

liability in excess of \$100,000 by a reinsurer listed on the U.S. Treasury list.

- (2) For the fourth and fifth years of this Agreement and for the renewal period, if elected by the Director, Contractor may either furnish a performance bond in the amount of \$250,000 for such years conditioned upon Contractor's full and timely performance of all terms, conditions and covenants of this Agreement or an irrevocable letter of credit, substantially in the form attached to this Agreement as Exhibit "Q", payable upon presentation to a solvent bank or savings and loan in the initial principal amount of \$250,000 which shall be kept in full force and effect for the remainder of the term or renewal term as appropriate of this Agreement.
- (3) If Contractor has defaulted under the terms of this Agreement, has failed to cure such default and the Agreement has been terminated, the City shall have the right to enforce the performance bond or the letter of credit and apply the proceeds thereof to cover costs as may be incurred by the City as a result of the breach of contract and lost revenues resulting from such default. However, in no event shall enforcement of the bond or letter of credit be deemed an exclusive remedy of the City.
- (4) If Contractor has Contractor has delivered systems and services in accordance with the terms and conditions of this Agreement at all times during the first three years of this Agreement, the Director may release Contractor from its surety requirement at any point during years four (4)

through ten (10) in which case the bond or letter of credit will be released to Contractor.

L. Ownership of System

It is understood by the City that the Photo Red Light Enforcement System being installed by Contractor is, and shall remain, the sole property of Contractor, unless separately procured from Contractor. The Photo Red Light Enforcement System is being provided to City only under the terms and for the term of this Agreement.

M. Confidentiality of City Information

At all times, the Contractor will recognize the City's sole and exclusive ownership of all documents and information provided by the City or generated by Contractor based on information provided by the City relating to the services and the sole and exclusive right and jurisdiction of the City to control the use of this information.

(a) The Contractor agrees that neither it, or its employees, subcontractors, agents, or parent company shall disclose confidential information, to any person or to anyone except as necessary to perform the services under this Agreement, including other subsidiaries within Contractor without the expressed written permission of the City or unless required to do so by law.

(b) The Contractor shall further agree that in the event that any documents containing confidential information should be improperly used or be removed in any way from the possession or control of the Contractor or its subcontractors by anyone except the Director or authorized representatives, the Contractor shall immediately notify the City orally and in writing, and shall join with the Director at his request in taking such reasonable steps as the City may deem advisable to enjoin the misuse and regain possession of such confidential information, or

steps otherwise necessary for the protection of the City's rights and the confidentiality of the information.

(c) The Contractor agrees to return any and all data furnished and information derived hereunder promptly upon a request by the Director or his authorized designee.

(d) The Contractor shall provide the design and implementation of a security system which will protect both the physical documents and the confidential information contained therein from the time of Contractor's receipt until the delivery to the City. Security shall include, without, limitation, fire protection, protection against smoke and water damage, alarm systems, locked files or other devices reasonable expected to prevent loss or unauthorized removal of documents and/or manually held data; passwords, access logs, badges, or other methods reasonably expected to prevent loss or unauthorized access to electronically or mechanically held data; limited terminal access, access to input documents and output documents, and design provisions to limit use of client or applicant name.

#### IV. DUTIES OF CITY

##### A. Payment Terms

The City shall pay and Contractor shall accept fees at the prices and the conditions set forth in Exhibit "G" for all services rendered by Contractor. Contractor's prices shall be revised as applicable by the service level performance standards all as set forth in Exhibit "G". All fees due to Contractor under this Agreement shall only be paid from Collection Revenue. Under no circumstances shall the current and past due fees due to Contractor in any one month exceed the service level performance standard established pursuant to Exhibit "G".

If a court issues an order prohibiting or enjoining the City in any way from issuing Citations or other penalties or fines for the Violations described in this Agreement, then the City

shall pay to Contractor for the period up to the date of the order all accrued and eligible fees, including the fixed monthly fees set forth in Exhibit "G". During the period the City is ordered or enjoined from issuing Citations or other penalties or fines for the Violations described in this Agreement, but not to exceed twelve (12) months, the City shall pay to Contractor, subject to allocation of funds therefore by City Council, the monthly fee of \$1,250.00 , prorated if required for part of any month. However, under no circumstances shall the City be obligated to pay Contractor more than ninety percent (90%) of the money that the program has generated from the inception of the Agreement up to the date of suspension for the period of the suspension.

During the period of the suspension, Contractor shall not be required to perform any service described in this Agreement during such period. Both Parties are excused from performance under this Agreement and shall not be in default while the court order is in effect.

