



CITY OF HOUSTON INVITATION TO BID

Issued: March 28, 2008

BID OPENING

Sealed bids, in duplicate, will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002, until **10:30 AM Thursday, April 17, 2008** and all bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby at 11:00 AM on that date for the purchase of:

INSPECTION & TESTING OF AERIAL DEVICES/BUCKET TRUCKS SERVICES

For

VARIOUS DEPARTMENTS

BID INVITATION NO.: S11-L22775

NIGP CODE: 961-45

BUYER

Questions regarding this solicitation document should be addressed to **Gloria Jordan-King, Sr. Procurement Specialist**, at (713) 247-1846, or e-mail to gloria.king@cityofhouston.net

ELECTRONIC BIDDING

In order to submit a bid for the items associated with this procurement, you must fill in the pricing information on the "**PLACE BID**" page.

PRE-BID CONFERENCE

A Pre-Bid Conference will be held for all Prospective Bidders at the City Hall, Strategic Purchasing Division, 901 Bagby, Conference Rm. 2 (Basement), Houston, Texas 77002 at **1:30 PM on Wednesday, April 9, 2008**.

All Prospective Bidders are urged to be present. It is the bidder's responsibility to ensure that they have secured and thoroughly reviewed the solicitation documents prior to the Pre-Bid Conference. Any revisions to be incorporated into this solicitation document arising from discussions before, during and subsequent to the Pre-Bid Conference will be confirmed in writing by Letter(s) of Clarification prior to the bid due date. Verbal responses will not otherwise alter the specifications, terms and conditions as stated herein.

Bidding forms, specifications, and all necessary information should be downloaded from the Internet at <https://purchasing.houstontx.gov/>. By registering and downloading this solicitation document, all updates to this solicitation document will be automatically forwarded via e-mail to all registered bidders. This information may also be obtained from the Supplier Assistance Desk, Strategic Purchasing Division, 901 Bagby, Concourse Level, Houston, Texas 77002.

The place of the bid opening may be transferred in accordance with Paragraph (b), (5) of Section 15-3 of The Code of Ordinances, Houston, Texas. The bid opening meeting may be rescheduled in accordance with Paragraph (b), (6) of said Section 15-3.

The City reserves the right to reject any or all bids or to accept any bid or combination of bids deemed advantageous to it.

City Employees are prohibited from bidding on this solicitation in accordance with the Code of Ordinances, Section 15-1.

***CONTENTS:**

SECTION A: OFFER
SECTION B: SCOPE OF WORK/SPECIFICATIONS
SECTION C: GENERAL TERMS & CONDITIONS

***NOTE 1: Actual page numbers for each Section may change when the solicitation document is downloaded from the Internet or because of Letters of Clarification. Therefore, Bidders must read the bid document in its entirety and comply with all the requirements set forth therein.**

***NOTE 2: To be considered for award, please submit the electronic bid form and the forms listed in Section A, including the Official Signature Page, which must be signed by a company official authorized to bind the company.**

SECTION A



INSPECTION & TESTING OF AERIAL DEVICES/BUCKET TRUCKS SERVICES
For
VARIOUS DEPARTMENTS
BID INVITATION NO.: S11-L22775
NIGP CODE: 961-45

To The Honorable Mayor
and Members of the City Council
of the City of Houston (the "City"), Texas:

The undersigned Bidder hereby offers to contract with the City upon the terms and conditions stated in that certain "**Contract for Inspection & Testing of Aerial Devices/Bucket Trucks Services for a three-year period with two (2) one-year option periods to extend for the Various Departments**", which was distributed by the City together with the "Notice to Bidders" and is hereby incorporated herein by this reference (the "Contract"). This offer is made at the prices stated on the electronic Bid Form. When issued by the City of Houston, Letters of Clarification shall automatically become part of this bid document and shall supersede any previous specifications or provisions in conflict with the Letters of Clarification. It is the responsibility of the bidder to ensure that it has obtained all such letters. By submitting a bid on this project, bidder shall be deemed to have received all Letters of Clarification and to have incorporated them into its bid.

The City may accept this bid offer by issuance of a Contract covering award of said bid to this Bidder at any time on or before the 180th day following the day this Official Bid Form is opened by the City. This offer shall be irrevocable for 180 days, but shall expire on the 181st day unless the parties mutually agree to an extension of time in writing.

The City of Houston reserves the option, after bids are opened, to increase or decrease the quantities listed, subject to the availability of funds, and/or make award by line item.

If the City accepts the foregoing offer, this Bidder promises to deliver to the City Purchasing Agent of the City, five (5) original counterparts of said Contract duly executed by this Bidder (as "Contractor") in accordance with this paragraph, proof of insurance as outlined in Article II of the Contract, all on or before the tenth (10th) day following the day this Bidder receives from the City the unsigned counterparts shall be executed so as to make it binding upon the Bidder, and all of the applicable requirements stated in the document entitled "Instructions for Execution of Contract Documents," (which was distributed by the City) shall be complied with.

The City reserves the right to accept or reject, in whole or in part, any or all bids received and to make award on the basis of individual items or combination of items, as it is deemed in the best interest of the City.

