

THE STATE OF TEXAS

BID # L23584

COUNTY OF HARRIS

ORDINANCE # 2010-654

CONTRACT # 4600010465

I. PARTIES

1.0 ADDRESS:

THIS AGREEMENT FOR TOWING SERVICES FOR VEHICLES AND EQUIPMENT ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a Texas Home-Rule City and **RBEX, INC., d/b/a APPLE TOWING CO.** ("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

RBEX, INC., d/b/a APPLE TOWING CO.

2030 Holmes Rd.
Houston, Texas 77045
mscully@appletowing.com
Phone: 713-383-6200
Fax: 713-383-9038

The Parties agree as follows:

2.0 TABLE OF CONTENTS:

2.1 This Agreement consists of the following sections:

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- H. FEES AND COSTS
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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:

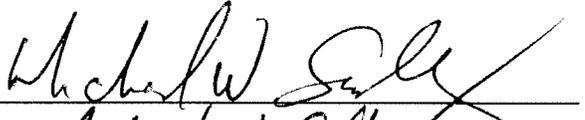
6.1 The Parties have executed this Agreement in multiple copies, each of which is an original.

ATTEST/SEAL (if a corporation):

RBEX, INC., d/b/a APPLE TOWING CO.

WITNESS (if not a corporation):

By: 
Name: Kevin C Scott
Title: Gen Mgr.

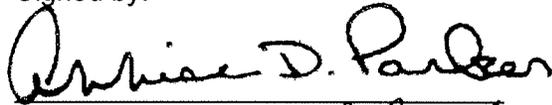
By: 
Name: Michael W Sully
Title: President
Federal Tax ID Number: 62-1683671

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

Signed by:

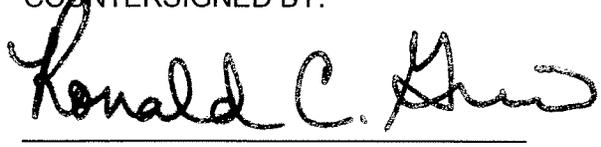

City Secretary


Mayor Matthew D. Appel

APPROVED:

COUNTERSIGNED BY:


City Purchasing Agent


City Controller Ch B. Ann

DATE COUNTERSIGNED:

8-27-10

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 July 20, 2010


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 labor, material, equipment, transportation and supervision necessary to perform the services described in Exhibit "B".

2.0 INDEMNITY AND RELEASE:

2.1 RELEASE

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.

2.2 INDEMNIFICATION:

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:

- 2.2.1 PRIME CONTRACTOR/SUPPLIERS AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 2.1-2.3, "PRIME CONTRACTOR/SUPPLIER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- 2.2.2 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER PRIME CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT; AND
- 2.2.3 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER PRIME CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT.

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

2.3 INDEMNIFICATION:

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

3.0 INDEMNIFICATION PROCEDURES:

3.1 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:

3.1.1 a description of the indemnification event in reasonable detail,

3.1.2 the basis on which indemnification may be due, and

3.1.3 the anticipated amount of the indemnified loss.

3.2 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.

3.3 Defense of Claims

3.3.1 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.

3.3.2 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.

4.0 INSURANCE:

- 4.1 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 coverages in the following amounts:
 - 4.1.1 Commercial General Liability insurance including Contractual Liability insurance:
\$500,000 per occurrence; \$1,000,000 aggregate
 - 4.1.2 Workers' Compensation including Broad Form All States endorsement:
Statutory amount
 - 4.1.3 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.

- 4.1.4 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)

- 4.2 All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, Contractor shall give 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:
 - 4.2.1 immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
 - 4.2.2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

5.0 WARRANTIES:

- 5.1 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.
- 5.2 With respect to any parts and goods furnished by it, Contractor warrants:
 - 5.2.1 that all items are free of defects in title, material, and workmanship,
 - 5.2.2 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,
 - 5.2.3 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

5.2.4 that no item or its use infringes any patent, copyright, or proprietary right.

6.0 LICENSES AND PERMITS:

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

7.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE:

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

8.0 MWBE COMPLIANCE:

8.1 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 14% 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.

8.2 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.

9.0 DRUG ABUSE DETECTION AND DETERRENCE:

9.1 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.

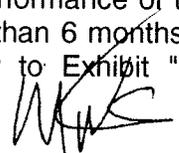
9.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

9.2.1 a copy of its drug-free workplace policy,

9.2.2 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,

9.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F."

9.3 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.

- 9.4 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.
- 9.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

10.0 ENVIRONMENTAL LAWS:

- 10.1 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.
- 10.2 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.

11.0 CONTRACTOR'S PERFORMANCE:

- 11.1 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.

12.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS:

- 12.1 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.
- 12.2 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.
- 12.3 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.

13.0 CONTRACTOR PAY OR PLAY PROGRAM:

- 13.1 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. Exhibit "I".
- 13.2 The Pay or Play Program for various departments will be administered by the City of Houston Affirmative Action Division's designee and for a Department specific contract; the Department's designated contract administrator will administer the Pay or Play Program.

III. DUTIES OF CITY

1.0 PAYMENT TERMS:

- 1.1 The City shall pay and Contractor shall accept fees at the unit prices 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.
- 1.2 Any quantities of services or Deliverables shown in any part of this contract or its exhibits are estimated only and are not any guarantee that the City will not purchase more or less of those services or Deliverables. The City will pay only for the services or Deliverables actually ordered and only at the unit prices set out.

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 **\$521,953.00** 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 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 of the City Department elects not to renew this Agreement, the City Purchasing shall notify Contractor in writing of non-renewal at least 30 days before the expiration of the then-current term.

4.0 TIME EXTENSIONS:

- 4.1 If the 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 to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

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 therefor.

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.

"Contractor Administrator" means the representative of the Department who is responsible for the administration for the Contract.

"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 WORK/SPECIFICATIONS
FOR
TOWING SERVICES FOR VEHICLES & EQUIPMENT

1.0 SCOPE OF SERVICES

- 1.1 The Contractor shall furnish all supervision, labor, parts, materials, equipment, supplies, facilities and transportation necessary to provide for towing services for vehicles and equipment for the City of Houston (herein after referred to as the "City"). The Contractor awarded this contract shall have the experience and technical ability to perform all work specified herein.

2.0 GENERAL REQUIREMENTS

- 2.1 Contractor shall provide light-duty, medium-duty, and heavy-duty towing services, tire changing and battery charging/starting services. Services apply to disabled City-owned vehicles or equipment and privately-owned vehicles in police custody being towed to a police storage lot/facility.

2.1.1 Not all vehicles may require towing. Occasionally, roadside assistance may suffice as in the case of light duty passenger cars which only require a tire change or battery charge.

- 2.2 Contractor shall provide all tools, supplies, fuel, transportation, equipment, labor, training and supervision necessary for light-duty, medium-duty, and heavy-duty towing and starting services.

- 2.3 Contractor shall maintain at least fourteen (14) approved wreckers and two (2) roll-back trucks.

- 2.4 Light-duty, medium-duty, and heavy-duty wreckers shall be available twenty-four (24) hours per day, seven (7) days a week and fully operational with all the required equipment in good working order.

