THE STATE OF TEXAS

COUNTY OF HARRIS

BID # S23- L22967
ORDINANCE # 2009-0072
CONTRACT # 4600009283

I. PARTIES

1.0 ADDRESS

THIS AGREEMENT for **FUEL TANKER AND TRAILER SERVICES** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and **ADOBE EQUIPMENT HOUSTON, LLC.** ("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 Director
of Public Works & Engineering Department
City of Houston
P.O. Box 1562
Houston, Texas 77251

Contractor

Adobe Equipment Houston, LLC.
7402 Eastex Freeway
Houston, Texas 77093
Phone: (713) 692-4471
Fax: (713) 696-8519

The Parties agree as follows:

2.0 TABLE OF CONTENTS

2.1 This Agreement consists of the following sections:

TABLE OF CONTENTS

Page No.

I. PARTIES 1

1.0 ADDRESS 1
2.0 TABLE OF CONTENTS 1
3.0 PARTS INCORPORATED 3
4.0 CONTROLLING PARTS 3
5.0 DEFINITIONS 3
6.0 SIGNATURES 4

II. DUTIES OF CONTRACTOR 5

1.0 SCOPE OF SERVICES 5
2.0 RELEASE 5
3.0 INDEMNIFICATION 5
4.0 INDEMNIFICATION PROCEDURES 5
5.0 INSURANCE 6
6.0 WARRANTIES 7
7.0 LICENSES AND PERMITS 7
8.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE 7
9.0 MWBE COMPLIANCE 7
10.0 DRUG ABUSE DETECTION AND DETERRENCE 8
11.0 ENVIRONMENTAL LAWS 8
12.0 CITY'S CONTRACTOR PAY OR PLAY PROGRAM 9
13.0 CONTRACTOR'S PERFORMANCE 9
14.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS 9

III. DUTIES OF CITY 9

1.0 PAYMENT TERMS 9
2.0 TAXES 9
3.0 METHOD OF PAYMENT 10
4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS 10
5.0 LIMIT OF APPROPRIATION 10
6.0 CHANGES 11

IV. TERM AND TERMINATION 12

1.0 CONTRACT TERM 12
2.0 NOTICE TO PROCEED 12
3.0 RENEWALS 12
4.0 TIME EXTENSIONS 12
5.0 TERMINATION FOR CONVENIENCE BY THE CITY 12
6.0 TERMINATION FOR CAUSE BY CITY 13
7.0 TERMINATION FOR CAUSE BY CONTRACTOR 13
8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS 13

V. MISCELLANEOUS 14

1.0 INDEPENDENT CONTRACTOR 14
2.0 FORCE MAJEURE 14
3.0 SEVERABILITY 14
4.0 ENTIRE AGREEMENT 14
5.0 WRITTEN AMENDMENT 14
6.0 APPLICABLE LAWS 14
7.0 NOTICES 15
8.0 NON-WAIVER 15

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: Ashley Andrea Currey
Name: Ashley Andrea Currey
Title: Notary Public

ASHLEY ANDREA CURREY
Notary Public, State of Texas
My Commission Expires
October 19, 2011

ADOBE EQUIPMENT HOUSTON, LLC.

By: Patrick F. Journagan
Name: Patrick F. Journagan
Title: Operations Manager
Federal Tax ID Number: 26-1812157

ATTEST/SEAL:

Barbara Jungs
ACTING ASSISTANT CITY SECRETARY

CITY OF HOUSTON, TEXAS
Signed by:

Bill White
Mayor
Anayda Wellston

APPROVED:

Calvin D Wells
City Purchasing Agent

COUNTERSIGNED BY:

Annise D. Parker
City Controller Madeline D. Appel

DATE COUNTERSIGNED:

2-10-09

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.

1-27-09
Date

Dreda Wallace
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 polices must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City. **CONTRACTOR SHALL GIVE 30 DAYS WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELLED, MATERIALLY CHANGED OR NON-RENEWED.** 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:

PS

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 **N/A** 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 **N/A.** 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 "D", 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 "E".

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 "F". Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

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 Contractors 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 "G" 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

3.1 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 **$106,543.00** 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.

