

B. Table of Contents

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EXHIBITS

- A. Scope of Service
- A-1 E-Z Radiocom II Equipment cabling customized for City Use
- A-2 Specifications for E-Z Radiocom II Equipment
- B. Contractor's Pricing Schedule for E-Z Radiocom II Equipment and Supplies & Pricing for Parts and Labor
- C. Equal Employment Opportunity
- D. Drug Policy Compliance Agreement
- E. Drug Policy Compliance Declaration
- F. Certification of No Safety Impact Positions

C. Parts Incorporated

The above described exhibits are incorporated into this Agreement.

D. Controlling Parts

If a conflict among the sections and exhibits arises, the sections control over the exhibits.

E. Signatures

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

**SCOTT TECHNOLOGIES, INC.
D/B/A SCOTT HEALTH & SAFETY**

CITY OF HOUSTON, TEXAS

Signed by:

By: Robert C. Heintel
Name: Robert C. Heintel
Title: Vice President + Corporate Counsel

By: Bill White
Mayor

ATTEST/SEAL (if a corporation)
WITNESS (if not a corporation)

ATTEST/SEAL:

By: Cynthia L. Nagy
Name: Cynthia L. Nagy
Title: Exec. Admin. Assistant

Carla Russell
City Secretary

APPROVED:

John D. Wilk
City Purchasing Agent

Steve Tunnice
Chief, Houston Fire Department

APPROVED AS TO FORM:

Mayra Ramona
Assistant City Attorney
L.D. No. _____

COUNTERSIGNED BY:
Arvin D. Peden
May Ann Hart
City Controller

DATE COUNTERSIGNED:

11/10/04

II. 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 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.

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

"Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.

"Director" means the Chief, Houston Fire Department, or the person he or she designates.

"Documentation" means the service and operator manuals for Contractor's E-Z Radiocom II Equipment being provided to City under this Agreement.

"E-Z Radiocom II Equipment" means the ground communications equipment customized for City use according to Exhibit "A-1", manufactured by Contractor with features set out in Exhibit "A-2" being supplied for use by the Houston Fire Department under this Agreement.

"E-Z Radiocom II Supplies" mean mounting brackets, mask amplifiers (voice amp only), and Push-to-talk assembly with two quick disconnects that the City can purchase separately from Contractor for the unit prices set out for such items in Exhibit "B" of this Agreement.

"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.

"Purchasing Agent" means the City Purchasing Agent, or the person he or she designates.

III. DUTIES OF CONTRACTOR

A. Scope of Services

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit "A".

B. Coordinate Performance

Contractor shall coordinate its performance with the Director and other persons that the Director designates. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

C. Payment of Subcontractors

Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS. Contractor shall submit disputes relating to payment of MWBE subcontractors to arbitration in the same manner as any other disputes under the MWBE subcontract.

D. RELEASE

CONTRACTOR 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.

E. INDEMNIFICATION

CONTRACTOR 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, ATTORNEYS' 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:

- (1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (2) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND
- (3) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

F. INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO

CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR,
(2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE
AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE
ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE
EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND
CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

G. INDEMNIFICATION - SUBCONTRACTOR'S INDEMNITY

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.

H. INDEMNIFICATION - PROCEDURES

(1) Notice of Claims. If the City or Contractor 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:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

This notice does not estop 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 Contractor is prejudiced, suffers loss, or incurs expense

because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If Contractor elects to defend the claim, the City may retain at its own expense and not part of an indemnification loss separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor 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 Contractor 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.

I. Insurance

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:

- (1) Commercial General Liability insurance including Contractual Liability insurance:
 - \$500,000 per occurrence; \$1,000,000 aggregate
- (2) Workers' Compensation including Broad Form All States endorsement:
 - Statutory amount
- (3) Professional Liability
 - \$1,000,000 per occurrence; \$1,000,000 aggregate
- (4) Automobile Liability insurance
 - \$1,000,000 combined single limit

Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period
unless otherwise indicated.