2.5 Approved Light-Duty Wrecker

2.5.1 Contractor shall provide an approved light-duty tow truck with the capacity to tow a vehicle with a combined gross vehicle weight of 10,000 pounds or less equipped with wheel lifts, hitches, dollies, chains and cables and any other equipment necessary to tow any type of passenger car, farm or construction-type tractor or light-duty truck meeting the gross vehicle weight requirements. An approved light-duty wrecker shall be equipped to lift and carry any of the above-mentioned vehicles without bending or scratching or otherwise damaging the vehicle or equipment. A properly equipped rollback type truck is an approved light-duty wrecker.

2.5.1.1 If the Contractor uses a medium-duty wrecker to tow light-duty vehicles or equipment, the City will pay the service rate for a light-duty tow. In the event of damage to the vehicle or equipment, the Contractor shall be liable.

2.6 Approved Medium-Duty Wrecker

2.6.1 Contractor shall provide an approved medium-duty tow truck with the capacity to

tow a vehicle with a combined gross vehicle weight of 10,001 to 25,999 pounds or less equipped with wheel lifts, hitches, dollies, chains and cables, and any other equipment necessary to tow any type of vehicle, tractor or equipment. An approved medium-duty wrecker shall be equipped to lift and carry any of the above-mentioned vehicles without bending or scratching or otherwise damaging the vehicle or equipment: A properly equipped roll-back type truck is an approved medium-duty wrecker.

2.6.1.1 If the Contractor uses a heavy-duty wrecker to tow medium-duty vehicles or equipment, the City will pay the service rate for a medium-duty tow. In the event of damage to the vehicle or equipment, the Contractor shall be liable.

2.7 Approved Heavy-Duty Wrecker

2.7.1 Contractor shall provide an approved heavy-duty tow truck with the capacity to tow a vehicle with a combined gross vehicle weight of 26,000 pounds or heavier. An approved heavy-duty wrecker shall be properly equipped to tow or start any heavy truck including, but not limited to, garbage trucks and fire trucks. An approved heavy-duty wrecker shall be equipped and capable of lifting the above-mentioned vehicles without bending or scratching or otherwise damaging the vehicle or equipment. A properly equipped roll-back type truck is an approved heavy-duty wrecker.

2.7.1.1 If the contractor uses a medium-duty wrecker to tow heavy-duty vehicles or equipment, the City will pay the service rate for a medium-duty tow. In the event of damage to the vehicle or equipment, the Contractor shall be liable.

2.8 Required Wrecker Equipment

2.8.1 Wrecker shall have at least one (1) fire extinguisher that is properly filled and readily accessible. Fire extinguisher must meet or exceed the requirements of the National Fire Protection Handbook (current edition) for a 10 BC Fire Extinguisher. The fire extinguisher must be labeled by a national testing laboratory.

2.8.2 Each wrecker shall have at least three (3) flares that can be seen at a distance of six hundred (600) feet.

2.8.3 Each wrecker shall have at least five (5) gallons of dry sand or other absorbent as effective in absorbing liquid.

2.8.4 Each wrecker shall have one (1) set of jumper cables, one (2) four-way lug wrenches (one metric and one SAE), and a mobile two-way radio system or cellular telephone.

2.9 Additional Types of Wreckers and Equipment

2.9.1 Contractor may use a Roll-Back truck to tow vehicles or equipment. The vehicles or equipment shall be secured with no overhang.

2.9.1.1 A Roll-back truck is defined as a heavy truck equipped with a tilt bed and winch.

2.9.2 Contractor may use a Low-Boy truck and trailer to tow vehicles or equipment.

2.9.2.1 A Low-Boy truck and trailer is defined as a truck and trailer combination designed for transporting vehicles or equipment.

2.9.3 Contractor may use an Under-Reach to lift vehicles or equipment.

2.9.3.1 An Under-Reach is defined as a device capable of extending under the vehicle to be towed.

2.9.4 Contractor may use a Wheel Lift to transport vehicles or equipment.

2.9.4.1 A Wheel Lift is defined as a device used to safely lift the vehicle by the wheels when bumpers cannot be used.

2.10 Personnel

2.10.1 Contractor shall provide trained and skilled personnel with experience in performing wrecker services.

2.10.2 Drivers shall be employees of the Contractor.

2.10.3 Drivers shall have a current Commercial Drivers License (CDL) issued by the State of Texas.

2.10.4 Personnel shall wear identification badges or distinctive uniforms furnished by the Contractor. Upon arrival at the dispatched location or City premises, personnel shall identify themselves to a City representative on site.

2.10.5 Contractor shall designate one (1) employee as Contract Coordinator. The Coordinator shall address contract-related issues and resolve disputes.

2.10.6 Personnel providing towing services shall be able to speak, read, write, and understand the English language.

2.11 Dispatch and Services

2.11.1 Contractor shall tow vehicles or equipment only at the request of an authorized City representative (dispatcher).

2.11.2 Contractor shall maintain one or more dispatchers on duty twenty-four (24) hours a day, seven (7) days a week to respond to telephone requests for service and to transmit information to the authorized City representative (dispatcher). A mechanical or electronic answering device is not acceptable.

2.11.3 Contractor shall maintain and operate a mobile two-way radio system or cellular telephone equipment to facilitate continuous communications with all on-duty wreckers. A paging system is not considered an adequate communication system.

2.11.4 Contractor shall respond to service request by directing an approved wrecker to the dispatched location designated by authorized City representative (dispatcher).

2.11.4.1 Locations may be specific job sites, City facilities, streets, roadways or any place where a vehicle or equipment has become disabled.

2.11.4.2 Contractor may decline to provide service, without any penalty, if the vehicle or equipment is located more than fifty (50) feet (measured horizontally) off of hard pavement, or is more than twelve (12) feet (measured vertically) below the pavement elevation.

2.11.5 Contractor shall perform work while the operator of the vehicle or equipment or designated City representative is present. If the operator or designated

City representative is not present, the Contractor shall contact the authorized City representative (dispatcher) to get instructions on how to proceed.

2.11.6 Contractor shall ensure that the vehicle or equipment is properly secured and free from danger or harm during transportation.

2.11.7 Contractor shall make accommodations for at least one (1) City representative in the cab of the wrecker to accompany the vehicle or equipment during the tow.

2.11.8 Contractor shall transport the vehicle or equipment to the location designated by the authorized City representative (dispatcher) and provide a copy of the Delivery Ticket or Service Orders to the City representative that receives the vehicle or equipment.

2.11.9 Delivery Ticket and/or Service Orders shall include the information as stated below in 2.25.

2.12 Levels of Service

2.12.1 Contractor shall perform all services diligently and without unnecessary interruptions or delay.

2.12.2 Service shall meet or exceed the technical service specifications and requirements specified by the original equipment manufacturer for the vehicle or equipment being towed. This provision is required to prevent damage to the vehicle drivetrain and other mechanical systems during towing.