5.4 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:

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]

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

6.3.1 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.

6.3.2 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.

6.3.3 The total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.

6.4 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.

6.5 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.

6.6 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

4.1 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.

6.2 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.

6.3 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:

2.2.1 uses due diligence to remove the Force Majeure as quickly as possible, and

2.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.

2.3 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.

2.4 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
FUEL TANKER AND TRAILER SERVICES
PUBLIC WORKS & ENGINEERING DEPARTMENT

1.0 General:

The Contractor shall furnish all supervision, personnel, labor, parts, tools, materials, equipment, supplies, transportation, facilities and other items as necessary to perform the management and operation of motor vehicle maintenance functions as defined in this Scope of Services for the City of Houston (the "City") Public Works & Engineering Department as described herein. All supplies, materials, and equipment to be used in the performance of work described herein are subject to the approval of the Contracting Officer Representative (COR).

1.1 The Contractor shall provide maintenance, preventative maintenance, scheduled inspections/test; repair/replace unserviceable parts, assemblies, subassemblies and components.

1.2 The Contractor shall accomplish scheduled annual tightness tests, annual Department of Transportation (DOT), and VIK Inspections shall be performed every five years as required. This includes certification, repair and preventative maintenance services for fuel tanker trucks and fuel trailers owned and operated by the City Public Works and Engineering Department.

1.3 The Contractor/Supplier shall provide a facility located within Harris County for all maintenance, repair, inspection, and certification services.

2.0 Basic Services:

2.1 Tanks must have cleaning ticket and last load manifest prior to any inspection or repair performed.

Service	Rail Road Commission*Stamp
De-gas, Steam-out Trailer for Repairs	Prior to any tests, inspections or repairs
External Visual Inspection	V (Min. Annually)
Internal Visual Inspection, (1) Compartment*	I (Annually)
Internal Visual Inspection each additional Compartment	I (Annually)
Leakage Test, (1) Compartment (hydro)	K (Every Five Years)
Leakage Test, each additional compartment (hydro)	K (Every Five Years)
Hydrostatic Pressure Test, (1) Compartment	P (Min. Annually)
Hydrostatic Pressure Test, each additional Compartment	P (Min. Annually)
Remove & Reinstall Upper Coupler	UC (Min. Annually)
Thickness Test	T (Min. Annually)
Alternative Leak Test (Method 27)	K (Every Five Years)
Texas State Inspection	Annually

3.0 Certifications:

3.1 Contractor must have a Certificate of Authorization to use the R symbol for repairs and/or alterations in accordance with the National Board of Boiler & Pressure Vessel Inspectors.

3.2 Service technicians and repair facilities must meet the requirements as described by the Code of Federal Regulations below:

Title 49: Transportation

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS
Subpart E—Qualification and Maintenance of Cargo Tanks
Browse Previous | Browse Next
§ 180.409 Minimum qualifications for inspectors and testers.

(a) Except as otherwise provided in this section, any person performing or witnessing the inspections and tests specified in §180.407(c) must—

(1) Be registered with the Federal Motor Carrier Safety Administration in accordance with part 107, subpart F of this chapter,

(2) Be familiar with DOT-specification cargo tanks and trained and experienced in use of the inspection and testing equipment needed, and

(3) Have the training and experience required to meet the definition of "Registered Inspector" in §171.8 of this chapter.

(b) A person who only performs annual external visual inspections and leakage tests on a cargo tank motor vehicle, owned or operated by that person, with a capacity of less than 13,250 L (3,500 gallons) used exclusively for flammable liquid petroleum fuels, is not required to meet the educational and years of experience requirements set forth in the definition of "Registered Inspector" in §171.8 of this subchapter. Although not required to meet the educational and years of experience requirements, a person who performs visual inspections or leakage tests or signs the inspection reports must have the knowledge and ability to perform such inspections and tests and must perform them as required by this subchapter, and must register with the Department as required by subpart F of part 107 of this chapter.