Contractor shall submit monthly invoices to the City detailing the amount of fees Contractor is due for the prior month based upon the fees set forth in Exhibit "G" and showing if the fees owing are modified by the requirements of Exhibit "G".

B. Limit of Appropriation

The City has allocated no funds for this Agreement. All payments to Contractor under this Agreement, except as otherwise provided for in this Agreement, for services shall be made from Collection Revenue.

C. Taxes

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

D. Access to Data

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

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

V. TERM AND TERMINATION

A. Term

This Agreement is effective on the Countersignature Date and remains in effect for one five (5) year term, unless sooner terminated under this Agreement.

B. Renewal Term

The Director may extend the original term of this Agreement for one (1) five-year renewal period by providing thirty (30) days' written notice of such renewal to Contractor.

C. Termination for Convenience by City

For the first three (3) years of this Agreement, the City may not terminate this Agreement for its convenience. Thereafter, the Director may terminate this Agreement at any time by giving 120 days' written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement.

TERMINATION OF THIS AGREEMENT IS CONTRACTOR'S ONLY REMEDY FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM

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

D. Termination for Cause

If Contractor defaults under this Agreement, the Director shall allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

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

If a default occurs, the Director shall deliver a written notice to Contractor describing the default and the termination date (no less than thirty (30) days from the date of the notice). The Director, at his or her sole option, may extend the termination date to a later date. If the Contractor cures the default to the Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation of the City.

To effect final termination, the Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

E. Effect of Termination

Upon termination or expiration of this Agreement for any reason, Contractor shall remove its Equipment no later than 45 days from the date of termination. Costs of removal shall be at Contractor's sole expense.

**VI. MISCELLANEOUS**

A. Independent Contractor

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

B. 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.

C. 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.

D. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement is Harris County, Texas.

E. Notices

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

F. Non-Waiver

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

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

G. Inspections and Audits

City representatives may perform, or have performed, audits of Contractor's books and records relating to the services provided under this Agreement, including, but not limited to, financial records related to the billing and collection process, and inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 2 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.



H. Enforcement

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

I. 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.

J. Survival

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

K. Contractor Debt

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FOR ANY PAYMENTS OWED TO

CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY  
RECOURSE THEREFOR.

**EXHIBIT "A"**

**SCOPE OF SERVICES**

In consideration for the payment of fees described in the Agreement to Contractor, Contractor shall perform the following services related to the Photo Red Light Camera Enforcement System:

**1. Implementation**

**A. Work Plan**

Contractor shall provide, if notified in writing by the Director, its expertise to plan, monitor and complete implementation. This shall include Contractor's assistance in the preparation and maintenance of project work plans with implementation timelines for all items (listed below) in the scope of the project including dependencies on City resources and other third parties.

- Interface with Project Manager to define project, roles and expectations
- Perform intersection traffic surveys and site selections
- Conform to all city, state, and federal codes, standards and regulations of various authorities
- Submit detailed site plans to City of Houston and necessary authorities
- Submit specifications and/or tear-sheets for all pertinent material and equipment, as needed and if necessary
- Upon approval, obtain all necessary site construction permits
- Verify underground history and dangers
- Establish Critical Path – convey schedule to all proper authorities
- Mobilize personnel, materials, and equipment
- Secure proper traffic management to provide maximum safety and minimum impact to existing traffic patterns
- Perform any necessary construction work
- Display proper permit and warnings signs
- Test and review site construction and camera calibration and adjust equipment as needed
- Create and provide as-built drawings for City of Houston (See below)

- Issue official on-line notification of camera readiness

**B. As-Built Drawings**

The City shall provide the Contractor with "as built" drawings as may be required by the Contractor. Contractor shall resubmit these drawings to the City, inclusive of its added infrastructure, in paper and electronic format for review and approval. These plans shall become the property of the City and shall be prepared by an appropriately registered engineer in the State of Texas. Before final activation, each installation and its operation must be approved for activation by HPD and the City's Public Works departments.

The engineer or engineering firm that Contractor selects for these services must be licensed in the State of Texas and approved by the City prior to employment. Contractor shall select the most highly qualified engineer to provide the requested engineering services on the basis of demonstrated competence and qualifications. Contractor must be able to demonstrate to the City that its engineering selection was based upon the requirements contained in section 2254.004 of the Texas Government Code.

Upon City's approval of the selected engineering firm, Contractor may negotiate a fair and reasonable price with the selected engineering firm. The fair and reasonable price must then be approved by the City.