If the City accepts the foregoing offer, this bidder shall furnish all labor, supervision, materials, supplies, equipment and tools necessary to provide **Inspection & Testing of Aerial Devices/Bucket Trucks Services** for the City in accordance with the Scope of Work/Specifications contained in Section "B" of this invitation to bid.

INSPECTION & TESTING OF AERIAL DEVICES/BUCKET TRUCKS SERVICES

Documents/forms must be downloaded from the City's Website <http://www.houstontx.gov/purchasing/index.html>.

Additional Required Forms to be included with this Bid:

In addition to the Electronic Bid Form and the Official Signature Page, the Forms listed in Table 1 **must be completed and submitted to the Office of the City Secretary on or before the date and time the bid is due:**

TABLE 1 - REQUIRED FORMS
Affidavit of Ownership.doc
Fair Campaign Ordinance.doc
Statement of Residency.doc
Conflict of Interest Questionnaire.doc
Pay or Play Program Acknowledgement Form
Contractor's Questionnaire

Table 2 lists other documents and forms that should be viewed/downloaded from the City's website, but are not required to be submitted with the bid. The City will request these forms, as applicable, to be completed and submitted to the City by the recommended/successful bidder:

TABLE 2 - DOCUMENTS & FORMS
Drug Forms.doc
EEOC.doc
Formal Instructions for Bid Terms.doc
M/WBE.doc
Sample Insurance Over \$25,000.pdf
Pay or Play Affirmative Action & Contract Compliance Q & A
Pay or Play Affirmative Action & Contract Compliance Requirements
Pay or Play Certification of Agreement to Comply w' the Program
Pay or Play Contractor/Subcontractor Payment Reporting Form
Pay or Play Contractor/Subcontractor Waiver Request
Pay or Play List of Participating Subcontractors

CONTRACTOR'S QUESTIONNAIRE

In order to receive bid award consideration, the bidder must be able to demonstrate that they are currently providing or have had at least one contract, as a prime contractor, for **Inspection & Testing of Aerial Devices/Bucket Trucks Services** or that is similar in size and scope to this contract. **Bidder must have references documenting that it has performed Inspection & Testing of Aerial Devices/Bucket Trucks Services.** The reference(s) should be included in the space provided below. Please attach another piece of paper if necessary. If references are not included with the bid, the bidder shall be required to provide such references to the City of Houston within five working days from receipt of a written request from the City of Houston to do so. **Bidder's capability and experience shall be a factor in determining the Contractor's responsibility.**

1. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Services: _____

2. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Services: _____

3. Name: _____
Address: _____
City & State: _____
Name & Phone Number of Contact: _____ Years of Services: _____

SITE INSPECTION

The City of Houston reserves the right to inspect the bidder's current place of business to evaluate equipment condition and capabilities, staff experience, training and capabilities, and storage capabilities as they relate to the performance of this contract.

QUALITY AND WORKMANSHIP

The bidder must be able to demonstrate upon request that it has satisfactorily performed services similar to the services specified herein. The bidder will provide records of warranty and repair services upon request by City. The City of Houston shall be the sole judge as to whether the services performed are similar to the scope of services contained herein and whether the bidder is capable of performing such services.

SECTION B
SCOPE OF WORK/SPECIFICATIONS
For
INSPECTION & TESTING OF AERIAL DEVICES/BUCKET TRUCKS SERVICES
For
VARIOUS DEPARTMENTS
BID INVITATION NO.: S11-L22775

1.0 Scope of Services:

The Contractor shall perform a complete visual and operational inspection on the aerial devices/bucket trucks (Exhibit A). This inspection must follow and be in compliance with all federal and state regulations and OEM specifications. This inspection includes, but is not limited to, the turret, pedestal, rotation bearing and system, upper and lower boom(s) and insulators, boom pins and bushings, hydraulic cylinders and gear mechanisms, pumps, valves, baskets and liners, power take off, outriggers, stabilizer bar and components, placards and any or all other components and/or attachments which may affect the operation and/or safety of aerial devices/ bucket trucks. The inspection procedures must comply with the most current federal and state requirements for such inspections and cover all required areas as identified in each specific test, i.e., ultrasonic, magnetic particle, dielectric, etc.

2.0 Requirement: Testing

As a minimum, all testing shall include visual, operational, mechanical, ultrasonic, acoustical emissions, dielectric, magnetic particle and/or dye penetrant tests. The Contractor shall test all accessible critical welds, castings and other stress related areas as required.

2.1 The Contractor shall perform ultrasonic tests on all accessible pins and perform dielectric tests on all aerial device booms. Also, the Contractor shall perform acoustical emissions test on all aerial devices to isolate potentially defective areas.

2.2 All aforementioned tests and procedures must be in strict compliance with the OEM's specifications, ANSI and OSHA standards.

3.0 Testing Technicians:

3.1 The Contractor's testing technicians must possess all existing ANSI and/or OSHA required certifications for all tests performed/required under the contract. The Contractor's technicians shall obtain any new ANSI and/or OSHA required certifications that become applicable to existing or newly developed tests and required during the term of the contract. Technicians performing radiography testing must have a State of Texas license for radiography testing.