(c) A person who performs only annual external visual inspections and leakage tests on a permanently mounted non-bulk tank, owned or operated by that person, for petroleum products as authorized by §173.8(c) of this subchapter, is not required to be registered in accordance with subpart F of part 107 of this chapter. In addition the person who signs the inspection report required by §180.417(b) of this subpart for such non-bulk tanks is not required to be registered. Although not required to register, a person who performs visual inspections or leakage tests or signs the inspection reports must have the knowledge and ability to perform such inspections and tests and must perform them as required by this subchapter.
(d) A motor carrier or cargo tank owner who meets the requirements of paragraph (a) of this section may use an employee who is not a Registered Inspector to perform a portion of the pressure retest required by §180.407(g). External and internal visual inspections must be

accomplished by a Registered Inspector, but the hydrostatic or pneumatic pressure test, as set forth in §180.407(g)(1)(viii) and (ix), respectively, may be done by an employee who is not a Registered Inspector provided that—

(1) The employee is familiar with the cargo tank and is trained and experienced in the use of the inspection and testing equipment used;

(2) The employer submits certification that such employee meets the qualification requirements to the Associate Administrator, Attn: (PHH–32), Pipeline and Hazardous Materials Safety Administration, Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590; and

(3) The employer retains a copy of the tester's qualifications with the documents required by §180.417(b).

[Amdt. 180–2, 55 FR 37069, Sept. 7, 1990, as amended by Amdt. 180–3, 56 FR 66287, Dec. 20, 1991; 57 FR 45466, Oct. 1, 1992; Amdt. 180–11, 62 FR 1217, Jan. 8, 1997; 66 FR 45391, Aug. 28, 2001; 68 FR 19288, Apr. 18, 2003; 70 FR 56100, Sept. 23, 2005; 72 FR 55697, Oct. 1, 2007

Title 49: Transportation

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES
Browse Previous | Browse Next

Subpart F—Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers

§ 107.501 Scope.

(a) This subpart establishes a registration procedure for persons who are engaged in the manufacture, assembly, inspection and testing, certification, or repair of a cargo tank or a cargo tank motor vehicle manufactured in accordance with a DOT specification under subchapter C of this chapter or under terms of a special permit issued under this part.

(b) Persons engaged in continuing qualification and maintenance of cargo tanks and cargo tank motor vehicles must be familiar with the requirements set forth in part 180, subpart E, of this chapter.

[Amdt. 107–20, 55 FR 37047, Sept. 7, 1990]
§ 107.502 General registration requirements

(a) Definitions: For purposes of this subpart—

(1) Assembly means the performance of any of the following functions when the function does not involve welding on the cargo tank wall:

(i) The mounting of one or more tanks or cargo tanks on a motor vehicle or to a motor vehicle suspension component;
(ii) The installation of equipment or components necessary to meet the

specification requirements prior to the certification of the cargo tank motor vehicle; or

(iii) The installation of linings, coatings, or other materials to the inside of a cargo tank wall.

(2) The terms Authorized Inspector, Cargo tank, Cargo tank motor vehicle, Design Certifying Engineer, Registered Inspector, and Person are defined in §171.8 of this chapter.

(3) The terms *cargo tank wall* and *manufacturer* are defined in §178.320(a), and *repair* is defined in §180.403 of this chapter.

(b) No person may engage in the manufacture, assembly, certification, inspection or repair of a cargo tank or cargo tank motor vehicle manufactured under the terms of a DOT specification under subchapter C of this chapter or a special permit issued under this part unless the person is registered with the Department in accordance with the provisions of this subpart. A person employed as an inspector or design certifying engineer is considered to be registered if the person's employer is registered.

(c) A person who performs functions which are subject to the provisions of this subpart may perform only those functions which have been identified to the Department in accordance with the procedures of this subpart.

(d) Registration statements must be in English, contain all of the information required by this subpart, and be submitted to: FMCSA Hazardous Materials Division—MC-ECH, West Building, MC–ECH, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(e) Upon determination that a registration statement contains all the information required by this subpart, the Department will send the registrant a letter confirming receipt of the registration application and assigning a registration number to that person. A separate registration number will be assigned for each cargo tank manufacturing, assembly, repair facility or other place of business identified by the registrant.