**C. Preliminary Drawings Approvals**

Contractor shall resubmit these drawings to the City, inclusive of its added infrastructure, in paper or electronic format for review and approval. These plans shall become the property of the City and shall be prepared by an appropriately registered engineer in the State of Texas. Before the final activation, each installation and its operation must be approved for activation by HPD and Public Works departments.

**2. Installation of Equipment**

**A. Notice to Proceed**

Contractor shall not make any installation of Equipment until instructed to do so via a written Notice to Proceed issued by the Director. Each Notice to Proceed will instruct Contractor to install its Equipment or a Dummy System at designated Intersections listed in the Notice to Proceed. Although the Director will solely determine the specific Intersections for camera installation, the Director may seek Contractor's assistance for site analysis recommendations prior to Intersection selection. From the start date listed in each Notice to Proceed, Contractor shall have 45 days to install and make operational a complete Photo Red Light Camera Enforcement System per group of 10 at the instructed Intersections. Each Notice to Proceed will be issued for ten (10) Intersections, unless a different number is approved by the Director. The City is not required to issue any Notices to Proceed. On or before the date for complete installation and operation of each ten Intersections, Contractor shall notify the Director in writing that the installation is complete and that the Equipment is operational. Contractor shall issue no Citations for any Intersection until instructed by the Director.

**B. Installation**

1. **Installation Requirements of the System and Associated Equipment** – The installation of the Equipment shall be non-invasive (above ground only), and vehicle detection shall be digital video based or equivalent alternative (with approval by the Director) without a minimum speed for detection. Installation shall be accomplished without interfering with existing roadway surfaces, with the exception of necessary conduit installation. **Loop-based detection systems are not acceptable.** Contractor shall install its Equipment on existing traffic poles or on newly installed poles. **The System shall in no way interfere with the cycling, timing or sequencing of the City's traffic signals.** Contractor shall provide for its own metered service pedestal for each site and shall be allowed to tap into the same power line feeding the City's meter or power source at each Intersection. If the power source to which a meter may be attached is not present at any Intersection, the City, at its expense, shall extend such power source to an agreed upon location at the Intersection convenient to both Parties. Contractor shall then attach a meter pedestal at the agreed upon location at the Intersection and pay all monthly power fees directly to the provider of the power. Aside from the provision of the power source described above, any additional construction required at any Intersection to effect the power source, such construction shall be at Contractor's sole expense.
2. **Thirty (30) Day Warning for First Installation** – A thirty (30) day Public Awareness Campaign, conducted in accordance with Exhibit "O", shall be completed before the first System is installed by Contractor, as may be agreed upon between Contractor and Director.
3. **Relocation of Active Installations** – The Director may instruct Contractor to relocate any System installation during the term of the Agreement, at Contractor's expense, and Contractor shall do so. However, before the Director may request a System installation be relocated, such System installation shall have been in place a minimum of twelve (12) months, unless otherwise agreed to by the Contractor and the Director. The Director may request no more than three (3) System installation relocations in any twelve (12) month period, unless otherwise agreed to by the Contractor and the Director.
4. **Signage** – Contractor shall post warning signs, to be approved by the Director and the Director of the City's Public Works & Engineering Department, at each Intersection Approach. This signage shall be installed and maintained by Contractor and shall meet current and future Texas Manual of Uniform Traffic Control Devices (TxMUTCD) to insure proper notification to drivers of the System in advance of the Intersection. Sign installations shall not violate TxMUTCD or the Americans With Disabilities Act ("ADA").

**C. Dummy Camera Systems**

If instructed by the Director, Contractor shall install and remove upon the City's request Dummy Systems. These Dummy Systems shall look identical to operational cameras, but do not issue Violation notices. Contractor's charges for these Dummy Systems are as listed in Exhibit "G".

Additionally, Contractor shall measure the before and after compliance of enforcement at the Dummy System site. If Contractor's reports reveal that compliance rates are not improving or if the reports indicate continuous high levels of Violation at these sites, Contractor, at the Director's direction, shall quickly fit the Dummy Systems with full enforcement Systems. The Director shall determine the number and locations of Dummy Systems.

D. Violation Monitoring System ("ViMS")

With the Director's approval, Contractor may use its ViMS units to monitor and measure Violation rates at Dummy sites or any City Intersection at no additional cost to the City. Contractor shall advise the Director of any recommendations for future sites, based upon the results of its ViMS units.

3. Photo Red Light Camera Enforcement System Requirements

Upon Contractor's notification that the Equipment is installed and operated as described in (1) above and at all times thereafter, Contractor's Equipment must meet or exceed the Photo Red Light Camera Enforcement System requirements set forth in Exhibit "H".

4. Violation/Collection Processing

For each Citation generated, Contractor shall perform the processing/collection procedures set forth in Exhibits "I" and "P".

