

**ADAMS, COUNTY
CONSTRUCTION CONTRACT**

THIS CONSTRUCTION AGREEMENT ("Agreement") is made as of this 22nd day of August, 2012, by and between the Board of County Commissioners of Adams County, Colorado, located at 4430 South Adams County Parkway, Brighton, Colorado 80601, hereinafter referred to as the "County," and H.W. Houston Construction Company located at 210 South Victoria Avenue, Pueblo, Colorado 81003 hereinafter referred to as the "Contractor."

The County and the Contractor, for the consideration herein set forth, agree as follows:

1. RESPONSIBILITIES/SERVICES OF THE CONTRACTOR

- 1.1. The Contractor shall furnish all of the labor, machinery, equipment, materials, and supplies necessary to perform all of the work shown on the plans and described in the specifications, and in all other documents incorporated herein by reference, entitled:

**ADAMS COUNTY, COLORADO
Request for Proposal 2012.144
Flatrock Training Facility, General Contractor Services**

- 1.2. The Contractor shall perform in accordance with the project scope and provisions of the Request for Proposal, and, in addition to the terms set forth in this Agreement, the Contractor agrees to be bound by and to perform in accordance with the following specified documents attached hereto and incorporated herein as if fully written into this Agreement:

All terms set forth in the BID DOCUMENTS attached hereto and identified as: INVITATION TO BID, BID PROPOSAL, BID SCHEDULE, BID BOND, CONSTRUCTION AGREEMENT, PERFORMANCE & PAYMENT BONDS, INSURANCE, BIDDER'S CLIENT LIST, BIDDER'S CREDIT LIST, NOTICE OF AWARD, ACCEPTANCE OF NOTICE OF AWARD, NOTICE TO PROCEED, LETTER OF ACCEPTANCE, APPLICATION FOR EXEMPTION CERTIFICATE, FIELD ORDER, CHANGE ORDER, APPLICATION FOR PAYMENT, PARTIAL WAIVER OF LIEN, FINAL WAIVER OF LIEN, CERTIFICATE OF FINAL COMPLETION, PROJECT DRAWINGS AND ANY SPECIAL DETAILS.

- 1.3. The Contractor agrees that it has satisfied itself as to the nature and location of the work, the character, quality, and quantity of the materials to be encountered, including subsurface conditions, the equipment and facilities needed to

complete the work, the local conditions, and all other matters which can affect the work under this Agreement.

- 1.4. When required by any document incorporated into this Agreement, certain specified materials shall not be incorporated in the work until tests have been made and the material found to be in accordance with the requirements of the specifications. All costs of initial testing shall be included in the price bid. The Contractor will pay for repeated tests due to failure of initial tests.
- 1.5. This Agreement does not guarantee to the Contractor any work except as authorized in accordance with this Section I, nor does it create an exclusive agreement for services.
- 1.6. The Contractor understands that close cooperation and coordination of this project with all or other contractors or subcontractors is required.

2. RESPONSIBILITIES OF THE COUNTY

- 2.1. Provide information as to its requirements for the project.
- 2.2. Give prompt notice to the Contractor whenever the County observes or otherwise becomes aware of any defect in the project.
- 2.3. Provide reasonable assistance to the Contractor in obtaining approval from all governmental authorities having jurisdiction over the project, and such approvals and consents from such other individuals or bodies as may be necessary for completion of the project.
- 2.4. Furnish, or direct the Contractor to provide, at the County's expense, necessary additional services.

3. TERM

- 3.1. The work to be performed under this Agreement shall commence on the effective date of this Contract, and shall be completed no later than midnight on February 11, 2013.
- 3.2. Adams County at its sole discretion has the option to renew the services to be provided for two additional one year extensions, prevailing upon the same terms and conditions including unit price if any.

4. PAYMENT AND FEE SCHEDULE

- 4.1. The County shall pay the Contractor for services furnished under this Agreement, and the Contractor shall accept as full payment for those services,

the sum of Two Million Nine Hundred Twenty One Thousand Dollars (\$2,921,000) which includes alternate one "Box Tube Trusses".

