

# FORENSIC TOXICOLOGY DRUG TESTING LABORATORY

## CONTRACT-F10B9200023

**THIS CONTRACT** is made as of this 23rd day of July, 2009 by and between **Phamatech, Incorporated** and the **STATE OF MARYLAND**, acting through the **DEPARTMENT OF BUDGET AND MANAGEMENT**.

**IN CONSIDERATION** of the premises and the covenants herein contained, the parties agree as follows:

### **1. Definitions**

In this Contract, the following words have the meanings indicated:

- 1.1 “Bid” means the Contractor’s bid dated **5/20/2009** submitted in response to this IFB consisting of the technical offer and price bid.
- 1.2 “Collection Contractor” means the contractor that pursuant to a separate State contract, provides specimen collection and shipment and delivery of those specimens to the FTDTL.
- 1.3 “Contract Manager” means the manager designated by the Department. The Department may change the Contract Manager at any time by written notice.
- 1.4 “Contractor” means Phamatech, Incorporated whose principal business address is 10151 Barnes Canyon Rd San Diego CA 92121 and whose principal office in Maryland is N/A.
- 1.5 “Department” means the Department of Budget and Management.
- 1.6 FTDTL means the Forensic Toxicology Drug Testing Laboratory.
- 1.7 “IFB” means the Invitation for Bids for Forensic Toxicology Drug Testing Laboratory (FTDTL), **Project No. F10B9200023** dated April 15<sup>th</sup>, 2009, including all addenda.
- 1.8 “Notice To Proceed (NTP)” means the formal notification issued by the Contract Manager that direct the Contractor to immediately, or as of a date contained in the notice, begin performance of work.
- 1.9 “Procurement Officer” means Mike Yeager, Department of Budget and Management. The Department may change the Procurement Officer at any time by written notice.
- 1.10 “State” means the State of Maryland.

## **2. Scope of Work**

2.1 The Contractor shall provide all labor, materials and equipment necessary for the lab testing of specimens collected via the Collection Contractor and shipping expenses to the FTDTL for the State of Maryland as more completely described in the IFB and the Contractor's Bid (collectively, the "Services"). These services shall be provided in accordance with the Contract and the following exhibits, which are attached and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

- a) Exhibit A – Invitation for Bids –Project No. F10B9200023, dated 4/15/2009;
- b) Exhibit B – Contractor's Bid –Project No. F10B9200023, dated 5/20/2009;
- c) Exhibit C – Contractor's Contract Affidavit - Project No. F10B9200023, dated 7/1/2009 ; and
- d) Exhibit D – Living Wage Affidavit Project No. F10B9200023, dated 6/12/2009.

2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

## **3. Time for Performance**

Unless terminated earlier as provided in this Contract, the term of this Contract shall be for a period of approximately five years. The Services shall begin on the date the Contract Manager issues the Notice to Proceed and shall terminate, and the Contract shall expire, five years thereafter. It is anticipated that the Contract term shall be from about August 1, 2009 until July 31, 2014.

## **4. Consideration and Payment**

4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor for the Services in accordance with the IFB and the terms of Exhibit B, the Contractor's Bid. The consideration for the Services provided by the Contractor shall be payment at per unit price of \$█ for initial

immunoassay screenings and \$ [REDACTED] for GC/MS confirmations and at a fully loaded hourly rate of \$ [REDACTED] for expert testimony and preparation time as described in the IFB.

4.2 Payments to the Contractor for billed Services shall be made no later than thirty (30) days after receipt of a proper invoice from the Contractor and acceptance by the using agency of the Services provided by the Contractor. Each invoice for Services rendered must include the Contractor's Federal Tax Identification Number which is [REDACTED]. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, are prohibited. Invoices shall be submitted to the Contract Manager.

4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

4.4 Electronic funds transfer will be used by the State to pay Contractor for this Contract and any other State payments due Contractor unless the State Comptroller's Office grants an exemption.