3.2 Additionally, mechanical, electrical and hydraulic inspections and tests shall be performed/conducted by technicians accredited/certified in nondestructive aerial device examination pursuant to SNT-TC-1A. Lead technicians must be Level II and assistant technicians must be Level I certified. *Certification documentation for the technicians need not be submitted with the bid but will be required prior to award.*

4.0 Reports:

The Contractor shall submit inspection and test report(s) in duplicate to the Director noting in detail any discrepancies. The report shall identify all parts and mechanisms that require restoration or replacement to enable the equipment to pass re-inspection and re-test and to assure that the equipment operate efficiently, safely and at optimum level at all time. The report shall identify any unusual conditions, circumstances or safety hazards observed during initial inspection and testing or re-inspection and re-testing.

4.0 Reports: (Continued)

4.1 Also, the report shall include any conditions resulting from improper use, abusive operation and/or improper care with recommended corrective actions. The final inspection report shall be submitted to the Director or designated representative upon completion of re-inspection and re-testing.

5.0 Scheduled Inspections and Testing:

The Contractor shall be required to develop a schedule for testing all the equipment identified in the contract within 30 days after the notice-to-proceed is issued. The schedule must be approved by the end-users of the equipment before any inspection or testing can begin on the equipment. The Contractor shall be required to complete all required annual inspections and testing of the equipment for which authorization is given within 45 calendar days after authorization is received from the Director or authorized representative. Any and all extensions to the 45 calendar days must be approved in writing by the Director or authorized representative.

6.0 Unscheduled Inspections:

The Contractor shall be required to complete all required unscheduled inspections and testing of the equipment for which authorization is given within 5 calendar days after authorization is received from the Director or authorized representative. Any and All extensions must be approved in writing by the Director or authorized representative.

7.0 Inspection and Testing Program:

Any updated attachments or components including OEM's specifications that may affect the operation or safety of equipment must be included in the inspection and test program. Silence to, or omission of these specifications shall not be interpreted as authorization not to perform a required inspection or test procedure. Such failure to perform is not permitted.

8.0 The specifications are to be interpreted, even though not specifically stated herein, as including any additional items that require inspections and tests to insure safety and prolonged operation of the equipment. The Contractor should include any and all additional information in the Inspection and test report to the Director.

9.0 Inspection And Testing Records:

The Contractor shall maintain accurate inspection and test records for each piece of equipment it inspects and tests by City of Houston unit number. This information includes, but is not limited to, the manufacturer's vehicle identification number, make, model and serial number.

10.0 ADDITIONS & DELETIONS:

The City, by written notice from the City Purchasing Agent to the Contractor, at anytime during the term of this contract, may add or delete like services to be performed. Any such written notice shall take effect on the date stated in the notice from the City. Equipment, locations and/or services added will be subject to the contract services and charges or rates as an item already specified in the fee schedule. In the event the additional service is not identical to any item already under contract, the charges therefor will then be the Contractor's normal and customary charges or rates for the equipment, locations and/or services classified in the Contract Fee Schedule.

11.0 ESTIMATED QUANTITIES NOT GUARANTEED:

The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of inspection and testing of aerial devices/bucket truck services during the term of this contract. The quantities may vary depending upon the actual needs of the user Department. The quantities specified herein are good faith estimates of usage during the term of this contract. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into based on the City purchasing requiring all the quantities specified herein.

12.0 WARRANTY OF SERVICES:

12.1 *Definitions:* "Acceptance" as used in this clause, means the act of an authorized representative of the City by which the City assumes for itself, approval of specific services, as partial or complete performance of the contract.

12.2 "Correction" as used in this clause, means the elimination of a defect.

12.3 Notwithstanding inspection and acceptance by the City or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The City shall give written notice of any defect or nonconformance to the Contractor within a one-year period from the date of acceptance by the City. This notice shall state either (1) that the Contractor shall correct or re-perform any defective or non-conforming services at no additional cost to the City, or (2) that the City does not require correction or re-performance.

12.4 If the Contractor is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise correct or replace with similar services and charge to the Contractor the cost occasioned to the City thereby, or make an equitable adjustment in the contract price.

12.5 If the City does not require correction or re-performance, the City shall make an equitable adjustment in the contract price.