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

- (1) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or

- (2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

J. Warranties

Contractor 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.

With respect to any parts and goods it furnishes, Contractor warrants, subject to Section IV, K below:

- (1) that all items are free of defects in title, design, material and workmanship,
- (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,
- (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
- (4) that no item or its use infringes any patent, copyright, or proprietary right.

K. Contractor's Three-Year Free Warranty

- (i) Contractor warrants that all E-Z Radiocom II Equipment and E-Z Radiocom II Supplies shipped to the City under this Agreement shall be free from defects in workmanship and materials for a period of three years from the date of Director's Acceptance as set out in Section IV, E below. Contractor shall replace defective E-Z

Radiocom II Equipment and E-Z Radiocom II Supplies provided to City under this Agreement, when such defective Equipment or Supplies fail to function for any reason during Contractor's free three-year warranty period.

(ii) The City shall follow the procedure set out below to file a warranty claim:

The Director shall first obtain by facsimile at 704-296-3370 or by calling Contractor's telephone number, 704-296-3379, a Return Authorization (RA) form that for any E-Z Radiocom II Equipment and E-Z Radiocom II Supplies that need to be replaced during the three-year warranty period. Contractor shall provide the Director 30 days' written advance notice regarding the change in Contractor's facsimile or telephone numbers for warranty service. Upon receipt of a facsimile or telephone call, Contractor shall mail or fax an RA form to the Director. The Director shall ship the E-Z Radiocom II Equipment and E-Z Radiocom II Supplies that need to be replaced along with the RA to Contractor at the following address:

Scott Health and Safety Service Center

RA # _____

4320 Goldmine Road

Monroe, NC 28110

Contractor shall ship the replacement parts or the replacement E-Z Radiocom II Equipment or E-Z Radiocom II Supplies within two weeks of receipt of defective Equipment and Supplies to Director at the following address:

Houston Fire Department

Attn: Communication Management

1205 Dart Street

Houston, TX 77007

Contractor shall bear the cost of shipping defective Equipment and Supplies to and from the Houston Fire Department during Contractor's three-year free warranty period.

L. Post-Warranty Repairs

Subject to the allocation of funds and contingent upon the receipt of grant funds, effective the day following three years of Contractor's free warranty, the City shall follow the procedure set out in K, (ii) above to file post warranty repair claims. Contractor shall repair E-Z Radiocom II Equipment parts and E-Z Radiocom II Supplies shipped by City according to the unit costs for labor and parts set out in Exhibit "B" of this Agreement. The unit costs for labor and parts set out in Exhibit "B" shall be valid for two years effective the day following the expiration of Contractor's free three-year warranty. City will bear shipping costs to and from Contractor's facility. Contractor shall repair Equipment or Supplies shipped for repair within seven calendar days of receipt of such Equipment and Supplies from City.

Contractor warrants that labor and parts provided during the post-warranty period meet the standards set out in Section IV, J above.

M. Confidentiality - Protection of City's Interest

Contractor, its agents, contractors, and subcontractors shall hold all City information, data, and documents (collectively, "the Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing or required by law. Contractor shall obtain written agreements from its agents, contractors, and subcontractors

which bind them to the terms in this Section.

N. Licenses and Permits

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license.

O. Compliance with Laws

Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

P. Compliance with Equal Opportunity Ordinance

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

Q. Drug Abuse Detection and Deterrence

(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.

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

(a) a copy of its drug-free workplace policy,

- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "D," together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F."

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 "E." 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.

(3) 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.

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

R. Delivery of E-Z Radiocom II Equipment to City

Contractor shall ship City's initial and subsequent orders for E-Z Radiocom II Equipment and E-Z Radiocom II Supplies to The Director, Houston Fire Department Communications, City of Houston, 1205 Dart Street, Houston, TX 77007, within 90 calendar days from the date of receipt of a City Purchase Order. Contractor's price for the E-Z Radiocom II Equipment and the E-Z Radiocom

II Supplies includes the cost of shipping the Equipment and Supplies to City FOB.

IV. DUTIES OF THE CITY

A. Payment Terms

Upon Acceptance of the E-Z Radiocom II Equipment and Supplies by the Director, subject to the allocation of funds and contingent upon the receipt of grant funds as detailed in Sections IV, F and G below, City shall pay and Contractor shall accept the unit prices set out in Exhibit "B" for E-Z Radiocom II Equipment and Supplies shipped to City upon receipt of a City Purchase Order.

Subject to the allocation of funds and contingent upon the receipt of grant funds, effective the day following the expiration of Contractor's free three-year warranty, Contractor shall provide repairs to E-Z Radiocom II Equipment and Supplies in the event the Director requests City Purchasing Agent to extend this Agreement for two one-year terms by giving Contractor 30 days' written notice prior to the expiration of the initial three-year term of this Agreement. Contractor shall provide such repairs at the unit costs set out for parts and labor in Exhibit "B" of this Agreement and such rates shall be valid for the two one-year renewal option terms.

B. Taxes

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.

C. Method of Payment

The City shall pay on the basis of invoices submitted by Contractor and approved by the Director, showing the equipment and supplies shipped and the unit prices for the same. The City shall

pay Contractor within 30 days of the receipt and approval of the invoices.

D. Method of Payment - Disputed Payments

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.

E. Acceptance - E-Z Radiocom II Equipment and Supplies

Beginning promptly after delivery of the E-Z Radiocom II Equipment and Supplies, City shall operate the E-Z Radiocom II Equipment and Supplies for 30 business days (the "Trial Period"), with Contractor providing technical support services via telephone at 1-800-247-7257 between 8:00 A.M and 5:00 P.M., Central Time, on business days.

If during the Trial Period, the tests the City conducts indicate that the E-Z Radiocom II Equipment and Supplies are not performing in accordance with Contractor's Documentation or the requirements of this Agreement, Contractor will have 30 business days to correct the problem(s), at which time the City will have an additional 15 days to retest the corrections.

The City shall notify Contractor of any non-conformity between the E-Z Radiocom II Equipment and Supplies and the Documentation and provide documentation of the non-conformity to Contractor as soon as practicable after discovery.

The City shall accept the E-Z Radiocom II Equipment and Supplies when: (i) the E-Z Radiocom II Equipment and Supplies and related Documentation have been completely delivered, and (ii) the E-Z Radiocom Equipment and Supplies have, by the end of the 30-day Trial Period,

successfully operated in accordance with Contractor's Documentation and the requirements of this Agreement. The City shall reject the E-Z Radiocom Equipment or Supplies if at the end of the 30-day Trial Period (plus any time the City provides to Contractor to correct defects), the E-Z Radiocom II Equipment and Supplies have not performed in accordance with Contractor's Documentation and Contractor is unable to correct the deficiency.

If the City rejects the E-Z Radiocom II Equipment and Supplies, they will be returned to Contractor at no cost to the City and the City will not pay for the use of the E-Z Radiocom II Equipment and Supplies or any other applicable goods or services under this Agreement. Contractor shall return to the City all sums paid to it under this Agreement within 30 days of rejection of the E-Z Radiocom II Equipment and Supplies. The City reserves all other available rights at law or in equity.

F. Limit of Appropriation

(1) The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

(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 \$201,302.70 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:

(3) The City makes a supplemental allocation by sending a notice signed by the Director and the City Controller to Contractor in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of notice]
SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Agreement").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$_____, upon the request of the Director, 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.

The aggregate of all sums allocated for the purpose of such Contract, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is \$_____.

SIGNED:

(Signature of the City Controller)
City Controller of the City

REQUESTED:

(Signature of the Director)
Houston Fire Department

(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.