4.5 Contractor's eMarylandMarketplace vendor ID number is [REDACTED].

## **5. Rights to Records**

The Contractor agrees that all documents and materials including but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor, solely for purposes of this Contract with the State of Maryland shall be the sole property of the Department and shall be available to the Department at any time. The Department shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

## **6. Confidentiality**

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party, (d) was supplied to such party

by a third party lawfully in possession thereof and legally permitted to further disclose the information or (e) which such party is required to disclose by law.

## **7. Non-Hiring of Employees**

No official or employee of the State of Maryland, as defined under State Government Article, § 15-102, Annotated Code of Maryland, whose duties as such official or employee includes matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

## **8. Disputes**

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute or regulation, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

## **9. Maryland Law**

This Contract shall be construed, interpreted and enforced according to the laws of the State of Maryland. The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or any software license acquired hereunder. Any and all references to the Annotated Code of Maryland contained in this Contract shall be construed to refer to such Code sections as from time to time amended.

## **10. Nondiscrimination in Employment**

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, sexual orientation, or disability, or other unlawful form of discrimination; (b) to include a provision similar to that contained in subsection (a) above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

## **11. Contingent Fee Prohibition**

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Contract.

## **12. Non-availability of Funding**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State of Maryland from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

## **13. Termination for Cause**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State of Maryland shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

## **14. Termination for Convenience**

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12 (A)(2).

## **15. Delays and Extensions of Time**

The Contractor agrees to perform this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of Services under this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

## **16. Suspension of Work**

The State unilaterally may order the Contractor in writing to suspend, delay or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

## **17. Pre-Existing Regulations**

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

## **18. Financial Disclosure**

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

## **19. Political Contribution Disclosure**

The Contractor shall comply with Election Law Article, Sections 14-101 – 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall, file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a

lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

## **20. Retention of Records**

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three (3) years after final payment by the State of Maryland under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. The Contractor agrees to cooperate fully in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.

## **21. Warranties**

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- C. It shall comply with all federal, State and local laws, regulations and ordinances applicable to its activities and obligations under this Contract; and
- D. It shall obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

## **22. Cost and Price Certification**

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its bid.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its bid, was inaccurate, incomplete, or not current.

## **23. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the Services provided under this Contract without obtaining the prior written approval of the Procurement Officer, which approval the State may withhold or condition in its sole and absolute subjective discretion. Contractor may not assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer, which approval the State may withhold or condition in its sole and absolute subjective discretion. Any such subcontract or assignment shall include the terms of Sections 5 through 22 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

## **24. Administrative**

A. **Procurement Officer.** The work to be accomplished under this Contract shall be performed under the direction of the Procurement Officer. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

B. **Notices.** All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State:            Department of Budget and Management  
                                  Division of Procurement Policy & Administration  
                                  Room 144  
                                  45 Calvert Street  
                                  Annapolis, Maryland 21401  
                                  Attention: Mike Yeager

If to the Contractor: Phamatech Inc.  
10151 Barnes Canyon Rd  
San Diego, CA 92121

## **25. Indemnification**

25.1 The Contractor shall indemnify the State from and against liability for any costs, expenses, loss, suits, actions, or claims of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.

25.2 The State of Maryland has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

25.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.



25.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor's performance under this Contract.

## **26. Orderly Termination**

Contractor agrees that, except as expressly provided otherwise in the IFB, at the commencement of this Contract it shall have ready and available such systems, processes, and sufficient levels of qualified personnel to be able to promptly, diligently, efficiently and completely prosecute the requirements of this Contract.