2.12.3 Standard Response Service

2.12.3.1 Standard Response Time shall be sixty (60) minutes from the time the service call request is received by the Contractor. If Contractor fails to provide service within sixty (60) minutes, Contractor shall bill at 75% of the contract price, as specified in the Fee Schedule. If end-user (department) dispatching logs indicate that ten (10) or more service requests were dispatched to the Contractor during a sixty (60) minute period, this provision shall not apply.

2.12.4 Non-Priority Response Service

2.12.4.1 Non-Priority Response Time shall be four (4) hours from the time the service call request is received by the Contractor. The authorized City representative (dispatcher) may extend the response time to eight (8) hours. Non-priority towing services will normally be from a City facility to a place where City representatives are on duty, such as the City Vehicle Auctioneer's Yard.

2.13 Transportation of Vehicles

2.13.1 Vehicles or equipment towed by the Contractor shall be transported to the storage facility designated by the authorized City representative (dispatcher).

2.13.2 The Police Department may request towing services for privately-owned vehicles in its custody. Vehicles will be towed and transported to either a police storage lot or facility.

2.14 Storage Facility

2.14.1 Contractor shall transport vehicles or equipment to a secured garage, parking lot,

or facility that is privately-owned and operated by a business entity or owned by the City for storing vehicles. The secured location must be bonded, have 24 hour monitoring, and provide limited access to personnel, including Houston Police Department personnel. The public shall not have access to the secured location. The storage facility may be covered or uncovered.

2.15 Use of Other Wrecker Companies

2.15.1 Other wreckers shall meet all the requirements of an approved wrecker.

2.16 Dry Run

2.16.1 If the vehicle or equipment is gone on arrival of the Contractor and it is confirmed that the Contractor arrived in the time required by the contract and no notice of cancellation was given prior to arrival, Contractor may charge for a "Dry Run Service Call". Dry run charges will be billed separately and must be approved by the Director of the department that requested towing service.

2.17 Cancelled Service Call

2.17.1 A service call may be cancelled at any time. If an approved wrecker is dispatched and arrives at the designated location prior to notice of cancellation, the Contractor may charge for a "Road Service Call".

2.17.2 The wrecker may be dismissed by a police officer at the scene or the authorized City representative (dispatcher) only.

2.18 Mileage

2.18.1 Contractor may charge a mileage rate for pick-up of vehicles outside Houston city limits. The mileage rate applies to loaded miles, which is the total number of miles driven from outside of Houston city limits to Houston city limits line.

2.18.1.1 Formula: Flat rate per service call + (number of loaded miles x rate per mile)

2.19 Damaged Property

2.19.1 If City property is damaged as a result of carelessness or neglect by the Contractor or its agents, the Contractor shall be responsible for all repair costs.

2.19.2 The City shall not be liable for any loss, breakage, or damage to tools, materials, supplies, vehicles or equipment owned by the Contractor or its agents.

2.19.3 Loss, theft, or damage to any vehicle while in the Contractor's custody shall be reported immediately to the Department's Representative. Loss and/or damage to the vehicle shall be replaced (with that of like or equal value) or repaired, as instructed by the Department's Representative, within 20 days of notification. The Contractor will not be responsible for vehicle damage that occurs due to natural disasters.

2.20 Service Orders or Delivery Tickets

2.20.1 Service Orders or Delivery Tickets must contain, at a minimum, the following:

2.20.1.1 Date of service;

2.20.1.2 Name of Department/Division that requested service;

- 2.20.1.3 Name of authorized City representative (dispatcher) who requested services;
- 2.20.1.4 Dispatch time;
- 2.20.1.5 Dispatch number (Issued by the City);
- 2.20.1.6 Type of vehicle or equipment;
- 2.20.1.7 Shop number or VIN of vehicles not owned by the City;
- 2.20.1.8 Dispatched location of vehicle or equipment (address);
- 2.20.1.9 Arrival time at dispatched location;
- 2.20.1.10 Departure time from dispatched location;
- 2.20.1.11 Type of service provided;
- 2.20.1.12 Quantity of each service provided;
- 2.20.1.13 Delivery location;
- 2.20.1.14 Arrival time at delivery location;
- 2.20.1.15 Departure time from delivery location; and
- 2.20.1.16 Signature and employee number of the authorized City representative who approved the completed towing service.

2.21 Invoices

2.21.1 Contractor shall, unless otherwise directed by the Director, submit invoices as follows:

2.21.1.1 An original and two (2) copies shall be submitted to the remittance addresses as specified below.

2.21.1.2 Each invoice shall contain:

2.21.1.2.1 Contract Number;

2.21.1.2.2 Contract Item Number, Description, Quantity, Unit Price, and Total Amount;

2.21.1.2.3 Name of department for which services were performed;

2.21.1.2.4 Total Amount of Invoice; and

2.21.1.2.5 Three copies of the Delivery Ticket or Service Order reflecting the information required in 2.20.

2.21.1.3 Contractor shall mail invoices to applicable department:

HFD Invoicing Address:

Houston Fire Department
Attn: Accounts Payable
PO Box 3625

PW&E Invoicing Address:

Public Works & Engineering
Attn: Accounts Payable -
Mr. Craig Foster

Houston, TX 77253

PO Box 61449

Houston, TX 77208-1449

Solid Waste Department
Attention: Randy Tims
PO Box 1562
Houston, TX 77251

Houston Police Department
Attn: Accounts Payable Dept
1200 Travis, 17th Floor
Houston, Texas 77002

Parks & Recreation Dept
2999 S. Wayside, Room 178
Houston, Texas 77023
Attn: Accounts Payable - Gina Singleton

2.22 Final Inspection

2.22.1 The Department's Representative will inspect Contractor's facility and equipment for compliance with the items listed within this Scope of Services prior to the awarding of the contract.

2.23 Software Requirements

2.23.1 The Contractor will be required to use internet based software for the purpose of generating an electronic tow ticket order.

2.23.2 The Contractor shall make the software accessible to the various departments' Dispatch groups and generate a confirmation that the contractor has received the tow order.

2.23.3 PW&E, and, possibly, other departments, will make available to the Contractor an electronic vehicle list file (Excel Format) to update this software on a monthly basis to enable the PW&E Dispatch Group to simply input the unit number and automatically populate the other key fields as listed; Department number, Fund number, Organization number, Unit number, Year, Make, Model, License number.

2.23.4 The information specified in section 2.23.3 above shall also be used in the billing process. The Contractor must submit an electronic statement (Excel Format) using the following key fields; Name of caller, Caller employee number, Origination, Caller phone number, Department number, Fund number, Organization number, Unit number, Year, Make, Model, License number, Pickup location, Tow to location, Comments, FMD Authorization number, Dispatch time to vendor, Work order, Pickup time at location. A copy of the signed tow ticket for payment must be submitted with the statement.

2.23.5 The Contractor must submit an electronic statement (Excel Format) using the key fields identified in 2.23.3 above along with a copy of the signed tow ticket for payment).

2.24 Light Mechanic Work

2.24.1 Contractor shall provide light mechanic work, such as removal of drive shafts, axles or other types of attachments. Work shall be performed only when necessary to make the vehicle or equipment ready for towing.