EXHIBIT A

AERIAL DEVICE/BUCKET TRUCK LISTING FOR PUBLIC WORKS AND ENGINEERING DEPARTMENT

Vehicle No.	Year	Make	Boom Make	Model/Description	ID#/VIN#
1	2388	1983	International	Snooper	2HTSCABN5SH872772
2	23666	1995	Ford	Bucket Truck	1FDXF80C1SVA19468
3	27654	1997	Ford	ETI Utility Bucket Truck 29'	3FELF47G4VMA35772
4	27655	1997	Ford	ETI Utility Bucket Truck 29'	3FELF47G0VMA35770
5	19920	1993	IHC	Lift-All Bucket Truck 32'	1HTSCPHN3PH482826
6	19921	1993	IHC	Lift-All Bucket Truck 32'	1HTSCPHN1PH482825
7	19922	1993	IHC	Lift-All Bucket Truck 32'	1HTSCPHN7PH482828
8	19923	1993	IHC	Lift-All Bucket Truck 32'	1HTSCPHN5PH482827
9	19991	1993	Ford	TECO Bucket Truck 55'	1FDYK34A7NVA36269
10	23719	1995	International	TECO Bucket Truck 55'	1HTSCAARXSH644504
11	23720	1995	International	TECO Bucket Truck 55'	1HTSCAAR8SH644503
12	24273	1995	Ford	Lift-All Bucket Truck 1T 29'	1FDLF47F2SEA17297
13	24274	1995	Ford	Lift-All Bucket Truck 1T 29'	1FDLF47FXSEA34865
14	24275	1995	Ford	Lift-All Bucket Truck 1T 29'	1FDLF47F3SEA34867
15	24276	1995	Ford	Lift-All Bucket Truck 1T 29'	1FDLF47F1SEA34866
16	24277	1995	Ford	Lift-All Bucket Truck 1T 29'	1FDLF47F4SEA17298
17	24278	1995	Chevrolet	Versalift Bucket Truck 1T 29'	1GBKC34F2SJ112462
18	24530	1995	Chevrolet	Versalift Bucket Truck 1T 29'	1GBKC34F2SJ112487
19	24531	1995	Chevrolet	Versalift Bucket Truck 1T 29'	1GBKC34F0SJ112508
20	24573	1995	Chevrolet	Lift-All Bucket Truck 1T 29'	1GBKC34F1SJ113201
21	24660	1995	Chevrolet	Versalift Bucket Truck 1T 29'	1GBKC34F2SJ113269
22	24661	1995	Chevrolet	Versalift Bucket Truck 1T 29'	1GBKC34F0SJ113075
23	24662	1995	Chevrolet	Versalift Bucket Truck 1T 29'	1GBKC34F7SJ113252
24	24663	1995	Chevrolet	Versalift Bucket Truck 1T 29'	1GBKC34F4SJ113175
25	24672	1995	Chevrolet	Lift-All Bucket Truck 1T 29'	1GBKC34F0SJ113254
26	24673	1995	Chevrolet	Lift-All Bucket Truck 1T 29'	1GBKC34F1SJ113201
27	24674	1995	Chevrolet	Lift-All Bucket Truck 1T 29'	1GBKC34F9SJ114032
28	24675	1995	Chevrolet	Lift-All 29' Bucket Truck	1GBKC34F7SJ114028
29	24676	1995	Chevrolet	Versalift Bucket Truck 1T 29'	1GBKC34F3SJ114396
30	24677	1995	Chevrolet	Lift-All Bucket Truck 1T 29'	1GBKC34F9SJ113267
31	24678	1995	Chevrolet	Lift-All Bucket Truck 1T 29'	1GBKC34FXSJ113150
32	24679	1995	Chevrolet	Lift-All Bucket Truck 1T 29'	1GBKC34F2SJ114390
33	24875	1995	Chevrolet	Lift-All Bucket Truck 1T 29'	1GBKC34F7SJ114028
34	24878	1995	Chevrolet	Lift-All Bucket Truck 1T 29'	1GBKC34FXSJ113150
35	26687	1997	Chevrolet	Lift-All Bucket Truck 1T 29'	1GBKC34F2VJ104320
36	26689	1997	Chevrolet	Lift-All Bucket Truck 1T 29'	1GBKC34F4VJ104349
37	26690	1997	Chevrolet	Lift-All Bucket Truck 1T 29'	1GBKC34F8VJ104483
38	26691	1997	Chevrolet	Lift-All Bucket Truck 1T 29'	1GBKC34F0VJ103652
39	26692	1997	Chevrolet	Lift-All Bucket Truck 1T 29'	1GBKC34FXVJ103660
40	26693	1997	Chevrolet	Lift-All Bucket Truck 1T 29'	1GBKC34FXVJ103764
41	26694	1997	Chevrolet	Lift-All Bucket Truck 1T 29'	1GBKC34F6VJ103686
42	26695	1997	Chevrolet	Lift-All Bucket Truck 1T 29'	1GBKC34FXVJ103707
43	26696	1997	Chevrolet	Ford Bucket Truck 1T 29'	1GBKC34F5VJ103615
44	26792	1997	Chevrolet	Lift-All Bucket Truck 1T 29'	1GNKC34F4VJ107445