Upon the expiration or earlier termination of this Contract, Contractor shall:

- A. promptly, diligently, efficiently and in good faith work with any successor contractor and the State to transition Services over to the successor contractor;
- B. during the transition period, continue to be subject to all of the terms and conditions of the Contract, including, by way of example only, those that govern the rates, fees and other charges that Contractor may be permitted to charge the State under the Contract, and under no circumstances shall the Contractor be entitled to raise any such rates, fees and/or other charges during the transition period; and,
- C. at the end of the transition period, provide the State with a summary report of the transition that, among other things, contains a certification signed by an officer of the Contractor who is authorized to legally bind Contractor, that states that all actions necessary to successfully transition the Services to the successor contractor have been completed, or if they have not been completed, why they have not been completed. The State shall be entitled to withhold any final payment(s) otherwise due Contractor until it receives the summary report and certification specified in this subsection.

## **27. Living Wage**

A State contract for services valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement Article, Annotated Code of Maryland (SFP) and COMAR 21.11.10.

27.1 This Contract is designated a Tier 1 Contract. Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for Tier 1 contracts.

27.2 The Contractor shall comply with SFP Title 18, including the submission of payroll reports to the Commissioner of Labor and Industry and the posting in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.

27.3 The Contractor shall make any subcontractor on this Contract aware of the Living Wage law requirements.

## **28. Patents, Copyrights, Intellectual Property**

A. If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

B. The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, trade secret, or copyright, the Contractor shall defend the State against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a court finally awards, provided the State (i) promptly notifies that Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor, in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in section 28(C) below.

C. If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense; (a) procure for the State the right to continue using the applicable item, (b) replace the product with a non-infringing product substantially complying with the item's specifications, or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

## **29. Commercial Nondiscrimination**

A. As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this

clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

- B. The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department of Budget and Management, in all subcontracts.
- C. As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that is requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.

### **30. PROMPT PAYMENT POLICY**

- 1. If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:
  - 1.1. Not process further payments to the Contractor until payment to the subcontractor is verified;
  - 1.2. Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
  - 1.3. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
  - 1.4. Place a payment for an undisputed amount in an interest-bearing escrow account; or

- 1.5. Take other or further actions as appropriate to resolve the withheld payment.
2. An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute, including any retainage withheld, and includes an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
3. An act, failure to act, or decision of a procurement officer or a representative of the Department, concerning a withheld payment between the Contractor and subcontractor under this policy directive, may not:
  - 3.1. Affect the rights of the contracting parties under any other provision of law;
  - 3.2. Be used as evidence on the merits of a dispute between the Department and the Contractor in any other proceeding; or
  - 3.3. Result in liability against or prejudice the rights of the Department.
4. The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.
5. To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
  - 5.1. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
  - 5.2. This verification may include, as appropriate:
    - 5.2.1. Inspecting any relevant records of the Contractor;
    - 5.2.2. Inspecting the jobsite; and
    - 5.2.3. Interviewing subcontractors and workers.
    - 5.2.4. Verification shall include a review of:
      - 5.2.4.1. The Contractor’s monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
      - 5.2.4.2. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.

- 5.3. If the Department determines that the Contractor is in noncompliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action.
  - 5.3.1. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
- 5.4. If the Department determines that the Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
  - 5.4.1. Terminate the Contract;
  - 5.4.2. Refer the matter to the Office of the Attorney General for appropriate action; or
  - 5.4.3. Initiate any other specific remedy identified by the Contract, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.

Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

**IN WITNESS THEREOF**, the parties have executed this Contract as of the date hereinabove set forth.

**CONTRACTOR**

**MARYLAND DEPARTMENT OF  
BUDGET AND MANAGEMENT**

Signed Kevin Montejano  
By:

Signed T. Eloise Foster  
By: T. Eloise Foster, Secretary

7/01/2009  
Date:

7/23/2009  
Date:

Signed Thomas Aucoin  
Witness/Attest:

Signed Natasha Herbert  
Witness:

Approved for form and legal sufficiency this 24th day of July, 2009.

Signed Sharon Aldouby  
Assistant Attorney General

Approved by the  
Board of Public Works If Applicable:

7/22/2009  
Date

3-S  
BPW Item No.