5. Reports

Contractor shall provide to the Director the reports set forth in Exhibit "J".

6. Training

Contractor shall provide an initial training plan before proceeding with the installation of the System at the first Intersection Approach. Contractor shall present a schedule of its training courses (see courses below) to the Director and shall coordinate times, dates and locations of these training courses with the Director. Contractor shall conduct all training within the City at a site and time that is convenient for City personnel.

Contractor shall provide, at no additional cost to the City, a comprehensive training program inclusive of all training materials for up to thirty (30) City personnel in each course category listed below. Each training class within a course shall consist of no more than five (5) City personnel per class.

The training shall include, but not be limited to, the following categories:

- Equipment Orientation
- Centralized and in-field training

- Familiarization with the software programs used for citation processing
- Familiarization with the Contractor's customer service and payment operations
- Handling of payment processing

#### **Specific Courses**

##### **Camera Technology Course**

Contractor shall provide City personnel with a Camera Technology Course that will teach City personnel the basic understanding of how the camera system operates from a certified technician and trained camera instructor. This course will be conducted in a complete classroom environment and will be conducted in a half-day session. There will also be an additional field inspection where students are instructed on the entire lifecycle of installation, maintenance, and camera field tuning.

##### **Violation Processing Course**

Contractor shall provide training to designated officers and selected others on the use of the System. Training will be conducted within the City at a site and time that is convenient for City personnel. These courses will be scheduled so that there are fewer than five (5) participants per session.

This course shall include a complete overview of the Violation process in the City's context as well as hands-on training with the application in all areas of processing including those areas that will be provided by Contractor.

This program is a comprehensive Violations processing course that will attune trainees to the major issues in Violations processing that have a direct impact on their daily job tasks. This course will also provide training on the payment processing function. This included approach will provide City staff with a complete picture of how Violations are processed so that they can understand how their specific duties relate to the entire process. This will be a half-to full-day course.

##### **Court Training Course**

This course will provide a similar type of training as the Violation Processing Course with a focus on the court processing aspects of the System as well as a review of how the field camera technology works.

In addition, the Court Training Course will provide a historical and legal framework review of photo enforcement, the common reasons for dispute, the tactics of defendants, and the typical counter measures used by the prosecution. This course is applicable to court clerks, attorneys, police witnesses, and even judges. Taken in two parts, this is a half-day course.

**Other Training**

Contractor shall provide any other training necessary for the City to understand, implement and utilize the Red Light Camera Enforcement Systems and services effectively and efficiently.

**7. Public Awareness Campaign(s)**

At the Director's request, Contractor shall prepare a public awareness campaign. All campaigns and campaign budgets shall proceed only with the Director's written approval and be in accordance with the requirements of Exhibit "O".



**EXHIBIT "B"**

**Equal Employment Opportunity**

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

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

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

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

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

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

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

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

**EXHIBIT "C"**

**MWBE SUBCONTRACT TERMS**

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

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

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

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

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

a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within 30 days or the matter may be referred to arbitration.

b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with the American Arbitration Association on file in the City's Affirmative Action Division Office.

c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.

d. If the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

e. All arbitrations shall be conducted in Houston, Texas, unless the parties agree to another location in writing.

**EXHIBIT "D"**

**DRUG POLICY COMPLIANCE AGREEMENT**

I, \_\_\_\_\_ as an owner or officer of  
(Name) (Print/Type) (Title)  
\_\_\_\_\_  
(Name of Company) (Contractor)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a Notice to Proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT "E"**

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

I, \_\_\_\_\_  
(Name) (Title)

as an owner or officer of \_\_\_\_\_ (Contractor)  
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved

in performing \_\_\_\_\_  
(Project)

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

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

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

**EXHIBIT "F"**

**DRUG POLICY COMPLIANCE DECLARATION**

I, \_\_\_\_\_ as an owner or officer of  
 \_\_\_\_\_  
 (Name) (Print/Type) (Title) (Contractor)  
 \_\_\_\_\_  
 (Name of Company)

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

This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_, 20\_\_.

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

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

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

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

\_\_\_\_\_ From \_\_\_\_\_ to \_\_\_\_\_ the following testing has occurred:  
 Initials (Start date) (End date)

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

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

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

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

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

\_\_\_\_\_  
 (Typed or Printed Name)

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Title)

**EXHIBIT "G"**

**PAYMENTS TO CONTRACTOR**

HALKH21328.DOC  
L.D. FILE NO.