[Amdt. 107–20, 54 FR 25003, June 12, 1989; 55 FR 37047, Sept. 7, 1990, as amended by Amdt. 107–22, 55 FR 39978, Oct. 1, 1990; Amdt. 107–23, 56 FR 66157, Dec. 20, 1991; Amdt. 107–28, 58 FR 46873, Sept. 3, 1993; Amdt. 107–39, 61 FR 51337, Oct. 1, 1996; 67 FR 61011, Sept. 27, 2002; 68 FR 19273, Apr. 18, 2003; 72 FR 55683, Oct. 1, 2007]

§ 107.503 Registration statement.

(a) Each registration statement must be in English and contain the following information:

(1) Name;

(2) Street address, mailing address and telephone number for each facility or place of business;

(3) A statement indicating whether the facility uses mobile testing/inspection equipment to perform inspections, tests, or repairs at a location other than the address listed in paragraph (a) (2) of this section.

(4) A statement signed by the person responsible for compliance with the applicable requirements of this chapter, certifying knowledge of those requirements and that each employee who is a Registered Inspector or Design Certifying Engineer meets the

minimum qualification requirements set forth in §171.8 of this chapter for "Registered Inspector" or "Design Certifying Engineer". The following language may be used.

I certify that all Registered Inspectors and Design Certifying Engineers used in performance of the prescribed functions meet the minimum qualification requirements set forth in 49 CFR 171.8, that I am the person responsible for ensuring compliance with the applicable requirements of this chapter, and that I have knowledge of the requirements applicable to the functions to be performed.

(5) A description of the specific functions to be performed on cargo tanks or cargo tank motor vehicles, e.g.:

(i) Manufacture,
(ii) Assembly,
(iii) Inspection and testing (specify type, e.g., external or internal visual inspection, lining inspection, hydrostatic pressure test, leakage test, thickness test),
(iv) Certification,
(v) Repair, or
(vi) Equipment manufacture;

(6) An identification of the types of DOT specification and special permit cargo tanks or cargo tank motor vehicles which the registrant intends to manufacture, assemble, repair, inspect, test or certify;

(7) A statement indicating whether the registrant employs Registered Inspectors or Design Certifying Engineers to conduct certification, inspection or testing functions addressed by this subpart. If the registrant engages a person who is not an employee of the registrant to perform these functions, provide the name, address and registration number of that person; and

(8) If the registrant is not a resident of the United States, the name and address of a permanent resident of the United States designated in accordance with §105.40 to serve as agent for service of process.

(a) In addition to the information required under paragraph (a) of this section, each person who manufactures a cargo tank or cargo tank motor vehicle must submit a copy of the manufacturer's current ASME Certificate of Authorization for the use of the ASME "U" stamp.

(b) In addition to the information required under paragraph (a) of this section, each person who repairs a cargo tank or cargo tank motor vehicle must submit a copy of the repair facility's current National Board Certificate of Authorization for the use of the "R" stamp or ASME Certificate of Authorization for the use of the ASME "U" stamp. Any person who repairs MC-series cargo tanks which are not certified to the ASME Code must submit a copy of the National Board or ASME Certificate of Authorization to PHMSA before June 30, 1992.

[Amdt. 107–20, 54 FR 25003, June 12, 1989; 55 FR 37047, Sept. 7, 1990; 57 FR 365, Jan. 6, 1992; Amdt. 107–32, 59 FR 49131, Sept. 26, 1994; Amdt. 107–39, 61 FR 51337, Oct. 1, 1996; 63 FR 52846, Oct. 1, 1998; 68 FR 19273, Apr. 18, 2003

§ 107.504 Period of registration, updates, and record retention.

(a) Registration will be for a maximum of six years from the date of the original registration.

(b) Any correspondence with the Department must contain the registrant's name

and registration number.

(c) A registration must be renewed every six years or within thirty days of reissuance of an ASME or National Board Certification, whichever occurs first, by submitting an up-to-date registration statement containing the information prescribed by §107.503. Any person initially registered under the provisions of §107.502 and who is in good standing is eligible for renewal.