- 4.2. The Contractor shall maintain hourly records of time worked by its personnel to support any audits the County may require, and shall bill the County monthly for costs accrued during the preceding month. Payments on these billings will be subject to estimates prepared by the Project Manager of the value of work performed and materials delivered and materials placed in accordance with the specifications. Upon submission of such billings to the County and approval by the Project Manager, payment shall be issued. It is understood and agreed that the County may require a maximum of thirty-one (31) days to process payment after receiving billing in proper the form.
- 4.3. The County may deduct money from the partial payments in an amount necessary to protect the interests of the County, and is dependent upon the following:
 - 4.3.1. If the Agreement is for eighty-thousand dollars (\$80,000) or more, the County shall withhold five percent (5%) of monthly partial payments until work has been completed.
 - 4.3.2. All money withheld pursuant to this section shall be retained by the County no more than thirty (30) days after the project has been completed to satisfaction and has been finally accepted by the County. If the County finds that satisfactory progress is being made in all phases of the Agreement, the County may, upon written request of the Contractor, authorize payment from the withheld percentage. Before such payment is made, the County shall determine that satisfactory and substantial reasons exist for the payment, and shall require written approval from any surety furnishing bonds for the work performed under the terms of this Agreement.
- 4.4. Fund Availability: The County has appropriated sufficient funds for this Agreement for the current fiscal year. Payment pursuant to this Agreement, whether in full or in part, is subject to and contingent upon the continuing availability of County funds for the purposes hereof. In the event funds become unavailable, as determined by the County, the County may immediately terminate this Agreement or amend it accordingly

5. LIQUIDATED DAMAGES

- 5.1. The Contractor agrees that time is of the essence in the performance of this Agreement. If the Contractor is delayed for any reason beyond its control, the Contractor shall submit the reason for the delay in writing to the Project Manager who shall decide whether it sufficiently justifies an extension of the completion date.

- 5.2. All decisions of the Project Manager are at his/her complete discretion and will be final.
- 5.3. Time is of the essence in the performance of this Agreement. In the event the Contractor shall fail to complete all the work to be performed by the completion time aforementioned, the Contractor shall pay to the County as and for liquidated damages, not as a penalty, the applicable sum set forth in the schedule below, for each and every calendar day that the Contractor shall be in default.

Original Agreement Amount		Daily Charge
From More Than	To and Including	
\$ 0	\$ 25,000	\$ 270
25,000	50,000	465
50,000	100,000	540
100,000	500,000	950
500,000	1,000,000	1,250
1,000,000	2,000,000	1,400
2,000,000	4,000,000	1,750
4,000,000	8,000,000	1,970
8,000,000	10,000,000	2,050

Over \$10,000,000, the daily charge will increase by \$100 increments for each \$2,000,000 over \$10,000,000.

- 5.4. Any deduction assessed as liquidated damages under this section shall not relieve the Contractor from liability for any damages or costs resulting from delays to other contractors on the job or to other projects caused by a failure of the Contractor to complete the work according to the agreed time.
- 5.5. Any extension(s) of the completion date authorized by the Project Manager pursuant to this section shall not relieve the Contractor from liability for any damages or costs resulting from delays to other contractors on the job. The Contractor agrees to indemnify and hold the County harmless from any claim against the County resulting from the Project Manager authorizing an extension of the completion date or from the Contractor's failure to complete this Agreement by the completion date aforementioned.

5.6. Permitting the Contractor to continue and finish the work, or any part thereof, after elapse of the agreed time will not operate as a waiver on the part of the County of any of its rights under this Agreement.

6. **SUBCONTRACTING:** The Contractor may utilize the services of subcontractors on those parts of the work that would normally be performed by subcontractors. But the Contractor shall not subcontract any portion of the work until the written approval of such action has been obtained from the Project Manager. The Contractor shall be fully responsible to the County for the acts and omissions of its subcontractors and their employees.