5/18/2006

**EXHIBIT "G"**  
**PAYMENTS TO CONTRACTOR AND**  
**SERVICE LEVEL PERFORMANCE STANDARDS**

**1. FEES FOR EQUIPMENT, INSTALLATION AND MAINTENANCE OF EACH INTERSECTION APPROACH**

Each Intersection Approach covers up to four lanes of traffic going in one direction. An Intersection may have 1 – 4 Intersection Approaches. Contractor's fixed monthly fee for each Intersection Approach installation is identified in Section 10, Item 1, Contractor's Fees, below.

**2. FEES FOR PROCESSING, COLLECTIONS & ADMINISTRATIVE FUNCTIONS**

**2.1 Monthly Fees:**

**2.1.1 Monthly Installation Fee**

Contractor's unit cost for processing, collections and administrative fees shall be based upon each Violation approved by officers for citing. This cost shall include all administrative, related overhead, mailing of Citations, re-mailings due to corrected addresses or corrected violator, notices, and other correspondence, all customer service activities, and all payment processing activities.

Contractor's monthly fee for processing, collections and administrative functions per installation or Intersection Approach is identified in Section 10, Item 2 (a), Contractor's Fees, below.

**2.1.2 Monthly Per Citation Fee**

In addition, the City shall pay Contractor a Citation fee amount for each Citation issued. This fee is dependent upon the number of Citations issued each month as identified in Section 10, Item 2 (b), Contractor's Fees, below. This is a variable monthly fee paid to Contractor in addition to the above fixed monthly processing, collections and administrative functions fee and shall be determined by the number of Citations approved and issued at each Intersection Approach based upon a system-wide average.

**3. Minimum and Maximum Fees:**

**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 750 citations per month.

During a suspension, the City shall pay Contractor \$1,250 monthly (prorated, if required for part of any month) for each active installation for a period of up to twelve months.

**3.2 Maximum Fee:**

The maximum monthly fee the City shall pay Contractor shall not exceed \$5,000 per month per active operational camera approach based on an average of all active camera approaches for the previous month. This monthly cap amount shall be calculated by adding the fixed fees for equipment and maintenance costs plus the monthly citation processing costs.

**4. COLLECTIONS FOR PAST DUE PAYMENTS**

The City shall pay Contractor monthly fees for collection of past due bills over 70 (seventy) calendar days. These fees shall be twenty-three (23) percent of the total amount of past due or delinquent collections received by the City. This amount is a variable cost dependent on the amount of past due accounts collected and shall be paid to the Contractor by the City monthly.

**EXHIBIT "G"**  
**PAYMENTS TO CONTRACTOR AND**  
**SERVICE LEVEL PERFORMANCE STANDARDS**

**5. LIQUIDATED DAMAGES FOR POOR PERFORMANCE OF APPROACH INSTALLATIONS**

As stated in Exhibit "I", Violations Processing, Contractor shall perform the initial review of images for Violations. Contractor's fixed fee for Approaches shall be reduced for poor performance in the following manner. This performance percentage shall be designated by Contractor as detailed below, but may never be below 60 percent.

**5.1 One-Hundred Twenty-Day Performance Level Percentage:**

Contractor's initial designated performance level percentage shall be 90 percent effective after the first 120 days after the first installation becomes operational, based on the number of Violations presented to the HPD for approval versus those rejected for Citation.

**5.2 Contractor's Designated Performance Levels During the Contract Term:**

Thereafter, Contractor shall be allowed to submit subsequent performance level designations every twelve months from the date of Contractor's last written effective designated performance level. These performance designations must be submitted in writing to the Contract Administrator, HPD, Budget & Finance Division within 30 (thirty) days of the expiration of each twelve-month period. The performance level designated by Contractor for each subsequent year shall then become effective for payments to Contractor the beginning of the following month or the Countersignature Date of this Agreement each year of the term of this Agreement or extension thereof. These yearly revised performance level percentages shall never exceed more than ten percent (10%) less than the previously designated performance level and must never be less than sixty percent.

If, at any time during the year, Contractor's performance level falls below sixty percent (60%) for any month(s) during the year, the City shall not be obligated to pay any monies for fees to Contractor for that/those month(s).

**5.3 Calculation Formula for Poor Performance Below the Contractor's Designated Performance Percentage:**

5.3.1 The formula shall be (images approved for Citation by Police + Images deemed not citable by reviewing HPD police officers for cause\*) divided by the total number of images presented to reviewing HPD police officers for approval.

\* See below for a nonexclusive example of un-citable images included, at a minimum, but not limited to.

5.3.2 If Contractor fails to meet its designated performance level, on a system-wide basis, Contractor's fixed monthly fee will be discounted by the percentage of failure.