2.25 Waiting Time

2.25.1 In the event of an emergency situation (as defined by the Director of the department), the Contractor may be required to wait for a period time at the

dispatched location. In such case, the Contractor may charge for "Waiting Time". Waiting Time charges must be approved by the Director of the department that requested towing service.

3.0 ADDITIONS & DELETIONS

3.1 The City, by written notice from the City Purchasing Agent to the Contractor, at any time during the term of this contract, may add or delete like or similar equipment, supplies, locations and/or services to the list of equipment, supplies, locations, and/or services to be provided. Any such written notice shall take effect on the date stated in the notice from the City. Similar equipment, supplies, services, or locations added to the contract shall be in accordance with the contract specification/scope of services, and the charges or rates for items added shall be the same as specified in the fee schedule. In the event that the additional equipment, supplies, locations and/or services are not identical to the item(s) already under contract, the charges therefore will then be the Contractor's normal and customary charges or rates for the equipment, supplies, locations and/or services classified in the fee schedule.

4.0 ESTIMATED QUANTITIES NOT GUARANTEED

4.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of towing 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.

5.0 WARRANTY OF SERVICES

5.1 *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.

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

5.2 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.

5.3 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.

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

6.0 Contract Compliance:

6.1 The various departments reserve the right to monitor this contract for compliance to ensure

legal obligations are fulfilled and acceptable levels of service are provided.

6.2 Monitoring may take the form of, but not necessarily be limited to:

6.2.1 Inspection, testing, and/or sampling of goods delivered or to be delivered

6.2.2 Review of deliveries received for accuracy and timeliness

6.2.3 Review of Supplier's invoices for accuracy

6.2.4 Review of certifications and/or licenses

6.2.5 Site visits

6.3 The primary responsibility for monitoring compliance rests with the Contract Compliance Section, Management Support Branch of the Office of the Director, Department of Public Works & Engineering.

7.0 Pre-Performance Meeting:

Subsequent to contract approval/execution, the contractors shall be required to attend a performance conformance. The primary user department will host the pre-performance conference. The purpose of the pre-performance conference is for the Contractor to introduce his/her project manager to City staff and for City staff to introduce the contract end-users, contract compliance and accounts payable representatives.

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"
MWBE REQUIREMENTS

ATTACHMENT "A"
CITY OF HOUSTON
SCHEDULE OF M/WBE PARTICIPATION

DATE OF REPORT: 8/9/2010

BID No.: S37-L23584

FORMAL BID TITLE: TOWING AND STORAGE FOR SEIZURE VEHICLES

NAME OF MINORITY/ WOMEN SUBCONTRACTOR	AFFIRMATIVE ACTION DIVISION CERTIFICATION No.	STREET ADDRESS AND CITY, STATE, ZIP CODE	TELEPHONE No.	SCOPE OF WORK	AGREE PRICE
OIL DISTRIBUTION	07-08-6587	10516 KIPPWAY DR. #D HOUSTON, TEXAS 77099		SUPPLIER	\$190,313.55
PETER ENTERPRISE INC	05-05-2721			SUPPLIER	\$190,313.55
TOTAL.....					\$ 380,627.10
M/WBE PARTICIPATION AMOUNT.....					\$ 14 %
TOTAL BID AMOUNT.....					\$ 2,718,765.00

ATTACHMENT "A" (CONTINUED)

IF YOU HAVE USED YOUR BEST EFFORTS TO CARRY OUT THE CITY'S MWBE POLICY BY SEEKING SUBCONTRACTS AND SUPPLY AGREEMENTS WITH MINORITY AND WOMEN BUSINESS ENTERPRISES, YET FAILED TO MEET THE STATED PERCENTAGE GOAL OF THIS BID DOCUMENT, LIST BELOW YOUR GOOD FAITH EFFORTS FOR COMPLIANCE (DEFINITION OF REQUIREMENTS CAN BE OBTAINED THROUGH AFFIRMATIVE ACTION AT (713) 837-9000).

THE UNDERSIGNED WILL ENTER INTO A FORMAL AGREEMENT WITH THE MINORITY AND/OR WOMEN SUBCONTRACTORS AND SUPPLIERS LISTED IN THIS SCHEDULE CONDITIONED UPON AWARD OF A CONTRACT FROM THE CITY.

NOTE:

ALL FIRMS LISTED ABOVE MUST BE CERTIFIED (OR ELIGIBLE FOR CERTIFICATION) BY THE AFFIRMATIVE ACTION THIS SCHEDULE OF MWBE PARTICIPATION SHOULD BE RETURNED, IN DUPLICATE, WITH THE BID FORM.

DIVISION.

BIDDER COMPANY NAME: RBEX INC DBA APPLE TOWING CO



SIGNATURE OF AUTHORIZED OFFICER OR AGENT OF BIDDER

NAME (TYPE OF PRINT) MICHAEL W. SCULLY

TITLE: PRESIDENT

ATTACHMENT "B"
LETTER OF INTENT

THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT.

TO: **City of Houston**
City Purchasing Agent

MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) AND SUPPLIER

LETTER OF INTENT

Contract Bid Number: S37-L23584

Bid Title: TOWING AND STORAGE OF CITY OWNED VEHICLES

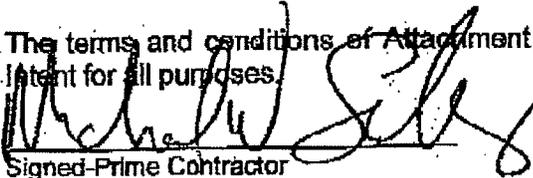
Bid Amount: \$ 2,718,765.00

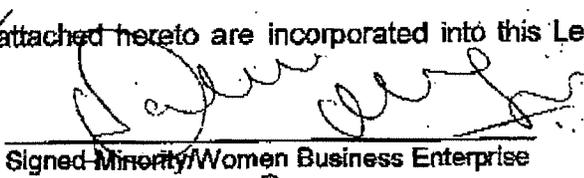
M/WBE Participation Amount: \$ 190,313.55

M/WBE GOAL 14. %

1. **OIL PRODUCTS DISTRIBUTION** agrees to perform work/supply goods and/or services in connection with the above-named contract and **RBEX INC. DBA APPLE TOWING CO** as:
Name of Minority/Women Business Enterprise **Name of Prime Contractor**
(a) _____ An Individual
(b) _____ A Partnership
(c) XX _____ A Corporation
(d) _____ A Joint Venture
2. **OIL PRODUCTS DISTRIBUTION** status is confirmed by M/WBE Directory made available through the City of Houston Affirmative Action Division. Certificate No.: 07-08-8587.
Name of Minority/Women Business Enterprise
3. **RBEX INC DBA APPLE TOWING CO** and **OIL PRODUCTS DISTRIBUTION** intend to work on the above-named contract in accordance with the M/WBE Participation Section of the City of Houston Contract Bid Provision.
Name of Prime Contractor **Minority/Women Business Enterprise**

The terms and conditions of Attachment "C" attached hereto are incorporated into this Letter of Intent for all purposes.


Signed-Prime Contractor


Signed-Minority/Women Business Enterprise

PRESIDENT
Title
Date 8/9/10

Vice President
Title
Date 08/09/10



ATTACHMENT "C"
CITY OF HOUSTON CERTIFIED M/WBE SUBCONTRACT TERMS

Contractor shall insure that all subcontracts with M/WBE subcontractors and suppliers are clearly labeled "THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT" and contain the following terms:

1. _____ (M/WBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director")
2. _____ (M/WBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform 1) audits of the books and records of the subcontractor, and 2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
3. Within five (5) business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
4. As conclude by the parties to this subcontract, and as evidenced by their signatures hereto, any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 – "the Act"). Arbitration shall be conducted according to the following procedures:
 - a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
 - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with American Arbitration Association on file in the Office of the City's Affirmative Action Division.
 - c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
 - d. In the event the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

These provisions apply to goal-oriented contracts. A goal oriented contract means any contract for the supply of goods or non-personal or non-professional services in excess of \$100,000.00 for which competitive bids are required by law; not within the scope of the MBE/WBE program of the United States Environmental Protection Agency on the United States Department of Transportation; and ;, which the City Purchasing Agent has determined to have significant M/WBE subcontracting potential in fields which there are an adequate number on known MBEs and/or WBE's to compete for City contract.

The M/WBE policy of the City of Houston will be discussed during the pre-bid. For information assistance, and/or to receive a copy of the City's Affirmative action policy and/or ordinance contact the Affirmative Action Division at (713) 837-9000, 611 Walker, 20th Floor, Houston, Texas.

EXHIBIT "E"
DRUG POLICY COMPLIANCE AGREEMENT

I, Michael W Sully President as an owner or officer of
(Name) (Print/Type) (Title)
RBex Inc DBA Apple Towing Co. (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.

Date 6/20/10

Contractor Name Michael W Sully

Signature Michael W Sully

Title President

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

I, Michael W. Saly President
(Name)(Print/Type) (Title)

as an owner or officer of Rex Inc. DBA Apple Towing Co. (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.

6/20/10
Date

Michael W Saly
Contractor Name

Michael W Saly
Signature

President
Title

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

I, Michael W Saly
(NAME) (PRINT/TYPE)

as an owner or officer of Rex Inc. DBA Apple Towing Co. (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.

6/20/10
DATE

Michael W Saly
CONTRACTOR NAME

Michael W Saly
SIGNATURE

President
TITLE

**EXHIBIT "G"
DRUG POLICY COMPLIANCE DECLARATION**

I, Michael W. Sally President as an owner or officer of
(Name) (Print/Type) (Title)
Rbx Inc DBA Apple Towing Co. (Contractor or Vendor)
(Name of Company)

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

This reporting period covers the preceding 6 months from 1/01/10 to 6/30/10 20 10.

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

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

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

MS
Initials Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is 40.

MS
Initials From 1/01/10 to 6-30-10 the following test has occurred
(Start date) (End date)

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested	11	0	0	11
Number Employees Positive	0	0	0	0
Percent Employees Positive	0%	0%	0%	0%

MS
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.

MS
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.

6/20/10
(Date)

Michael W. Sally
(Typed or Printed Name)
Michael W. Sally
(Signature)
President
(Title)

**EXHIBIT "H"
FEES AND COSTS**

BID ITEM	DESCRIPTION	UNIT	Unit Price
YEAR ONE (1)			
1	Road Service Call - Standard Response Service for Light-Duty Wrecker	EA	\$50.00
2	Road Service Call - Non-Priority Response Service for Light-Duty Wrecker	EA	\$50.00
3	Road Service Call - Standard Response Service for Medium-Duty Wrecker	EA	\$65.00
4	Road Service Call - Standard Response Service for Medium-Duty Wrecker with Wheel Lift Service	EA	\$88.00
5	Road Service Call - Standard Response Service for Medium-Duty Wrecker with Under-Reach Service	EA	\$88.00
6	Road Service Call - Non-Priority Response Service for Medium-Duty Wrecker	EA	\$55.00
7	Road Service Call - Non-Priority Response Service for Medium-Duty Wrecker with Wheel Lift Service	EA	\$88.00
8	Road Service Call - Non-Priority Response Service for Medium-Duty Wrecker with Under Reach Service	EA	\$88.00
9	Road Service Call - Standard Response Service for Heavy-Duty Wrecker	EA	\$145.00
10	Road Service Call - Standard Response Service for Heavy-Duty Wrecker with Under-Reach Service	EA	\$145.00
11	Road Service Call - Standard Response Service for Heavy-Duty Wrecker for Vehicles/Equipment with a gross weight of 60,000 pounds	EA	\$250.00
12	Road Service Call - Non-Priority Response Service for Heavy-Duty Wrecker	EA	\$85.00
13	Road Service Call - Non-Priority Response Service for Heavy-Duty Wrecker with Under Reach Service	EA	\$145.00
14	Road Service Call - Non-priority Response Service for Heavy-Duty Wrecker for Vehicles/Equipment with a gross weight of 60,000 pounds	EA	\$250.00
15	Road Service Call - Standard Response Service for Roll-back Truck for Light-Duty Vehicles or Equipment	EA	\$50.00
16	Road Service Call - Standard Response Service for Roll-back Truck for Medium-Duty Vehicles or Equipment	EA	\$115.00
17	Road Service Call - Standard Response Service for Roll-back Truck for Heavy-Duty Vehicles or Equipment	EA	\$145.00
18	Road Service Call - Non-Priority Response Service for Roll-back Truck for Light-Duty Vehicles or Equipment	EA	\$50.00
19	Road Service Call - Non-Priority Response Service for Roll-back Truck for Medium-Duty Vehicles or Equipment	EA	\$115.00
20	Road Service Call - Non-priority Response Service for Roll-back Truck for Heavy-Duty Vehicles or Equipment	EA	\$145.00
21	Road Service Call - Standard Response Service for Low-Boy Truck and Trailer for Medium-Duty Vehicles or Equipment	EA	\$145.00
22	Road Service Call - Standard Response Service for Low-Boy Truck and Trailer for Heavy-Duty Vehicles or Equipment	EA	\$145.00
23	Road Service Call - Non-priority Response Service for Low-Boy Truck and Trailer for Medium-Duty Vehicles or Equipment	EA	\$145.00
24	Road Service Call - Non-priority Response Service for Low-Boy Truck and Trailer for Heavy-Duty Vehicles or Equipment	EA	\$145.00
25	Light Mechanic Work (20 minute increments)	EA	\$20.00
26	Waiting Time for Emergency Situations	EA	\$20.00
27	Dry-Run Service Call for Light-Duty Wrecker	EA	\$40.00
28	Dry-Run Service Call for Medium-Duty Wrecker	EA	\$55.00
29	10020915; TOWING, VEHICLE TO VENDOR SHOP FLAT RATE; Dry-Run Service Call for Heavy-Duty Wrecker	EA	\$65.00
30	Mileage	MI	\$2.00
31	Vehicle/Equipment Storage for vehicles/equipment with a gross weight of 25,999 pounds or less- Secured and Uncovered (1 Vehicles/Equipment)	D	\$4.50
32	Vehicle/Equipment Storage for vehicles/equipment with a gross weight of 25,999 pounds or less- Secured and Uncovered (1 Vehicles/Equipment)	D	\$3.50
33	Vehicle/Equipment Storage for vehicles with a gross weight of 26,000 pounds or more - Secured and Covered (1 Vehicles/Equipment)	D	\$10.00
34	Vehicle/Equipment Storage for vehicles with a gross weight of 26,000 pounds or more - Secured and Uncovered (1 Vehicles/Equipment)	D	\$6.00
35	Road Service Call to change a flat tire or recharge/jump start a battery for a light duty vehicle at a specified location	EA	\$50.00
36	Outside storage / no maintenance	EA	\$3.00

YEAR TWO (2)			
BID ITEM	DESCRIPTION	UNIT	Unit Price
1	Road Service Call - Standard Response Service for Light-Duty Wrecker	EA	\$50.00
2	Road Service Call - Non-Priority Response Service for Light-Duty Wrecker	EA	\$50.00
3	Road Service Call - Standard Response Service for Medium-Duty Wrecker	EA	\$65.00
4	Road Service Call - Standard Response Service for Medium-Duty Wrecker with Wheel Lift Service	EA	\$88.00
5	Road Service Call - Standard Response Service for Medium-Duty Wrecker with Under-Reach Service	EA	\$88.00
6	Road Service Call - Non-Priority Response Service for Medium-Duty Wrecker	EA	\$55.00
7	Road Service Call - Non-Priority Response Service for Medium-Duty Wrecker with Wheel Lift Service	EA	\$88.00
8	Road Service Call - Non-Priority Response Service for Medium-Duty Wrecker with Under Reach Service	EA	\$88.00
9	Road Service Call - Standard Response Service for Heavy-Duty Wrecker	EA	\$145.00
10	Road Service Call - Standard Response Service for Heavy-Duty Wrecker with Under-Reach Service	EA	\$145.00
11	Road Service Call - Standard Response Service for Heavy-Duty Wrecker for Vehicles/Equipment with a gross weight of 60,000 pounds	EA	\$250.00
12	Road Service Call - Non-Priority Response Service for Heavy-Duty Wrecker	EA	\$85.00
13	Road Service Call - Non-Priority Response Service for Heavy-Duty Wrecker with Under Reach Service	EA	\$145.00
14	Road Service Call - Non-priority Response Service for Heavy-Duty Wrecker for Vehicles/Equipment with a gross weight of 60,000 pounds	EA	\$250.00
15	Road Service Call - Standard Response Service for Roll-back Truck for Light-Duty Vehicles or Equipment	EA	\$50.00
16	Road Service Call - Standard Response Service for Roll-back Truck for Medium-Duty Vehicles or Equipment	EA	\$115.00
17	Road Service Call - Standard Response Service for Roll-back Truck for Heavy-Duty Vehicles or Equipment	EA	\$145.00
18	Road Service Call - Non-Priority Response Service for Roll-back Truck for Light-Duty Vehicles or Equipment	EA	\$50.00
19	Road Service Call - Non-Priority Response Service for Roll-back Truck for Medium-Duty Vehicles or Equipment	EA	\$115.00
20	Road Service Call - Non-priority Response Service for Roll-back Truck for Heavy-Duty Vehicles or Equipment	EA	\$145.00
21	Road Service Call - Standard Response Service for Low-Boy Truck and Trailer for Medium-Duty Vehicles or Equipment	EA	\$145.00
22	Road Service Call - Standard Response Service for Low-Boy Truck and Trailer for Heavy-Duty Vehicles or Equipment	EA	\$145.00
23	Road Service Call - Non-priority Response Service for Low-Boy Truck and Trailer for Medium-Duty Vehicles or Equipment	EA	\$145.00
24	Road Service Call - Non-priority Response Service for Low-Boy Truck and Trailer for Heavy-Duty Vehicles or Equipment	EA	\$145.00
25	Light Mechanic Work (20 minute increments)	EA	\$20.00
26	Waiting Time for Emergency Situations	EA	\$20.00
27	Dry-Run Service Call for Light-Duty Wrecker	EA	\$40.00
28	Dry-Run Service Call for Medium-Duty Wrecker	EA	\$55.00
29	Dry-Run Service Call for Heavy-Duty Wrecker	EA	\$65.00
30	Mileage	MI	\$2.00
31	Vehicle/Equipment Storage for vehicles/equipment with a gross weight of 25,999 pounds or less - Secured and Covered (1 Vehicles/Equipment)	D	\$4.50
32	Vehicle/Equipment Storage for vehicles/equipment with a gross weight of 25,999 pounds or less - Secured and Uncovered (1 Vehicles/Equipment)	D	\$3.50
33	Vehicle/Equipment Storage for vehicles with a gross weight of 26,000 pounds or more - Secured and Covered (1 Vehicles/Equipment)	D	\$10.00
34	Vehicle/Equipment Storage for vehicles with a gross weight of 26,000 pounds or more - Secured and Uncovered (1 Vehicles/Equipment)	D	\$6.00
35	Road Service Call to change a flat tire or recharge/jump start a battery for a light duty vehicle at a specified location	EA	\$50.00
36	Outside storage / no maintenance	EA	\$3.00

YEAR THREE (3)			
BID ITEM	DESCRIPTION	UNIT	Unit Price
1	Road Service Call - Standard Response Service for Light-Duty Wrecker	EA	\$50.00
2	Road Service Call - Non-Priority Response Service for Light-Duty Wrecker	EA	\$50.00
3	Road Service Call - Standard Response Service for Medium-Duty Wrecker	EA	\$65.00
4	Road Service Call - Standard Response Service for Medium-Duty Wrecker with Wheel Lift Service	EA	\$88.00
5	Road Service Call - Standard Response Service for Medium-Duty Wrecker with Under-Reach Service	EA	\$88.00
6	Road Service Call - Non-Priority Response Service for Medium-Duty Wrecker	EA	\$55.00
7	Road Service Call - Non-Priority Response Service for Medium-Duty Wrecker with Wheel Lift Service	EA	\$88.00
8	Road Service Call - Non-Priority Response Service for Medium-Duty Wrecker with Under Reach Service	EA	\$88.00
9	Road Service Call - Standard Response Service for Heavy-Duty Wrecker	EA	\$145.00
10	Road Service Call - Standard Response Service for Heavy-Duty Wrecker with Under-Reach Service	EA	\$145.00
11	Road Service Call - Standard Response Service for Heavy-Duty Wrecker for Vehicles/Equipment with a gross weight of 60,000 pounds	EA	\$250.00
12	Road Service Call - Non-Priority Response Service for Heavy-Duty Wrecker	EA	\$85.00
13	Road Service Call - Non-Priority Response Service for Heavy-Duty Wrecker with Under Reach Service	EA	\$145.00
14	Road Service Call - Non-priority Response Service for Heavy-Duty Wrecker for Vehicles/Equipment with a gross weight of 60,000 pounds	EA	\$250.00
15	Road Service Call - Standard Response Service for Roll-back Truck for Light-Duty Vehicles or Equipment	EA	\$50.00
16	Road Service Call - Standard Response Service for Roll-back Truck for Medium-Duty Vehicles or Equipment	EA	\$115.00
17	Road Service Call - Standard Response Service for Roll-back Truck for Heavy-Duty Vehicles or Equipment	EA	\$145.00
18	Road Service Call - Non-Priority Response Service for Roll-back Truck for Light-Duty Vehicles or Equipment	EA	\$50.00
19	Road Service Call - Non-Priority Response Service for Roll-back Truck for Medium-Duty Vehicles or Equipment	EA	\$115.00
20	Road Service Call - Non-priority Response Service for Roll-back Truck for Heavy-Duty Vehicles or Equipment	EA	\$145.00
21	Road Service Call - Standard Response Service for Low-Boy Truck and Trailer for Medium-Duty Vehicles or Equipment	EA	\$145.00
22	Road Service Call - Standard Response Service for Low-Boy Truck and Trailer for Heavy-Duty Vehicles or Equipment	EA	\$145.00
23	Road Service Call - Non-priority Response Service for Low-Boy Truck and Trailer for Medium-Duty Vehicles or Equipment	EA	\$145.00
24	Road Service Call - Non-priority Response Service for Low-Boy Truck and Trailer for Heavy-Duty Vehicles or Equipment	EA	\$145.00
25	Light Mechanic Work (20 minute increments)	EA	\$20.00
26	Waiting Time for Emergency Situations	EA	\$20.00
27	Dry-Run Service Call for Light-Duty Wrecker	EA	\$40.00
28	Dry-Run Service Call for Medium-Duty Wrecker	EA	\$55.00
29	Dry-Run Service Call for Heavy-Duty Wrecker	EA	\$65.00
30	Mileage	MI	\$2.00
31	Vehicle/Equipment Storage for vehicles/equipment with a gross weight of 25,999 pounds or less - Secured and Covered (1 Vehicles/Equipment)	D	\$4.50
32	Vehicle/Equipment Storage for vehicles/equipment with a gross weight of 25,999 pounds or less- Secured and Uncovered (1 Vehicles/Equipment)	D	\$3.50
33	Vehicle/Equipment Storage for vehicles with a gross weight of 26,000 pounds or more - Secured and Covered (1 Vehicles/Equipment)	D	\$10.00
34	Vehicle/Equipment Storage for vehicles with a gross weight of 26,000 pounds or more - Secured and Uncovered (1 Vehicles/Equipment)	D	\$6.00
35	Road Service Call to change a flat tire or recharge/jump start a battery for a light duty vehicle at a specified location	EA	\$50.00
36	Outside storage / no maintenance	EA	\$3.00

YEAR FOUR (4), OPTION YEAR ONE (1)			
BID ITEM	DESCRIPTION	UNIT	Unit Price
1	Road Service Call - Standard Response Service for Light-Duty Wrecker	EA	\$50.00
2	Road Service Call - Non-Priority Response Service for Light-Duty Wrecker	EA	\$50.00
3	Road Service Call - Standard Response Service for Medium-Duty Wrecker	EA	\$65.00
4	Road Service Call - Standard Response Service for Medium-Duty Wrecker with Wheel Lift Service	EA	\$88.00
5	Road Service Call - Standard Response Service for Medium-Duty Wrecker with Under-Reach Service	EA	\$88.00
6	Road Service Call - Non-Priority Response Service for Medium-Duty Wrecker	EA	\$55.00
7	Road Service Call - Non-Priority Response Service for Medium-Duty Wrecker with Wheel Lift Service	EA	\$88.00
8	Road Service Call - Non-Priority Response Service for Medium-Duty Wrecker with Under Reach Service	EA	\$88.00
9	Road Service Call - Standard Response Service for Heavy-Duty Wrecker	EA	\$145.00
10	Road Service Call - Standard Response Service for Heavy-Duty Wrecker with Under-Reach Service	EA	\$145.00
11	Road Service Call - Standard Response Service for Heavy-Duty Wrecker for Vehicles/Equipment with a gross weight of 60,000 pounds	EA	\$250.00
12	Road Service Call - Non-Priority Response Service for Heavy-Duty Wrecker	EA	\$85.00
13	Road Service Call - Non-Priority Response Service for Heavy-Duty Wrecker with Under Reach Service	EA	\$145.00
14	Road Service Call - Non-priority Response Service for Heavy-Duty Wrecker for Vehicles/Equipment with a gross weight of 60,000 pounds	EA	\$250.00
15	Road Service Call - Standard Response Service for Roll-back Truck for Light-Duty Vehicles or Equipment	EA	\$50.00
16	Road Service Call - Standard Response Service for Roll-back Truck for Medium-Duty Vehicles or Equipment	EA	\$115.00
17	Road Service Call - Standard Response Service for Roll-back Truck for Heavy-Duty Vehicles or Equipment	EA	\$145.00
18	Road Service Call - Non-Priority Response Service for Roll-back Truck for Light-Duty Vehicles or Equipment	EA	\$50.00
19	Road Service Call - Non-Priority Response Service for Roll-back Truck for Medium-Duty Vehicles or Equipment	EA	\$115.00
20	Road Service Call - Non-priority Response Service for Roll-back Truck for Heavy-Duty Vehicles or Equipment	EA	\$145.00
21	Road Service Call - Standard Response Service for Low-Boy Truck and Trailer for Medium-Duty Vehicles or Equipment	EA	\$145.00
22	Road Service Call - Standard Response Service for Low-Boy Truck and Trailer for Heavy-Duty Vehicles or Equipment	EA	\$145.00
23	Road Service Call - Non-priority Response Service for Low-Boy Truck and Trailer for Medium-Duty Vehicles or Equipment	EA	\$145.00
24	Road Service Call - Non-priority Response Service for Low-Boy Truck and Trailer for Heavy-Duty Vehicles or Equipment	EA	\$145.00
25	Light Mechanic Work (20 minute increments)	EA	\$20.00
26	Waiting Time for Emergency Situations	EA	\$20.00
27	Dry-Run Service Call for Light-Duty Wrecker	EA	\$40.00
28	Dry-Run Service Call for Medium-Duty Wrecker	EA	\$55.00
29	Dry-Run Service Call for Heavy-Duty Wrecker	EA	\$65.00
30	Mileage	MI	\$2.00
31	Vehicle/Equipment Storage for vehicles/equipment with a gross weight of 25,999 pounds or less - Secured and Covered (1 Vehicles/Equipment)	D	\$4.50
32	Vehicle/Equipment Storage for vehicles/equipment with a gross weight of 25,999 pounds or less- Secured and Uncovered (1 Vehicles/Equipment)	D	\$3.50
33	Vehicle/Equipment Storage for vehicles with a gross weight of 26,000 pounds or more - Secured and Covered (1 Vehicles/Equipment)	D	\$10.00
34	Vehicle/Equipment Storage for vehicles with a gross weight of 26,000 pounds or more - Secured and Uncovered (1 Vehicles/Equipment)	D	\$6.00
35	Road Service Call to change a flat tire or recharge/jump start a battery for a light duty vehicle at a specified location	EA	\$50.00
36	Outside storage / no maintenance	EA	\$3.00

YEAR FIVE (5), OPTION YEAR TWO (2)

BID ITEM	DESCRIPTION	UNIT	Unit Price
1	Road Service Call - Standard Response Service for Light-Duty Wrecker	EA	\$50.00
2	Road Service Call - Non-Priority Response Service for Light-Duty Wrecker	EA	\$50.00
3	Road Service Call - Standard Response Service for Medium-Duty Wrecker	EA	\$65.00
4	Road Service Call - Standard Response Service for Medium-Duty Wrecker with Wheel Lift Service	EA	\$88.00
5	Road Service Call - Standard Response Service for Medium-Duty Wrecker with Under-Reach Service	EA	\$88.00
6	Road Service Call - Non-Priority Response Service for Medium-Duty Wrecker	EA	\$55.00
7	Road Service Call - Non-Priority Response Service for Medium-Duty Wrecker with Wheel Lift Service	EA	\$88.00
8	Road Service Call - Non-Priority Response Service for Medium-Duty Wrecker with Under Reach Service	EA	\$88.00
9	Road Service Call - Standard Response Service for Heavy-Duty Wrecker	EA	\$145.00
10	Road Service Call - Standard Response Service for Heavy-Duty Wrecker with Under-Reach Service	EA	\$145.00
11	Road Service Call - Standard Response Service for Heavy-Duty Wrecker for Vehicles/Equipment with a gross weight of 60,000 pounds	EA	\$250.00
12	Road Service Call - Non-Priority Response Service for Heavy-Duty Wrecker	EA	\$85.00
13	Road Service Call - Non-Priority Response Service for Heavy-Duty Wrecker with Under Reach Service	EA	\$145.00
14	Road Service Call - Non-priority Response Service for Heavy-Duty Wrecker for Vehicles/Equipment with a gross weight of 60,000 pounds	EA	\$250.00
15	Road Service Call - Standard Response Service for Roll-back Truck for Light-Duty Vehicles or Equipment	EA	\$50.00
16	Road Service Call - Standard Response Service for Roll-back Truck for Medium-Duty Vehicles or Equipment	EA	\$115.00
17	Road Service Call - Standard Response Service for Roll-back Truck for Heavy-Duty Vehicles or Equipment	EA	\$145.00
18	Road Service Call - Non-Priority Response Service for Roll-back Truck for Light-Duty Vehicles or Equipment	EA	\$50.00
19	Road Service Call - Non-Priority Response Service for Roll-back Truck for Medium-Duty Vehicles or Equipment	EA	\$115.00
20	Road Service Call - Non-priority Response Service for Roll-back Truck for Heavy-Duty Vehicles or Equipment	EA	\$145.00
21	Road Service Call - Standard Response Service for Low-Boy Truck and Trailer for Medium-Duty Vehicles or Equipment	EA	\$145.00
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23	Road Service Call - Non-priority Response Service for Low-Boy Truck and Trailer for Medium-Duty Vehicles or Equipment	EA	\$145.00
24	Road Service Call - Non-priority Response Service for Low-Boy Truck and Trailer for Heavy-Duty Vehicles or Equipment	EA	\$145.00
25	Light Mechanic Work (20 minute increments)	EA	\$20.00
26	Waiting Time for Emergency Situations	EA	\$20.00
27	Dry-Run Service Call for Light-Duty Wrecker	EA	\$40.00
28	Dry-Run Service Call for Medium-Duty Wrecker	EA	\$55.00
29	Dry-Run Service Call for Heavy-Duty Wrecker	EA	\$65.00
30	Mileage	MI	\$2.00
31	Vehicle/Equipment Storage for vehicles/equipment with a gross weight of 25,999 pounds or less - Secured and Covered (1 Vehicles/Equipment)	D	\$4.50
32	Vehicle/Equipment Storage for vehicles/equipment with a gross weight of 25,999 pounds or less- Secured and Uncovered (1 Vehicles/Equipment)	D	\$3.50
33	Vehicle/Equipment Storage for vehicles with a gross weight of 26,000 pounds or more - Secured and Covered (1 Vehicles/Equipment)	D	\$10.00
34	Vehicle/Equipment Storage for vehicles with a gross weight of 26,000 pounds or more - Secured and Uncovered (1 Vehicles/Equipment)	D	\$6.00
35	Road Service Call to change a flat tire or recharge/jump start a battery for a light duty vehicle at a specified location	EA	\$50.00
36	Outside storage / no maintenance	EA	\$3.00

YEAR ONE (1)			
BID ITEM	DESCRIPTION	UNIT	Unit Price
1	Equipment & Parts Needed for Maintenance of Vehicles (Original Invoice) Used as Needed		\$2,500.00
YEAR TWO (2)			
1	Equipment & Parts Needed for Maintenance of Vehicles (Original Invoice) Used as Needed		\$2,500.00
YEAR THREE (3)			
1	Equipment & Parts Needed for Maintenance of Vehicles (Original Invoice) Used as Needed		\$2,500.00
YEAR FOUR (4), OPTION YEAR ONE (1)			
1	Equipment & Parts Needed for Maintenance of Vehicles (Original Invoice) Used as Needed		\$2,500.00
YEAR FIVE (5), OPTION YEAR TWO (2)			
1	Equipment & Parts Needed for Maintenance of Vehicles (Original Invoice) Used as Needed		\$2,500.00

EXHIBIT "I"
PAY OR PLAY PROGRAM

Document 00460
(Form POP-1A)



City of Houston
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.

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.

Michael W. Scully
Signature

4/15/10
Date

Michael W. Scully
Print Name

113864
City Vendor ID

R Box Inc DBA Apollo Towing Co.
Company Name

713 383 6200
Phone Number

MScully@ApolloTowing.com
Email Address

Revised 07-22-2008



**CERTIFICATION OF AGREEMENT TO
COMPLY WITH PAY OR PLAY PROGRAM**

Contractor Name: R Bey Inc DBA Apple Boring \$2,498,905.00
(Contractor/Subcontractor) (Amount of Contract)

Contractor Address: 2030 Holmes Rd Houston TX 77045

Project No. (GFS/CIP/SIP/FIS No.): L-37-L23584

Project Name: (Legal Project Name) Towing Services for Vehicles & Equipment

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 compliance for covered subcontractors' employees and contract labor, under the contract with the City.
- Yes No Contractor agrees to offer health benefits to each covered employee, including compliance by the covered subcontractors that meet or exceed the following criteria:
 - (1) the employer will contribute no less than \$:50 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 on behalf of some covered employees and contract labor and play on behalf of other covered employees in accordance with program requirements, including subcontractors' employees if applicable.
- Yes No If contract labor is utilized the Contractor agrees to report hours worked by the contract laborer and Pay \$1.00 per hour for work performed.
- 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.

Following information is Mandatory	Prime Contractor	Sub-Contractor
Total No. of Employees on City Job	40	0
No. of Employees Paying	40	0
No. of Employees Playing	0	0
No. of Employees Exempt	0	0

I hereby certify that the above information is true and correct.
Michael W. Sully 5/24/10
 CONTRACTOR (Signature) DATE
Michael Sully President
 NAME AND TITLE (Print or type)