G. Limit of Liability

Obligation of City

The City's obligation for payment under this Agreement, if any, is limited to funds received from the Federal Emergency Management Agency (FEMA); unless adequate funds are received, the City shall have no obligation to pay Contractor/Subcontractor. Contractor/Subcontractor must look to these designated funds only and to no other fund for the City's payment under this Agreement.

V. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and remains in effect for 3 years unless sooner terminated under this Agreement.

B. Renewals

If the Director, at his or her sole discretion, requests City Purchasing Agent to make a written request for renewal to Contractor at least 30 days before expiration of the then-current term and if sufficient funds are allocated, then, upon expiration of the initial term, this Agreement is renewed for two successive one-year terms upon the same terms and conditions.

C. Termination for Convenience by City

The City Purchasing Agent 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.

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 IV, A unless the fees exceed the allocated funds remaining under this Agreement.

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 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.

D. Termination for Cause

If Contractor defaults under this Agreement, the City Purchasing Agent may, after written notice to Contractor and 30 days to cure the default, terminate this Agreement 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:

- (1) Contractor fails to perform any of its duties under this Agreement;
- (2) Contractor becomes insolvent;
- (3) all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- (4) a receiver or trustee is appointed for Contractor.

If default occurs, the City Purchasing Agent shall deliver a written notice to Contractor describing the default and the termination date. If Contractor cures the default in 30 days to the City Purchasing Agent'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 may terminate this Agreement on the termination date, at no further obligation of the City.

VI. MISCELLANEOUS

A. Independent Contractor

Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Contractor's performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all workers' compensation benefits coverage.

B. Force Majeure

1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, strikes, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application;

or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra Reimbursable Expenses or payment.

2. This relief is not applicable unless the affected party does the following:

- (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
- (b) provides the other party with prompt written notice of the cause and its anticipated effect.

3. The City Purchasing Agent will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the City Purchasing Agent is final.

4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.

5. If the Force Majeure continues for more than 10 days from the date performance is affected, the City Purchasing Agent may terminate this Agreement by giving 7 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 UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

C. Severability

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.

D. Entire Agreement

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.

E. Written Amendment

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 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.

F. Applicable Laws

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.

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

G. Notices

All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

H. Captions

Captions contained in this Agreement are for reference only, and therefore, have no effect in

construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

I. Non-Waiver

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.

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.

J. Inspections and Audits

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 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

K. Enforcement

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.

L. Ambiguities

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.

M. Survival

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.

N Publicity

Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.

O. Risk of Loss

Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for E-Z Radiocom II Equipment and Supplies shipped passes from Contractor to the City upon acceptance by the City.

P. Parties In Interest

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

Q. Successors and Assigns

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.

R. Business Structure and Assignments

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 prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 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.

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

S. Remedies Cumulative

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.

EXHIBIT "A"

SCOPE OF SERVICES

1. Contractor warrants that Contractor's new E-Z Radiocom II:
 - (a) with a mask amplified head set, push-to-talk button, two quick disconnects, cabling, a Motorola radio connector for use on Motorola XTS-3500 and XTS 5000 radios, AV-2000, P/N 804636-01 mounting brackets and batteries; and
 - (b) subject to the approval of National Fire Protection Association and the National Institute for Occupational Safety and Health when configured to City specifications detailed in Exhibit "A-1" meets City's need for fire ground communications equipment for use by emergency response personnel wearing full fire fighting protective clothing;
 - (c) has been determined to be intrinsically safe by InterTek Testing Services (ITS), NA, Inc. when configured according to illustration in Exhibit "A-1";
 - (d) with the above configuration can be used by firefighters wearing full protective clothing (boots, protective pants, suspenders, protective coat, Reed fire fighting gloves and hood, Scott face piece, fire fighting helmet, and self-contained breathing apparatus (SCBA) ;
 - (e) allows firefighters to communicate clearly with other crew members without using the Houston Fire Department's frequency and such communications are audible up to 15 feet when firefighters are fighting a fire;
 - (f) allows firefighters to communicate directly with the Incident Commander or Dispatcher using the Houston Fire Department's existing radio equipment;
 - (g) allows firefighters to simultaneously hear inter-crew communications and the

Incident Commander, Sector Officers or Dispatcher,

- (h) is compatible with Houston Fire Department's existing Motorola radio equipment;
- (i) is water-resistant even when submersed in a foot of water;
- (j) uses batteries that can be replaced with off-the-shelf batteries and such batteries can be replaced with ease in the field;
- (k) weighs around two pounds;
- (l) uses attachment clips that can be positioned anywhere on the protective clothing or on the SCBA and can be locked easily into place from any angle;
- (m) is easy to assemble for service or comes pre-connected and is ready to use within the time required to don protective clothing to meet the National Fire Protection Association's requirements;
- (n) passes all applicable Military 810 C successive tests and any independent tests done to verify results from the same (Contractor shall provide Director with test results);
- (o) can be connected or disconnected without exposing external connections on the firefighters' SCBA clothing and radio equipment;
- (p) the quick-disconnect between the push-to-talk button and radio is such that the radio can be operated even when the cable is disconnected.

2. Contractor shall support the City by maintaining an inventory of 50 E-Z Radiocom II Equipment for use by the City as loaner equipment in the event Equipment owned by the City are being repaired at Contractor's facility. Of this inventory, Contractor shall maintain 25 units of the Equipment at a location identified by the Director and the remaining 25 units at Contractor's facility in North Carolina.

3. Contractor shall provide two service and operator manuals in CD-ROM format.

4. Training

Contractor shall train City employees in the use of Contractor's E-Z Radiocom II Equipment. Contractor shall train City employees designated as Trainers in four training sessions. Contractor shall provide one training session per day for 25 City designated Trainers per training session. Contractor shall coordinate the schedule for the four training sessions with the Director.

EXHIBIT A-1

E-Z RADIOCOM II EQUIPMENT CABLING CUSTOMIZED FOR CITY USE

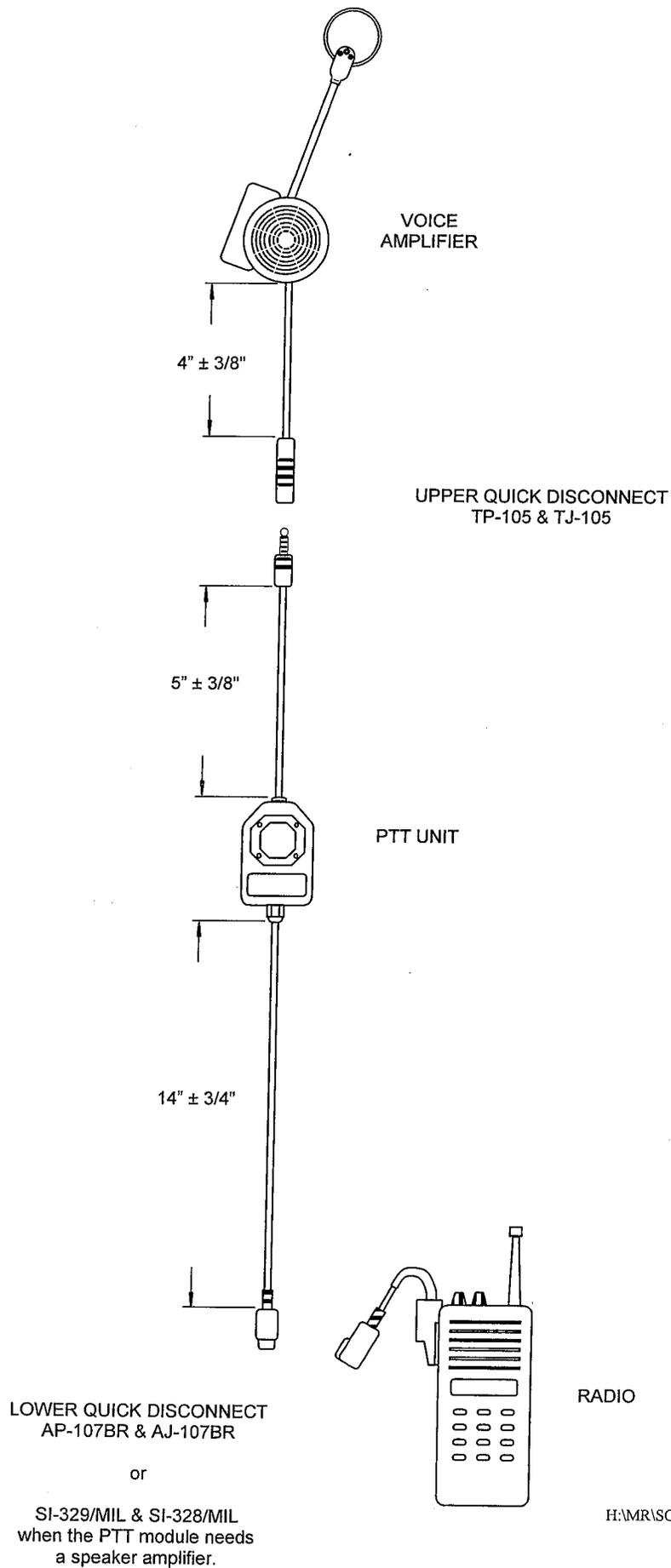
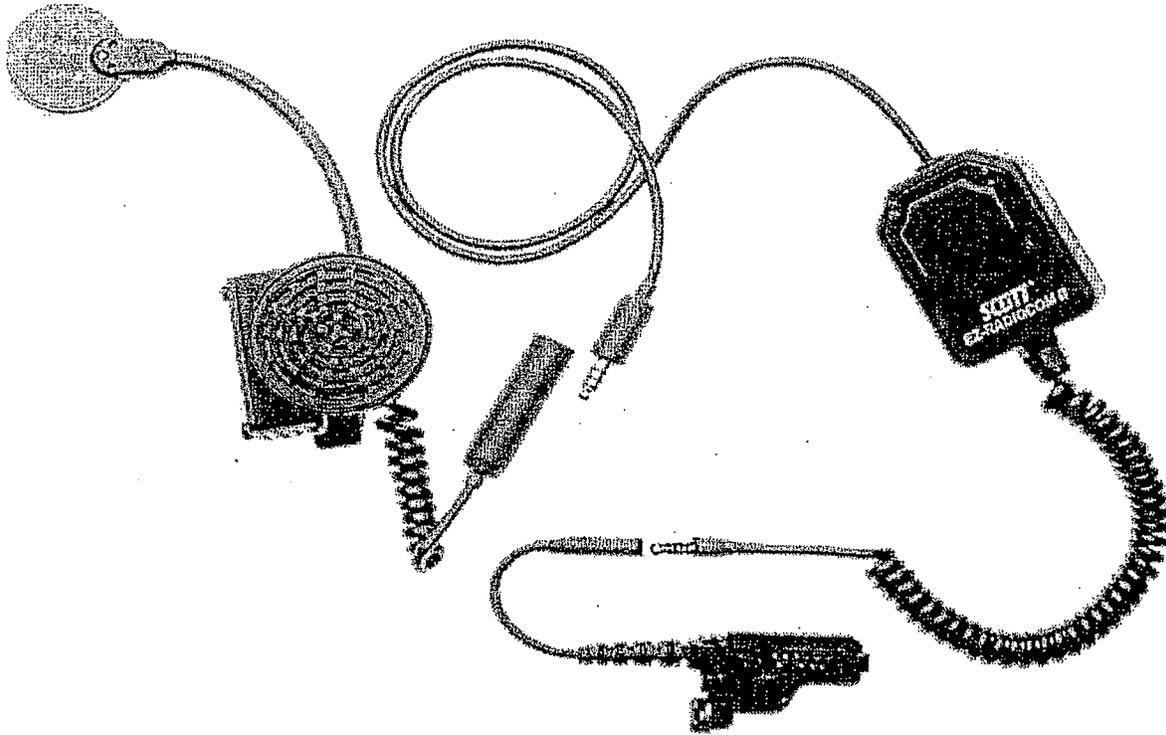


EXHIBIT A-2

SPECIFICATIONS FOR E-Z RADIOCOM II EQUIPMENT

SCOTT'S NEW E-Z RADIOCOM® II

VOICE AMPLIFIER AND 2-WAY RADIO INTERFACE



Scott's new E-Z Radiocom II is designed to support clear, effective communications. The system features a facepiece-mounted voice amplifier for communications among firefighter teams working in the same general area, as well as an interface with a two-way radio for remote communications.

A flexible speaker boom delivers in-coming radio communications. Outgoing two-way radio communication from the SCBA user to remote locations is activated by simply pressing a gloved-hand friendly PTT switch. The system is available with connectors for most popular twoway radios.

One of the advantages of the system is the user's ability to employ the voice amplifier independently by simply disconnecting the quick-disconnect coupling between the voice amplifier and PTT console. The voice amplifier is powered by three AAA batteries.

The E-Z Radiocom II is suitable for use with either the AV-2000® or AV-3000® facepiece. Brackets to attach the system's voice amplifier must be ordered separately. (AV-2000 bracket, P/N 804636-01; AV-3000 bracket, P/N 805787-01.)

tyco/SCOTT®
HEALTH AND SAFETY

EXHIBIT "B"

**CONTRACTORS PRICING SCHEDULE FOR
E-Z RADIOCOM II EQUIPMENT AND SUPPLIES & PRICING FOR PARTS AND
LABOR**

Description	Unit Cost
E-Z Radiocom II Equipment (Includes mask amplifier head set with Quick Disconnects, plus Push-to-Talk cabling with Quick Disconnects and radio connection for Motorola XTS-3500 & 5000, mounting bracket and three AAA batteries)	\$687.00
Mask amplifier (voice amp, three AAA batteries)	\$280.00
Push-to-Talk assembly with 2 Quick Disconnects	\$408.00
Mounting brackets	\$ 8.30

Pricing for Parts & Labor					
Item		Part	Unit Cost of Part & Labor	Cost of Part Only	Cost of Labor Only
1		Voice amp repair (replacement of circuit board)	\$80.00	\$53.63	\$26.37
2		Voice Amp speaker replacement	\$64.00	\$52.62	\$11.35
3	Push-to-talk assembly with 2 Quick Disconnects	Push-to-Talk module repair (replacement of circuit board)	\$51.50	\$27.30	\$24.20
4		Top portion of lower cable assembly repair (including Quick Disconnects)	\$106.40	\$58.50	\$47.90
5		Bottom portion of lower cable assembly repair (including Quick Disconnects)	\$68.80	\$43.88	\$24.92
6		HT-1000 Radio interface cable replacement (for Motorola XTS 3500 & XTS 5000)	\$190.00	\$157.50	\$32.50

EXHIBIT "C"
EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "D"
DRUG POLICY COMPLIANCE AGREEMENT

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

(Name of Company) (Contractor)

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

Contractor Name

Signature

Title

EXHIBIT "E"
DRUG POLICY COMPLIANCE DECLARATION

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

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

This reporting period covers the preceding 6 months from _____ to _____, 20____.

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

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

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

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

_____ From _____ to _____ the following test has occurred
 Initials (Start date) (End date)

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

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.

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.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "F"

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

(Name) _____ (Title)

as an owner or officer of _____ (Contractor)
(Name of Company)

have authority to bind the Contractor with respect to its bid, and 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 _____ (Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

(Date)

(Typed or Printed Name)

(Signature)

(Title)