EXHIBIT A

AERIAL DEVICE/BUCKET TRUCK LISTING FOR PUBLIC WORKS AND ENGINEERING DEPARTMENT

45	27060	1997	Chevrolet	Versalift	Bucket Truck 1T 29'	1GBKC34FVJ110719
46	27061	1997	Chevrolet	Versalift	Bucket Truck 1T 29'	1GBKC34F3VJ110689
47	27062	1997	Chevrolet	Versalift	Bucket Truck 1T 29'	1GBKC34F4VJ110653
48	28046	1998	Chevrolet	Versalift	Bucket Truck 1T 29'	1GBKC34F9WF029166
49	28047	1998	Chevrolet	Versalift	Bucket Truck 1T 29'	1GBKC34F6WF029223
50	28048	1998	Chevrolet	Versalift	Bucket Truck 1T 29'	1GBKC4F1WF029792
51	29334	1999	International	Hi-Ranger	42' Bucket Truck	1HTSCABN7XH652854
52	29407	1999	Chevrolet	ETI	29' Bucket Truck	1GBKC34F7XF0257
53	29408	1999	Chevrolet	ETI	29' Bucket Truck	1GBKC34F5XF027190
54	29409	1999	Chevrolet	ETI	29' Bucket Truck	1GBKC34FXXFO26505
55	29410	1999	Chevrolet	ETI	29' Bucket Truck	1GBKC34F7XF026543
56	29411	1999	Chevrolet	ETI	29' Bucket Truck	1GBKC34F9XF026480
57	29412	1999	Chevrolet	ETI	29' Bucket Truck	1GBKC34F7XFO26610
58	29413	1999	Chevrolet	ETI	29' Bucket Truck	1GBKC34F7XFO25826
59	29414	1999	Chevrolet	ETI	29' Bucket Truck	1GBKC34F7XF025425
60	29415	1999	Chevrolet	ETI	29' Bucket Truck	1GBKC34F2XF025946
61	29416	1999	Chevrolet	ETI	29' Bucket Truck	1GBKC34F6XF025657
62	29417	1999	Chevrolet	ETI	29' Bucket Truck	1GBKC34F0XFO27355
63	29418	1999	Chevrolet	ETI	29' Bucket Truck	1GBKC34F6XFO26159
64	30052	1999	Ford	Skytel	29' Bucket Truck	1FDXF46F9XEE19747
65	30053	1999	Ford	Skytel	29' Bucket Truck	1FDXF46F1XEE19743
66	30165	1999	Ford	Skytel	29' Bucket Truck	1FDX46F5XEE19745
67	30166	1999	Ford	Skytel	29' Bucket Truck	1FDXF46F7XEE19746
68	30192	1999	Ford	Skytel	29' Bucket Truck	1FDXF46F0XEE19748
69	30193	1999	Ford	Skytel	29' Bucket Truck	1FDXF46F3XEE19744
70	30419	2000	International	Hi-Ranger	42' Bucket Truck	1HTSCABN5YH252969
71	30668	2000	International	Hi-Ranger	42' Bucket Truck	1ATSCBN6YH309552
72	31091	2000	Ford		Bucket Truck	1FDXF46F4YEE08768
73	31092	2000	Ford	Skytel	29' Bucket Truck	1FDXF46F6Y3308769
74	31093	2000	Ford	Skytel	29' Bucket Truck	1FDSF46F6YEE08772
75	31095	2000	Ford	Skytel	29' Bucket Truck	1FDSF46F26EE08770
76	31620	2001	International	Hi-Ranger	42' Bucket Truck	1HTSCABN01H403254
77	32046	2001	Ford	Skytel	29' Bucket Truck	1FDXF46F51ED44343
78	18499	1991	Ford	TECO	Bucket Truck 42'	1FDYK84A1MVA37867
79	27493	1997	Chevrolet	ETI	Bucket Truck 1T 29'	1GBKC34F4VJ113942

EXHIBIT A

AERIAL DEVICE/BUCKET TRUCK LISTING FOR PUBLIC WORKS AND ENGINEERING DEPARTMENT

80	225377	1996	Ford	Sky Tel	29' Bucket Truck	1FDYF8OE6TVA28951
81	29420	1999	Chevrolet	ETI	29' Bucket Truck	1GBKC34F5XFO25830
82	30005	1999	Ford	Sky Tel	29' Bucket Truck	1FDXF46F8XEE19742
83	30191	1999	Ford	Sky Tel	29' Bucket Truck	1FDXF46F8XEE19741
84	31973	2002	Ford F-450	Sky Tel	29' Bucket Truck	1FDXF46F31ED44342
85	31974	2002	Ford F-450	Sky Tel	29' Bucket Truck	1FDXF45F11ED44341
86	32046	2001	Ford	Sky Tel	29' Bucket Truck	1FDXF46F51ED44343
87	33954	2004	Ford F-450	Sky Tel	29' Bucket Truck	1FDXF46P34EC31956
88	33955	2004	Ford F-450	Sky Tel	29' Bucket Truck	1FDXF46P54EC31957
89	33956	2004	Ford F-450	Sky Tel	29' Bucket Truck	1FDXF46P74EC31958
90	34366	2004	Ford F-450	Sky Tel	29' Bucket Truck	1FDXF46P74EC31958
91	31871	2001	(Ginie)		Man-Life Model S-45	Serial #S40-5615
92	37912	2008	Ford F-550	Versalift	36' Bucket Truck	1FDAF56R48EC31550
93	37913	2008	Ford F-550	Versalift	36' Bucket Truck	1FDAF56R68EC31551
94	37914	2008	Ford F-550	Versalift	36' Bucket Truck	1FDAF56R88EC31552
95	37915	2008	Ford F-550	Versalift	36' Bucket Truck	1FDAF56RX8EC31553
96	37916	2008	Ford F-550	Versalift	36' Bucket Truck	1FDAF56R18EC31554
97	37917	2008	Ford F-550	Versalift	36' Bucket Truck	1FDAF56R38EC31555
98	37918	2008	Ford F-550	Versalift	36' Bucket Truck	1FDAF56R58EC31556