7. **CHANGE ORDERS OR EXTENSIONS**

7.1. The County may, from time to time, require changes in the scope of the services of the Contractor to be performed herein including but not limited to additional instructions, additional work, and the omission of work previously ordered. Such changes, including any increase or decrease in the amount of the Contractor's compensation, must be mutually agreed upon in writing by the County and the Contractor. The Contractor shall be compensated for all authorized changes in services, pursuant to the applicable provision in the Invitation to Bid, or, if no provision exists, pursuant to the terms of a Change Order.

7.2. The County may, upon mutual written agreement by the parties, extend the time of completion of services to be performed by the Contractor.

8. **INSPECTIONS, REVIEWS AND AUDITS**

8.1. When the work is completed, the Contractor shall file a written notice with the Project Manager that the work, in the opinion of the Contractor, has been finished. Within ten (10) days after the Contractor files the written notice, the Project Manager and the Contractor shall make a final inspection of the project to determine whether all of the work has been completed in accordance with this Agreement and with all documents incorporated herein. A final list shall be made by the County, in sufficient detail to fully outline to the Contractor the following items:

8.1.1. Work to be completed, if any;

8.1.2. Work not in compliance with the Agreement, if any; and

8.1.3. Unsatisfactory work for any reason, if any.

8.1.4. The County shall not authorize final payment until all items on the list, if any, have been completed to the satisfaction of the Project Manager.

9. **CLEAN-UP:** The Contractor shall frequently clean up all refuse or scrap materials resulting from the progress of the work. Upon completion of the work and prior to final inspection, the Contractor shall remove from the construction site and occupied adjoining property all refuse, unused materials, forming lumber, sanitary facilities, and any other materials belonging to the Contractor or subcontractors. Failure of the Contractor to clean up and restore the site satisfactorily will result in the County doing so. The cost will be charged to the account of the Contractor or his/her surety.

10. PROJECT ADMINISTRATION

- 10.1. The Project Manager for this Agreement shall be Mr. Mike Goins, who can be reached by phone at (720) 523-6006 . The Project Manager does not have the authority to alter or modify the terms of this Agreement.
- 10.2. The Project Manager is designated by the County to exercise authority on its behalf under this Agreement, and to see that it is performed according to its terms. The Project Manager shall furnish all explanations or directions and inspections necessary to carry out and complete satisfactorily the services contemplated and provided for under this Agreement. The Project Manager shall also approve all report formats and related procedures, and shall be responsible for final acceptance of all work performed. Any conflict between the plans or specifications, and any other document incorporated herein, shall be submitted in writing to the Project Manager for review and determination.
- 10.3. If the Contractor considers any work demanded to be outside the Agreement requirements, or considers any determination of the Project Manager to be unfair, the Contractor shall immediately ask for a written instruction or decision from the Project Manager and shall proceed to perform the services to conform with the Project Manager's determination. If the Contractor considers such instructions or decision to be unsatisfactory, it shall, within five (5) days after their receipt, file a written protest with the Adams County Purchasing Office stating the objections and the reasons therefore. Unless protests or objections are made in the manner specified and within the time limit stated herein, the Contractor hereby waives all grounds for protests.
- 10.4. All claims, disputes and other matters in question arising out of or relating to the Agreement documents or breach thereof between the Project Manager and the Contractor shall be submitted to the Adams County Purchasing Office.

11. NONDISCRIMINATION

- 11.1. The Contractor shall not discriminate against any employee or qualified applicant for employment because of age, race, color, religion, marital status, disability, sex, or national origin. The Contractor agrees to post in conspicuous

places, available to employees and applicants for employment, notices provided by the local public agency setting forth the provisions of this nondiscrimination clause.