(d) A registrant shall provide written notification to the Department within thirty days of any of the following occurrences:

(1) Any change in the registration information submitted under §107.503;

(2) Replacement of the person responsible for compliance with the requirements in §107.503(a) (4). If this occurs, the registrant shall resubmit the required certification;

(3) Loss of ASME or National Board Certificate of Authorization; or

(4) A change in function; such as, from assembly to manufacture, an addition of a function, or a change to the types of inspections, tests or certifications of cargo tanks or cargo tank motor vehicles.

(e) Each registrant shall maintain a current copy of the registration information submitted to the Department and a current copy of the registration number identification received from the Department at the location identified in §107.503(a)(2) during such time the person is registered with the Department and for two years thereafter.

(f) The issuance of a registration number under this subpart is not an approval or endorsement by the Department of the qualifications of any person to perform the specified functions.

[Amdt. 107–20, 54 FR 25003, June 12, 1989; 55 FR 37048, Sept. 7, 1990, as amended by Amdt. 107–20, 56 FR 27875, June 17, 1991; Amdt. 107–37, 61 FR 18931, Apr. 29, 1996; 71 FR 54390, Sept. 14, 2006]

Title 49: Transportation

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS
Subpart A—Applicability, General Requirements, and North American Shipments

§ 171.8 Definitions and abbreviations.

Registered Inspector means a person registered with the Department in accordance with subpart F of part 107 of this chapter who has the knowledge and ability to determine whether a cargo tank conforms to the applicable DOT specification. A Registered Inspector meets the knowledge and ability requirements of this section by meeting any one of the following requirements:

(1) Has an engineering degree and one year of work experience relating to the testing and inspection of cargo tanks;

(2) Has an associate degree in engineering and two years of work experience relating to the testing and inspection of cargo tanks;

(3) Has a high school diploma (or General Equivalency Diploma) and three years of work experience relating to the testing and inspection of cargo tanks; or

(4) Has at least three years' experience performing the duties of a Registered Inspector prior to September 1, 1991.

3.3 The contractor shall provide to the City Purchasing Agent, prior to contract award and within seven working days after such written request is made, a letter from the companies that provided the required certification training to its employees. The letter must state therein how the contractor meets the requirements set forth in provision 3.2 above. Failure to provide the aforementioned information in the timeframe set forth herein may be just cause for rejection of the contractor's bid/offer.

4.0 Personnel/Supervision:

4.1 The Contractor shall provide and maintain on staff a sufficient number of personnel who are qualified and thoroughly trained in all phases of vehicle maintenance, repair services, techniques and safety.

4.2 The Contractor will provide its best skill and knowledge to the performance of work and shall diligently and efficiently supervise the performance of the same.

4.3 Contacts:
Questions concerning listed equipment may be referred to the Department Designee at (713) 374-2922.

5.0 Safety and Security:

5.1 The Contractor shall comply with all health, safety, and security regulations which may, from time to time, be issued by the Contract Administrator or the City's Department Director, or its designee.

5.2 Contractor will be held responsible for all damages to city vehicles/property due to negligence, incompetence and improper technique or installations while performing the services under this Contract.

6.0 Repair/Estimate Proposal:

6.1 The Contractor shall complete a Repair Estimate and forward it to the Public Works and Engineering Department Fleet Maintenance Outside Service Section Manager for approval before starting to work. The Department will forward the approved authorization back to the Contractor authorizing work to begin one day after receipt of approval documents from the City.

7.0 Warranty:

7.1 The Contractor warrants that all work performed under this Contract shall be performed in a good and workmanlike manner meeting the standards of quality prevailing in the United States for services for like kind. The Contract further warrants that all work performed under this Contractor shall be performed by trained and skilled persons having experience with vehicle maintenance and repair.

8.0 FLEET:

8.1 All vehicles were certified in 2006 to transport fuel; diesel and unleaded gasoline to various locations within the City.

PWE FUEL TANKER TRUCKS AND FUEL TRAILERS

Unit No.	Year	Make	Model	Tank Capacity Gallons	Tank Mfg.	VIN
131	1979	Ford	Fuel Truck	8,800	Not Applicable	U91TVEC5747
132	1979	Trail Mobil	Fuel Trailer	9,000/4 Cmpts.	Trail Mobil	V40749
631	1983	Ford	Fuel Truck	2,000	Elliott Mach. Wks	1FDXK74N8DVA18323
23639	1994	Chevrolet	Fuel Truck	500	Shop Built	1GBKC34F6RJ115388
23640	1994	Chevrolet	Fuel Truck	500	Shop Built	1GBKC34F5RJ115401
26385	1997	Ford	Fuel Truck	1,000	Oilmen's Tk. Tanks	1FDYF80E1VVA16659
27814	1998	International	Fuel Truck	650/120/75/25/25 Individual Tanks	Lube Equipment	1HTSEAAR2WH529265
27953	1997	Chevrolet	Fuel Truck	1,000/2 Cmpts.	Oilmen's Tk. Tanks	1GBP7H1JOVJ115493
35652	1967	Fruehauf	Fuel Trailer	5,000	Fruehauf	OMH961735
35653	1967	Fruehauf	Fuel Trailer	5,000	Fruehauf	918506
35654	1967	Fruehauf	Fuel Trailer	5,000	Fruehauf	7F8496
35655	1982	Mack	Fuel Truck	5,000	Kovatch	1M2B114C7DA002220
35656	1982	Mack	Fuel Truck	5,000	Kovatch	1M2B112C3DA002453
35657	1984	Mack	Fuel Truck	5,000	Kovatch	1M2B114CXEA002786
35671	1967	Fruehauf	Fuel Trailer	5,000	Fruehauf	UNH95118
35672	1967	Fruehauf	Fuel Trailer	5,000	Fruehauf	UNH951107
35673	1982	Mack	Fuel Truck	5,000	Kovatch	1M2B11CXDA002219
35674	1982	Mack	Fuel Truck	5,000	Kovatch	1M2B112C9DA002607
35675	1967	Fruehauf	Fuel Trailer	5,000	Fruehauf	OMG959917
37161	1990	Oshkosh	Fuel Truck	6,000	Rentec, Inc.	1OT2F3D01L1040486
37162	1990	Oshkosh	Fuel Truck	6,000	Rentec, Inc.	1OT2F3D07L1040802
37653	1991	Oshkosh	Fuel Truck	6,000	Rentec, Inc.	1OT2F3D02M1041597
37654	1989	Oshkosh	Fuel Truck	6,000	Rentec, Inc.	1OT2F3D00L1039216
37655	1989	Oshkosh	Fuel Truck	6,000	Rentec, Inc.	1OT2F3D05K1033748
37656	1989	Oshkosh	Fuel Truck	6,000	Rentec, Inc.	1OT2F3D06L1039253
	1982	Gorman Rupp	Fuel Pump	25	Gorman Rupp	767799
	1983	Gorman Rupp	Fuel Pump	25	Gorman Rupp	781690
	1984	Gorman Rupp	Fuel Pump	25	Gorman Rupp	781890

9.0 Vehicle Storage:

9.1 Vehicles must be stored in a secured storage area and must be locked and secured at all times when not being serviced by the Contractor.

10.0 ADDITIONS & DELETIONS:

10.1 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/equipment 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 therefore will then be the Contractor's normal and customary charges or rates for the equipment, locations and/or services classified in the fee schedule.

11.0 ESTIMATED QUANTITIES NOT GUARANTEED:

11.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of fuel tanker and trailer 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 C
EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

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

EXHIBIT D
DRUG POLICY COMPLIANCE AGREEMENT

I, Patrick F. Journagan as an owner or officer of
(Name) (Print/Type) (Title)

Adobe Equipment Houston LLC. (Contractor)
(Name of Company)

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

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).

2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.

3. Monitor and keep records of drug tests given and the results, and upon request from the City of Houston, provide confirmation of such testing and results.