AERIAL DEVICE/BUCKET TRUCK LISTING FOR PARKS AND RECREATION DEPARTMENT

ELECTRICAL SECTION

UNIT #	YEAR MODEL	MAKE	PLATFORM HEIGHT	TYPE OF VEHICLE
19994	1993	TECO-MTI	75FT	Bucket Truck
21647	1993	TECO-MTI	N/A	Digger/Derrick
22983	1995	SIMON-TELECT	N/A	Pole Truck
25114	1983	REACH-ALL	55 FT	Bucket Truck
25151	1983	REACH-ALL	55 FT	Bucket Truck
27645	1997	ETI	29 FT	Bucket Truck
30634	1999	MTI	75FT	Bucket Truck
NEW	2002	MTI	75 FT	Bucket Truck

FORESTRY SECTION

UNIT #	YEAR MODEL	MAKE	PLATFORM HEIGHT	TYPE OF VEHICLE
17017	1990	REACH-ALL	55 FT	Bucket Truck
29382	1998	HI-RANGER	40 FT	Bucket Truck
29383	1998	HI-RANGER	40 FT	Bucket Truck
32385	2001	ALTEC	55 FT	Bucket Truck

**SECTION C
GENERAL TERMS & CONDITIONS**

THE STATE OF TEXAS

BID # S11 – L22775

COUNTY OF HARRIS

ORDINANCE # _____

CONTRACT # _____

I. PARTIES

1.0 ADDRESS

THIS AGREEMENT for **INSPECTION & TESTING OF AERIAL DEVICES/BUCKET TRUCKS SERVICES** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and _____ ("Contractor or Vendor"), a corporation doing business in Texas.

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

City

City Purchasing Agent for Directors
of Various Departments
City of Houston
P.O. Box 1562
Houston, Texas 77251

Contractor

Phone: _____
Fax: _____

The Parties agree as follows:

2.0 TABLE OF CONTENTS

2.1 This Agreement consists of the following sections:

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EXHIBITS

- A. DEFINITIONS
- * B. SCOPE OF SERVICES
- * C. EQUAL EMPLOYMENT OPPORTUNITY
- * D. MWBE SUBCONTRACT TERMS
- * E. DRUG POLICY COMPLIANCE AGREEMENT
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- * G. DRUG POLICY COMPLIANCE DECLARATION
- H. FEES AND COSTS
- * I. CITY’S CONTRACTORS PAY OR PLAY PROGRAM

* Note: These Exhibits shall be inserted into the Contract agreement at the time of Contract execution.

3.0 PARTS INCORPORATED

3.1 The above described sections and exhibits are incorporated into this Agreement.

4.0 CONTROLLING PARTS

4.1 If a conflict among the sections or exhibits arises, the Exhibits control over the Sections.

5.0 DEFINITIONS

5.1 Certain terms used in this Agreement are defined in Exhibit "A".

6.0 SIGNATURES

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

ATTEST/SEAL: (if a corporation)

WITNESS: (if not corporation)

By: _____

Name:

Title:

By: _____

Name:

Title:

Federal Tax ID Number: _____

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

City Purchasing Agent

City Controller

DATE COUNTERSIGNED:

This Contract has been reviewed as to form by the undersigned legal assistant and has been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

Date

Legal Assistant

II. DUTIES OF CONTRACTOR

1.0 SCOPE OF SERVICES

1.1 In consideration of the payments specified in this Agreement, Contractor shall provide all supervision, labor, tools, equipment, permits, parts, expendable items, material, and supplies necessary to perform the services described in Exhibit "B".

2.0 RELEASE

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

3.0 INDEMNIFICATION

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

3.1.1 PRIME CONTRACTOR/SUPPLIER AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 2.1-3.2, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

3.1.2 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND

3.1.3 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

3.1.4 PRIME CONTRACTOR/SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS CONTRACT AND FOR FOUR YEARS AFTER THE CONTRACT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

3.2 CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

4.0 INDEMNIFICATION PROCEDURES

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

- 4.1.1 a description of the indemnification event in reasonable detail, and
- 4.1.2 the basis on which indemnification may be due and
- 4.1.3 the anticipated amount of the indemnified loss.

4.2 This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Prime Contractor/Supplier is prejudiced, suffers loss, or incurs expense because of the delay.