- 11.2. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. INDEPENDENT CONTRACTOR: In providing services under this Agreement, the Contractor acts as an independent contractor and not as an employee of the County. The Contractor shall be solely and entirely responsible for his/her acts, and the acts of his/her employees, agents, servants, and subcontractors during the term and performance of this Agreement. No employee, agent, servant, or subcontractor of the Contractor shall be deemed to be an employee, agent, or servant of the County because of the performance of any services or work under this Agreement. The Contractor, at its expense, shall procure and maintain workers' compensation insurance as required by State law and personal injury and property damage insurance in the coverage amounts as described in Section XIV. . **Pursuant to the Workers' Compensation Act § 8-40-202(2)(b)(IV), C.R.S., as amended, the Contractor understands that it and its employees and servants are not entitled to workers' compensation benefits from the County. The Contractor further understands that it is solely obligated for the payment of federal and state income tax on any moneys earned pursuant to this Agreement.**

13. INDEMNIFICATION: The Contractor agrees to indemnify and to hold the County and its agents harmless for, from, and against any and all claims, suits, expenses, damages or other liabilities, including reasonable attorney fees and court costs, arising out of damage or injury to persons or property caused or sustained by any person, persons, or entities as a result of the performance or failure of the Contractor, its agents or employees, or any subcontractor to provide services pursuant to the terms of this Agreement.

14. INSURANCE

- 14.1. The Contractor shall furnish a certificate of insurance for commercial general liability, comprehensive automobile liability, workers' compensation, and professional liability upon notification of award and prior to performance. Work shall not commence under this Agreement until the Contractor has submitted to the County, and received approval thereof, the certificate of insurance showing compliance with the following types and coverages of insurance.

14.1.1. Commercial General Liability Insurance: to include products liability, completed operations, contractual, broad form property damage, and personal injury.

Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000

14.1.2. Comprehensive Automobile Liability Insurance: to include all motor vehicles owned, hired, leased, or borrowed.

Bodily Injury/Property Damage	\$1,000,000 (each accident)
Personal Injury Protection	Per Colorado Statutes

14.1.3. Workers' Compensation Insurance: Per Colorado Statutes

14.1.4. Professional Liability Insurance: to include coverage for damages or claims for damages arising out of the rendering, or failure to render, any professional services.

Each Occurrence	\$1,000,000
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14.1.5. This insurance requirement applies only to Contractors who are performing services under this Agreement as professionals licensed under the laws of the State of Colorado, such as physicians, lawyers, engineers, nurses, mental health providers, and any other licensed professionals.

14.2. The Contractor's commercial general liability, comprehensive automobile liability, workers' compensation, and professional liability insurance policies and/or certificates of insurance shall be issued to include Adams County as an "additional insured" and shall include the following provisions:

14.2.1. Underwriters shall have no right of recovery or subrogation against the County, it being the intent of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses resulting from the actions or negligence of the Contractor.

14.2.2. The insurance companies issuing the policy or policies shall have no response against the County for payment of any premiums due or for any assessments under any form of any policy.

14.2.3. Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of the Contractor.

14.2.4. If any of the said policies shall be or at any time become unsatisfactory to the County as to form or substance, or if a company issuing any such policy shall

be or at any time becomes unsatisfactory to the County, the Contractor shall promptly obtain a new policy, submit the same to the Purchasing Agent of Adams County for approval, and thereafter submit a certificate of insurance as herein provided. Upon failure of the Contractor to furnish, deliver, and maintain such insurance as provided herein, this Agreement, at the election of the County, may be immediately declared suspended, discontinued, or terminated. Failure of the Contractor to obtain and/or maintain any required insurance shall not relieve the Contractor from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with the obligations of the Contractor concerning indemnification.

- 14.3. If the Contractor is a Joint Venture, then the respective parties thereto are each individually held fully responsible for completion of the project according to the terms of this Agreement. The parties thereto also have joint and several liability to the County for any liquidated damages assessed or for performance bond claims against the Joint Venture. The performance bond and all insurance required by this Agreement shall set forth the identity of each party to the Joint Venture.