4. Submit semi-annual Drug Policy Compliance Declarations.

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

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

12-5-08
Date

Contractor Name: Adobe Equipment Houston LLC

Signature: [signature]

Title: Operations Manager

EXHIBIT "E"
CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS IN PERFORMANCE OF A CITY CONTRACT

I, _____ _____ as an owner or officer of
(Name) (Print/Type) (Title)

_____ (Contractor) have authority to bind the Contractor wi
respect to its bid, and I hereby certify that Contractor has no employee safety impact positions as defined in §5.18 of Executi
Order No. 1-31 that will be involved in performing this City Contract. Contractor agrees and covenants that it shall immediately not
the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contrac

_____
Date

Contractor Name _____

N/A

Signature _____

Title _____

ATTACHMENT D

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

I, _____ _____ as an owner or officer of
(Name) (Print/Type) (Title)

_____ (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

N/A

Signature

Title

EXHIBIT F
DRUG POLICY COMPLIANCE DECLARATION

I Patrick F. Journagan Operations Manager as an owner or officer of
(Name) (Print/Type) (Title)

Adobe Equipment Houston LLC. (Contractor)
(Name of Company)

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

This reporting period covers the preceding six months from 6-1-08 to 11-30-08 20 08

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

PJ Initials Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order 1-31. Employees have been notified of such procedures.

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

PJ Initials Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of total employees on safety impact positions during this reporting period is 5

PJ Initial From 6-1-08 (start date) to 11-30-08 (end date) the following testing has occurred:

	Random	Reasonable Suspicion	Post Accident	Total
Number of Employees Tested	1	0	0	1
Number of Employees Positive	0	0	0	0
Percent Employees Positive	0%	0%	0%	0%

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

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

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

12-5-08
Date

Contractor Name: Adobe Equipment Houston LLC

Signature: [signature]

Title: Operations Manager

EXHIBIT G
FEES AND COSTS

BID ITEM	DESCRIPTION	UNIT	UNIT PRICE
	YEAR ONE		
1	Standard Labor Rate	HR	$60.00
2	De-Gas, Steam-Out Trailers	EA	$300.00
3	External Visual Inspections	EA	$100.00
4	Internal Visual Inspections	EA	$200.00
5	Internal Visual Inspections (additional compartment)	EA	$50.00
6	Leakage Test (one compartment)	EA	$240.00
7	Leakage Test (additional compartment)	EA	$50.00
8	Hydrostatic Pressure Test	EA	$300.00
9	Hydrostatic Pressure Test (additional compartment)	EA	$50.00
10	Remove & Re-install Upper Coupler	EA	$120.00
11	Thickness Test	EA	$180.00
12	Alternative Leak Test	EA	$180.00
13	FHWA Inspection	EA	$62.00
14	State Inspection	EA	$62.00
15	Parts and Materials (cost plus markup)		18% Mark-up

BID ITEM	DESCRIPTION	UNIT	UNIT PRICE
	YEAR TWO		
1	Standard Labor Rate	HR	$62.00
2	De-Gas, Steam-Out Trailers	EA	$300.00

3	External Visual Inspections	EA	$100.00
4	Internal Visual Inspections	EA	$200.00
5	Internal Visual Inspections (additional compartment)	EA	$50.00
6	Leakage Test (one compartment)	EA	$240.00
7	Leakage Test (additional compartment)	EA	$50.00
8	Hydrostatic Pressure Test	EA	$30000
9	Hydrostatic Pressure Test (additional compartment)	EA	$50.00
10	Remove & Re-install Upper Coupler	EA	$120.00
11	Thickness Test	EA	$180.00
12	Alternative Leak Test	EA	$180.00
13	FHWA Inspection	EA	$62.00
14	State Inspection	EA	$62.00
15	Parts and Materials (cost plus markup)		18% Mark-up

BID ITEM	DESCRIPTION	UNIT	UNIT PRICE
	YEAR THREE		
1	Standard Labor Rate	HR	$64.00
2	De-Gas, Steam-Out Trailers	EA	$300.00
3	External Visual Inspections	EA	$100.00
4	Internal Visual Inspections	EA	$200.00
5	Internal Visual Inspections (additional compartment)	EA	$50.00
6	Leakage Test (one compartment)	EA	$240.00
7	Leakage Test (additional compartment)	EA	$50.00
8	Hydrostatic Pressure Test	EA	$300.00
9	Hydrostatic Pressure Test (additional compartment)	EA	$50.00

BID ITEM	DESCRIPTION	UNIT	UNIT PRICE
	YEAR FIVE		
1	Standard Labor Rate	HR	$68.00
2	De-Gas, Steam-Out Trailers	EA	$300.00
3	External Visual Inspections	EA	$100.00
4	Internal Visual Inspections	EA	$200.00
5	Internal Visual Inspections (additional compartment)	EA	$50.00
6	Leakage Test (one compartment)	EA	$240.00
7	Leakage Test (additional compartment)	EA	$50.00
8	Hydrostatic Pressure Test	EA	$300.00
9	Hydrostatic Pressure Test (additional compartment)	EA	$50.00
10	Remove & Re-install Upper Coupler	EA	$120.00
11	Thickness Test	EA	$180.00
12	Alternative Leak Test	EA	$180.00
13	FHWA Inspection	EA	$62.00
14	State Inspection	EA	$62.00
15	Parts and Materials (cost plus markup)		18% Mark-up

EXHIBIT H
CITY'S CONTRACTORS PAY OR PLAY PROGRAM

CITY OF HOUSTON
STANDARD SPECIFICATION

AFFIRMATIVE ACTION AND CONTRACT COMPLIANCE
PROGRAM REQUIREMENTS

FORM POP 1

EFFECTIVE 7.1.07

City of Houston

Form POP-1A
7.1.07

Pay or Play Program
Acknowledgement Form

What this form does. This form acknowledges your awareness of the Pay or Play program. Your signature affirms that you will comply with the requirements of the program if you are the successful bidder/proposer, and ensure the same on behalf of subcontracts subject to the Pay or Play Program.

If you cannot make this assurance now, do not return this form.

For more information, contact the Contract Administrator.

Routing. Return this form with your bid or proposal.

I declare under penalty of perjury under the laws of the State of Texas that if awarded a contract, I will comply with the requirements of the Pay or Play Program.

Signature

12-5-08
Date

Patrick F. Journagan
Print Name

114297
City Vendor ID

Adobe Equipment Houston LLC.
Company Name

713-692-4471
Phone Number

pjournagan@adobequip.com
Email Address

EXHIBIT H
CITY'S CONTRACTORS PAY OR PLAY PROGRAM

CITY OF HOUSTON
STANDARD SPECIFICATION
FORM POP 2

AFFIRMATIVE ACTION AND CONTRACT COMPLIANCE
CERTIFICATION BY BIDDER
EFFECTIVE 7.1.07

CERTIFICATION OF AGREEMENT TO COMPLY WITH PAY OR PLAY PROGRAM

Contractor Name: Adobe Equipment Houston LLC. $ _____
(Contractor/Subcontractor) (Amount of Contract)

Contractor Address: 7402 Eastex Freeway, Houston TX 77093

Project No.: [GFS/CIP/AIP/File No.] _____

Project Name: [Legal Project Name] _____

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534, Contractor agrees to abide by the terms of this Program. This certification is required of all contractors for contracts subject to the program. You must agree EITHER to PAY or to PLAY for each covered employee, including those of subcontractors subject to the program.

[✓] Yes [ ] No Contractor agrees to Pay $1.00 per hour for work performed by covered employees, including covered subcontractors' employees, under the contract with the City.

[ ] Yes [✓] No Contractor agrees to offer health benefits to each covered employee, including covered subcontractors' employees that meet or exceed the following criteria:
(1) the employer will contribute no less than $150 per employee per month toward the total premium cost; and
(2) the employee contribution, if any amount, will be no greater than 50% of the total premium cost.

[✓] Yes [ ] No Contractor agrees to pay of behalf of some covered employees and play on behalf of other covered employees, in accordance with program requirements, including subcontractors' employees, if applicable.

[✓] Yes [ ] No Contractor will comply with all provisions of the Pay or Play Program and will furnish all information and reports requested to determine compliance with program provisions.

[ ] Yes [ ] No For Prime Contractors Only: Contractor will file compliance reports with the City, which will include activity for subcontractors subject to the program, in the form and to the extent requested by the administering department or the Affirmative Action and Contract Compliance Office. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

I hereby certify that the above information is true and correct.

Patrick F. Journagan 12-5-09
CONTRACTOR (Signature) DATE

Patrick F. Journagan
NAME AND TITLE (Print or type)