4.3 Defense of Claims

- 4.3.1 Assumption of Defense. Prime Contractor/Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Prime Contractor/Supplier shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Prime Contractor/Supplier must advise the City as to whether or not it will defend the claim. If Prime Contractor/Supplier does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.
- 4.3.2 Continued Participation. If Prime Contractor/Supplier elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Prime Contractor/Supplier may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Prime Contractor/Supplier does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

5.0 INSURANCE

5.1 Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverage in the following amounts:

- 5.1.1 Commercial General Liability insurance including Contractual Liability insurance:
\$500,000 per occurrence; \$1,000,000 aggregate
- 5.1.2 Workers' Compensation including Broad Form All States endorsement:
Statutory amount
- 5.1.3 Automobile Liability insurance
\$1,000,000 combined single limit per occurrence
Defense costs are excluded from the face amount of the policy
Aggregate Limits are per 12-month policy period unless otherwise indicated
- 5.1.4 Employer's Liability
Bodily injury by accident \$100,000 (each accident)

Bodily injury by disease	\$100,000 (policy limit)
Bodily injury by disease	\$100,000 (each employee)

5.2 All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, and that it shall give 30 days written notice to the City before they may be canceled. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:

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

6.0 WARRANTIES

6.1 Contractor represents and warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

6.2 With respect to any parts and goods furnished by it, Contractor warrants:

- 6.2.1 that all items are free of defects in title, material, and workmanship,
- 6.2.2 that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,
- 6.2.3 that each replacement item is new in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and
- 6.2.4 that no item or its use infringes any patent, copyright, or proprietary right.

7.0 LICENSES AND PERMITS

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

8.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE

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

9.0 MWBE COMPLIANCE

- 9.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least **0%** of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them.
- 9.2 Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration in Houston, Texas if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "D". If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

10.0 DRUG ABUSE DETECTION AND DETERRENCE

- 10.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- 10.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
- 10.2.1 a copy of its drug-free workplace policy,
 - 10.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E", together with a written designation of all safety impact positions, and
 - 10.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F".
- 10.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G". Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.
- 10.4 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.
- 10.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

11.0 ENVIRONMENTAL LAWS

- 11.1 Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations ("Environmental Laws"). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.
- 11.2 Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Regulations. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

12.0 CITY'S CONTRACTOR PAY OR PLAY PROGRAM

- 12.1 The requirement and terms of the City of Houston Pay or Play Policy, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.

13.0 CONTRACTOR'S PERFORMANCE

- 13.1 Contractor shall make citizen satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Contractor is not interacting in a positive and polite manner with citizens, he or she shall direct Contractor to take all remedial steps to conform to these standards.

14.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

- 14.1 Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees.
- 14.2 Failure of Contractor to pay its employees as required by law shall constitute a default under this contract for which the Contractor and its surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.
- 14.3 Contractor shall defend and indemnify the City from any claims or liability arising out of Contractor's failure to pay its subcontractors as required by law. Contractor shall submit disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

III. DUTIES OF CITY

1.0 PAYMENT TERMS

- 1.1 The City shall pay and Contractor shall accept fees provided in Exhibit "H" for all services rendered and the Deliverables furnished by Contractor. The fees must only be paid from Allocated Funds, as provided below.

2.0 TAXES

- 2/1 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.

3.0 METHOD OF PAYMENT

- 3.0 The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director, showing the specific tasks completed in the preceding month and the corresponding prices. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS

- 4.1 If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

5.0 LIMIT OF APPROPRIATION

- 5.1 The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.
- 5.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$_____ to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

- 5.3 The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

- 5.3.1 The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.

6.0 CHANGES

- 6.1 At any time during the Agreement Term, the City Purchasing Agent or Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.
- 6.2 The City Purchasing Agent or Director will issue the Change Order in substantially the following form:

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of Notice]
SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:
[Signature of City Purchasing Agent or Director]

The City Purchasing Agent or Director may issue more than one Change Order, subject to the following limitations:

CHANGE ORDER

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of Notice]
SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:
[Signature of City Purchasing Agent or Director]

The City Purchasing Agent or Director may issue more than one Change Order, subject to the following limitations:

- 6.2.1 Council expressly authorizes the City Purchasing Agent or Director to approve a Change Order of up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.
- 6.2.2 If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
- 6.2.3 The total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- 6.3 Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The City Purchasing Agent's or Director's decision regarding a time extension is final.
- 6.4 A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.
- 6.5 Change Orders are subject to the Allocated Funds provisions of this Agreement.

IV. TERM AND TERMINATION

1.0 CONTRACT TERM

- 1.1 This Agreement is effective on the Countersignature Date and expires three (3) years after the starting date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement.

2.0 NOTICE TO PROCEED

- 2.1 Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the City Purchasing Agent.

3.0 RENEWALS

- 3.1 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive one-year terms on the same terms and conditions. If the Director/Chief of the City Department elects not to renew this Agreement, the City Purchasing Agent shall notify Contractor in written of non-renewal at least 30 days before the expiration of the then current term.