15. TERMINATION

- 15.1. **TERMINATION OF AGREEMENT FOR CONVENIENCE OF THE COUNTY:** The County, at its sole option and discretion, may terminate this Agreement at any time by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least fifteen days before the effective date of termination. If the Agreement is terminated by the County, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Agreement, less payments of compensation previously made.
- 15.2. **TERMINATION OF AGREEMENT FOR CAUSE:** If, through any cause, the Contractor shall fail to fulfill its obligations under this Agreement in a timely and proper manner, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the County shall thereupon have the right to immediately terminate this Agreement upon giving written notice to the Contractor of such termination and specifying the effective date thereof.
- 15.3. **OWNERSHIP OF PARTIALLY COMPLETED WORK:**
 - 15.3.1. All work accomplished by the Contractor prior to the date of such termination shall be recorded and tangible work documents shall be transferred to and become the sole property of the County prior to payment for services rendered.

15.3.2. Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Agreement by the Contractor and for the purposes of setoff until such time as the exact amount of damages due the County from the Contractor is determined.

16. BONDING: The Contractor shall secure a Performance Bond and a Payment Bond each in the amount of one hundred percent (100%) of the Agreement price with a corporate surety approved by the County and licensed to do business in the State of Colorado, said bonds to be released at the sole direction of the County.

17. WARRANTY: The Contractor warrants and guarantees to the County that all work, equipment, and materials furnished under the Agreement are free from defects in workmanship and materials for a period of one (1) year after final acceptance by the County. The Contractor further warrants and guarantees that the plans and specifications incorporated herein are free of fault and defect sufficient for the Contractor to warrant the finished product after completion date. Should the Contractor fail to proceed promptly in accordance with this guarantee, the County may have such work performed by another contractor at the expense of the original Contractor. This section does not relieve the original Contractor from liability for defects which become known after one (1) year.

18. MUTUAL UNDERSTANDINGS

18.1. Jurisdiction and Venue: The laws of the State of Colorado shall govern as to the interpretation, validity, and effect of this Agreement. The parties agree that venue and jurisdiction for disputes regarding performance of this Agreement are with the District Court of Adams County, Colorado.

18.2. Compliance with Laws: The Contractor, at all times during the performance of this Agreement, agrees to strictly adhere to all applicable federal, state, and local laws, rules, and regulations that affect or govern the work as contemplated under this Agreement. If applicable, the Contractor and subcontractors shall abide by all applicable provisions of the Davis-Bacon Act for payment of wages to employees and the Contract Work Hours and Safety Standards Act. The parties hereto aver that they are familiar with §§ 18-3-301, et seq., C.R.S. (Bribery and Corrupt Influences), as amended, and §§ 18-8-401, et seq., C.R.S. (Abuse of Public Office), as amended, and that no violation of such provisions are present.

18.3. Record Retention: The Contractor shall maintain records and documentation of the services provided under this Agreement, including fiscal records, and shall retain the records for a period of three (3) years from the date this Agreement is terminated. Said records and documents shall be subject at all

reasonable times to inspection, review, or audit by authorized federal, state, or County personnel.

- 18.4. Assignability: Neither this Agreement, nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable by the Contractor without the prior written consent of the County.
- 18.5. Waiver: Waiver of strict performance or the breach of any provision of this Agreement shall not be deemed a waiver, nor shall it prejudice the waiving party's right to require strict performance of the same provision, or any other provision in the future, unless such waiver has rendered future performance commercially impossible.
- 18.6. Force Majeure: Neither party shall be liable for any delay or failure to perform its obligations hereunder to the extent that such delay or failure is caused by a force or event beyond the control of such party including, without limitation, war, embargoes, strikes, governmental restrictions, riots, fires, floods, earthquakes, or other acts of God.
- 18.7. Notice: Any notices given under this Agreement are deemed to have been received and to be effective: (1) three (3) days after the same shall have been mailed by certified mail, return receipt requested; (2) immediately upon hand delivery; or (3) immediately upon receipt of confirmation that a facsimile was received. For the purposes of this Agreement, any and all notices should be addressed to the contacts listed below:

<u>Adams County Attorney's Office</u> <u>4430 South Adams County Parkway</u> <u>Brighton, Colorado 80601</u> <u>Phone: 303-654-6116</u> <u>Fax: 303-654-6114</u>
<u>Adams County</u> <u>Contact: Mr. Mike Goins, Facilities Operations Director</u> <u>Address: 4430 South Adams County Parkway, Brighton, CO 80601</u> <u>Phone: 720-523-6006</u> <u>E-mail: mgoins@adcogov.org</u>
<u>Adams County</u> <u>Contact: Loren Imhoff, Purchasing Manager</u> <u>Address: 4430 South Adams County Parkway, Brighton, CO 80601</u> <u>Phone: 720-523-6057</u> <u>E-mail: limhoff@co.adams.co.us</u>
<u>H.W. Houston Construction Company</u> <u>Contact: Mr. Paul M. Depatie, Vice President</u> <u>Address: 210 South Victoria Avenue, Pueblo, Colorado 81003</u>

Phone: 719-544-2791 Fax: 719-544-2791 E-mail: pauld@hwhouston.com

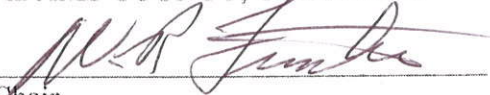

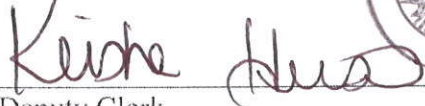


- 18.8. Integration of Understanding: This Agreement contains the entire understanding of the parties hereto and neither it, nor the rights and obligations hereunder, may be changed, modified, or waived except by an instrument in writing that is signed by the parties hereto.
- 18.9. Severability: If any provision of this Agreement is determined to be unenforceable or invalid for any reason, the remainder of this Agreement shall remain in effect, unless otherwise terminated in accordance with the terms contained herein.
- 18.10. Authorization: Each party represents and warrants that it has the power and ability to enter into this Agreement, to grant the rights granted herein, and to perform the duties and obligations herein described.

19. COMPLIANCE WITH C.R.S. § 8-17.5-101, ET. SEQ. AS AMENDED 5/13/08:
Pursuant to Colorado Revised Statute (C.R.S.), § 8-17.5-101, *et. seq.*, as amended 5/13/08, the Contractor shall meet the following requirements prior to signing this Agreement (public contract for service) and for the duration thereof:

- 19.1. The Contractor shall certify participation in the E-Verify Program (the electronic employment verification program that is authorized in 8 U.S.C. § 1324a and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program) or the Department Program (the employment verification program established by the Colorado Department of Labor and Employment pursuant to C.R.S. § 8-17.5-102(5)) on the attached certification.
- 19.2. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- 19.3. The Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- 19.4. At the time of signing this public contract for services, the Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services through participation in either the E-Verify Program or the Department Program.

- 19.5. The Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.
- 19.6. If Contractor obtains actual knowledge that a subcontractor performing work under this public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall: notify the subcontractor and the County within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to the previous paragraph, the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- 19.7. Contractor shall comply with any reasonable requests by the Department of Labor and Employment (the Department) made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).
- 19.8. If Contractor violates this Section, of this Agreement, the County may terminate this Agreement for breach of contract. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the County.

IN WITNESS WHEREOF, the parties hereto have caused their names to be affixed hereto.

BOARD OF COUNTY COMMISSIONERS ADAMS COUNTY, COLORADO  Chair	<u>8-22-12</u> Date
APPROVED AS TO FORM:  Adams County Attorney's Office	
ATTEST: KAREN LONG CLERK AND RECORDER  Deputy Clerk 	
H.W. HOUSTON  Name: <u>KENNETH W. WEST</u> Title: <u>PRESIDENT</u>	<u>8-14-12</u> Date: