>	<b>23</b>
<b>B. Severability .....</b>	<b>23</b>
<b>C. Entire Agreement.....</b>	<b>23</b>
<b>D. Applicable Laws.....</b>	<b>23</b>
<b>E. Notices .....</b>	<b>24</b>
<b>F. Non-Waiver .....</b>	<b>24</b>

<b>G.</b>	<b>Inspections and Audits .....</b>	<b>24</b>
<b>H.</b>	<b>Enforcement .....</b>	<b>25</b>
<b>I.</b>	<b>Ambiguities .....</b>	<b>25</b>
<b>J.</b>	<b>Survival .....</b>	<b>25</b>
<b>K.</b>	<b>Contractor Debt .....</b>	<b>25</b>

**EXHIBITS**

<b>A.</b>	<b>Scope of Services</b>
<b>B.</b>	<b>Equal Employment Opportunity</b>
<b>C.</b>	<b>MWBE Subcontract Terms</b>
<b>D.</b>	<b>Drug Policy Compliance Agreement</b>
<b>E.</b>	<b>Certificate of No Safety Impact Positions</b>
<b>F.</b>	<b>Drug Policy Compliance Declaration</b>
<b>G.</b>	<b>Payments to Contractor</b>
<b>H.</b>	<b>System Requirements</b>
<b>I.</b>	<b>Violation Processing</b>
<b>J.</b>	<b>Reports</b>
<b>K.</b>	<b>Key Personnel</b>
<b>L.</b>	<b>Intentionally Deleted</b>
<b>M.</b>	<b>Equipment</b>
<b>N.</b>	<b>Chain of Custody</b>
<b>O.</b>	<b>Public Awareness Campaign</b>
<b>P.</b>	<b>Citations Issuance/Collections Processing</b>
<b>Q.</b>	<b>Letter of Credit</b>

C. Signatures

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

APPROVED AS TO FORM:

AMERICAN TRAFFIC SOLUTIONS, INC.

By: [Signature]  
Name: Adam Dreyfus  
Title: Executive Vice President

By: [Signature] James D. Tuton

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

[Signature]  
City Secretary

Signed by: [Signature]  
Mayor: [Signature] Martha L. Stein

APPROVED:

COUNTERSIGNED:

[Signature]  
Chief, Houston Police Department

[Signature]  
City Controller [Signature] Madeline B. Appel

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

[Signature]  
Sr. Assistant City Attorney  
L.D. File No.

6-28-06

## 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 Contractor.

"Approach" means one direction of travel of up to four lanes on a road or a traffic Intersection.

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

"Citations" mean a Citation issued by a competent state or municipal law enforcement agent or agency or by a court of competent jurisdiction relating to a Violation documented or evidenced by the Photo Red Light Camera Enforcement System.

"Collection Revenue" means that revenue collected solely from the issuance of Citations, less court fees and returned check fees, as defined by City policy.

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

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

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

"Dummy System" means a non-operational Photo Red Light Camera Enforcement System that looks identical to operational cameras, but does not issue a Notice of Violation.

"Equipment" initially means those items of hardware and software described in Exhibit "M" which collectively monitor, or assist in monitoring, red light violations, traffic speed or

other traffic movements and issue Citations for traffic Violations or as otherwise enhanced or revised with the approval of the Director under this Agreement.

"HPD" means the City of Houston Police Department.

"Intersection" means the place or area where two or more streets intersect.

"Notice of Violation" means a notification or notice that is mailed to a violator that is photographed as running a red light at an Intersection Approach that is monitored by a Photographic Red Light Camera Enforcement System.

"Operational Time" means the actual time that a Photo Red Light Camera Enforcement System is monitoring traffic.

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

"Person" or "Persons" means any individual, partnership, joint venture, corporation, trust, unincorporated association, governmental authority or political subdivision thereof or any other form of entity.

"Photo Red Light Camera Enforcement System" or "System" means that Equipment installed and utilized for monitoring red light Violations, traffic speed or other traffic movements and issue Citations for traffic Violations.

"Violation" means failure to obey an applicable traffic law or regulations, including, without limitation, failure to obey a traffic signal, operating a motor vehicle in excess of the posted speed limit, and operating a motor vehicle without displaying a valid license plate.

### **III. DUTIES OF CONTRACTOR**

#### **A. Scope of Services**

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to provide a complete end-to-end Photo Red Light

Camera Enforcement System, and other services as described in this Agreement and the Exhibits attached hereto. Specifically Contractor's services shall consist of completing the services set forth in Exhibit "A". Notwithstanding any dates, notice periods and other provisions contained in this Agreement or the Exhibits attached hereto, all services shall be performed in accordance with Chapter 45, Article XIX, of the City of Houston Code (the "Code") as amended from time to time.

Contractor shall not initiate any services under this Agreement until it receives a written Notice to Proceed for such services from the Director.

Contractor shall assign the key personnel identified in Exhibit "K" to work on the services to be provided under this Agreement. Contractor shall not replace any of these key personnel without the Director's prior written consent. Contractor shall notify Director if replacement is necessary due to an event outside Contractor's control, such as resignation, termination, illness or death.

The Contractor shall assign a Contractor Project Manager to this project. The Contractor Project Manager shall be the single point of contact responsible for all work undertaken by the Contractor. The Contractor Project Manager shall be dedicated solely to the City's project and shall maintain a substantial presence in Houston during the period of installation of the first fifty (50) cameras and thereafter for no less than four (4) months. At all times, the Contractor Project Manager shall be accessible by telephone and e-mail, shall address project issues in a timely manner and shall be on site in Houston whenever necessary to ensure the success of the project. Contractor shall also provide the Director with the name, e-mail address and telephone number of an alternate person that shall answer any questions if Contractor's Project Manager is not available.

**B. RELEASE**

CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

**C. INDEMNIFICATION**

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

- (1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3;



"CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

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

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

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

D. INDEMNIFICATION PROCEDURES

(1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

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

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to

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

(2) Defense of Claims

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

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

E. Insurance

Contractor shall maintain in effect certain insurance coverage, which is described as follows:

(1) Minimum Insurance Requirements. Contractor shall maintain the following insurance coverage in the following amounts:

<u>(Coverage)</u>	<u>(Limit of Liability)</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	Bodily Injury by accident \$500,000 (each accident) Bodily Injury by Disease \$500,000 (policy limit) Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence and \$1,000,000 aggregate
Automobile Liability Insurance (for vehicles Contractor uses in performing under this Agreement, including Employer's Non-Owned and Hired Auto Coverage)	\$1,000,000 combined single limit
Crime Bond (covering Dishonesty, Disappearance and Destruction of property assets by Employees of Contractors), with the City of Houston named as "Loss Payee" as their interest may appear; with Form C, "inside and outside coverage" attached, covering theft of Contractor's and City's property or assets.	

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

- (2) Form of Policies. The Director may approve the form of the insurance policies, but nothing the Director does or fails to do relieves Contractor from its duties to provide the required coverage under this Agreement. The Director's actions or inactions do not waive the City's rights under this Agreement.
- (3) Issuers of Policies. 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.

- (4) Insured Parties. Each policy, except those for Workers' Compensation, and Employer's Liability, must name the City (and its officers, agents, and employees) as Additional Insured parties on the original policy and all renewals or replacements.
- (5) Deductibles. Contractor shall be responsible for and pay any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.
- (6) Cancellation. Each policy must state that it may not be canceled, materially modified, or nonrenewed unless the insurance company gives the Director 30 days' advance written notice. Contractor shall give written notice to the Director within five days of the date on which total claims by any party against Contractor reduce the aggregate amount of coverage below the amounts required by this Agreement. In the alternative, the policy may contain an endorsement establishing a policy aggregate for the particular project or location subject to this Agreement.
- (7) Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.
- (8) Endorsement of Primary Insurance. Each policy, except Workers' Compensation and Professional Liability (if any), must contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement.

(9) Liability for Premium. Contractor shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.

(10) Subcontractors. Contractor shall require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements except amount. The amount must be commensurate with the amount of the subcontract, but in no case less than \$500,000 per occurrence. Contractor shall provide copies of insurance certificates to the Director.

(11) Proof of Insurance.

(a) Prior to execution of this Agreement, Contractor shall furnish the Director with Certificates of Insurance, along with an Affidavit from Contractor confirming that the Certificates accurately reflect the insurance coverage maintained. If requested in writing by the Director, Contractor shall furnish the City with certified copies of Contractor's actual insurance policies.

(b) Contractor shall continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may

- (1) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
- (2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

The City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

(12) Other Insurance. If requested by the Director, Contractor shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Contractor's operations under this Agreement.

F. Licenses and Permits

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation.

G. Compliance with Laws

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

H. Compliance with Equal Opportunity Ordinance

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

I. MWBE Compliance

Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 10% of the total value of this Agreement to MWBEs. Contractor 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.

Contractor 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 "C". If Contractor is an individual person (as distinguished

from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

J. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

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

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

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "F." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement.

The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

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

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

K. Performance Bond

(1) Contractor shall furnish an initial performance bond for \$1,000,000 conditioned on Contractor's full and timely performance of all terms, conditions and covenants of this Agreement. The initial performance bond shall remain in place for one (1) year. Thereafter, Contractor shall furnish a performance bond for \$500,000 conditioned upon Contractor's full and timely performance of all terms, conditions and covenants of this Agreement. The second bond shall remain in place for one (1) year. Upon expiration of the second bond, Contractor shall furnish a third performance bond for \$250,000 conditioned upon Contractor's full and timely performance of all terms, conditions and covenants of this Agreement. Each bond must be in a form approved by the City Attorney and issued by a corporate surety authorized and admitted to write surety bonds in Texas. If the amount of the bond exceeds \$100,000, the surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any