4.0 TIME EXTENSIONS

- 4.0 If Department requests an extension of time to complete its performance, then the City Purchasing Agent may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

5.0 TERMINATION FOR CONVENIENCE BY THE CITY

- 5.1 The City Purchasing Agent or Director may terminate this Agreement at any time by giving 30 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.
- 5.2 On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section III unless the fees exceed the allocated funds remaining under this Agreement.
- 5.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

6.0 TERMINATION FOR CAUSE BY CITY

- 6.1 If Contractor defaults under this Agreement, the City Purchasing Agent or Director may either terminate this Agreement or 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:
- 6.1.1 Contractor fails to perform any of its duties under this Agreement;
 - 6.1.2 Contractor becomes insolvent;
 - 6.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
 - 6.1.4 a receiver or trustee is appointed for Contractor.
- 6.1.5 If a default occurs, the City Purchasing Agent or Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent or Director, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's or 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 City Purchasing Agent or Director may terminate this Agreement on the termination date, at no further obligation of the City.
- 6.1.6 To effect final termination, the City Purchasing Agent or 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.

7.0 TERMINATION FOR CAUSE BY CONTRACTOR

- 7.1 Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date.
- 7.2 The date must be at least 30 days after the Director receives notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS

- 8.1 Upon expiration, or termination of this Agreement, Contractor is permitted ten (10) days within which to remove contractor-owned material and equipment from the City's premises. The City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

V. MISCELLANEOUS

1.0 INDEPENDENT CONTRACTOR

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

2.0 FORCE MAJEURE

- 2.1 Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
- 2.2 This relief is not applicable unless the affected party does the following:
- 2.3 uses due diligence to remove the Force Majeure as quickly as possible, and
- 2.4 provides the other party with prompt written notice of the cause and its anticipated effect.
- 2.5 The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.
- 2.6 If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director may terminate this Agreement by giving 30 days written notice to Contractor. This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.

3.0 SEVERABILITY

- 3.1 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.

4.0 ENTIRE AGREEMENT

- 4.1 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.

5.0 WRITTEN AMENDMENT

- 5.1 Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

6.0 APPLICABLE LAWS

6.1 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.

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

7.0 NOTICES

7.1 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.

8.0 NON-WAIVER

8.1 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.

8.2 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.

9.0 INSPECTIONS AND AUDITS

9.1 City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) 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 3 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

10.0 ENFORCEMENT

10.1 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.

11.0 AMBIGUITIES

11.1 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.

12.0 SURVIVAL

12.1 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.

13.0 PARTIES IN INTEREST

13.1 This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

14.0 SUCCESSORS AND ASSIGNS

14.1 This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

15.0 BUSINESS STRUCTURE AND ASSIGNMENTS

15.1 Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent's or Director's prior written consent. Nothing in this clause, however, prevents the assignment of Accounts receivable or the creation of a security interest under Section 9.406(c) of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

15.2 Contractor shall not delegate any portion of its performance under this Agreement without the City Purchasing Agent's or Director's prior written consent.

16.0 REMEDIES CUMULATIVE

16.1 Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

17.0 CONTRACTOR DEBT

17.1 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 from any payments owed to Contractor under this agreement, and Contractor waives any recourse therefore.

EXHIBIT A DEFINITIONS

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

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

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

"City Purchasing Agent" is defined as the person or duly authorized successor, authorized in writing to act for the City. The term includes, except as otherwise provided in this Contract, the authorized representative of the City Purchasing Agent acting within the limits of delegated authority.

"Contract Award Notice" means the official notification substantiated by the Notice to Proceed issued by the City Purchasing Agent to the Contractor.

"Contract Charges" means charges that accrue during a given month as defined in Article III.

"Contract Term" is defined in Article IV.

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

"Countersignature Date" means the date this agreement is countersigned by the City Controller.

"Director" mean the Directors/Chiefs of each of the Departments or the City Purchasing Agent for the City, or the person he or she designates.

"Effective Date" is defined as date contract is countersigned by the City Controller.

"Governing Body" means the Mayor and City Council of the City of Houston.

"Hazardous Materials" is defined in Article II (Environmental Laws).

"Notice to Proceed" means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance.

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

EXHIBIT B
SCOPE OF SERVICES

(To be inserted by the City at the time of Contract execution)

**EXHIBIT C
EQUAL EMPLOYMENT OPPORTUNITY**

(To be inserted by the City at the time of Contract execution)

**EXHIBIT D
MWBE SUBCONTRACT TERMS**

(To be inserted by the City at the time of Contract execution)

**EXHIBIT E
DRUG POLICY COMPLIANCE AGREEMENT**

(To be inserted by the City at the time of Contract execution)

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

I, _____
(Name - Print/Type) **(Title)**

as an owner or officer of _____ (Contractor) have authority to bind the Contractor with respect to its bid, and I 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 this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

Date

Contractor Name

Signature

Title

**CONTRACTOR'S CERTIFICATION OF NON-APPLICATION OF
CITY OF HOUSTON DRUG DETECTION AND DETERRENCE PROCEDURES
FOR CONTRACTORS**

I, _____
(Name - Print/Type)

as an owner or officer of _____ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also 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 this City Contract. Safety impact position means a Contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

Date

Contractor Name

Signature

Title

**EXHIBIT G
DRUG POLICY COMPLIANCE DECLARATION**

(To be inserted by the City at the time of Contract execution)

**EXHIBIT H
FEES AND COSTS**

(To be inserted by the City at the time of Contract execution)

**EXHIBIT I
PAY OR PLAY**

(To be inserted by the City at the time of Contract execution)