

4600009082
09-0129

THE STATE OF TEXAS

BID # S11 - L22535

COUNTY OF HARRIS

ORDINANCE # _____

CONTRACT # 4600009082

I. PARTIES

1.0 ADDRESS

THIS AGREEMENT for **SEWER CLEANING EQUIPMENT MAINTENANCE, REPAIR AND REPLACEMENT PARTS SERVICES** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and **BALAR HOLDING CORPORATION** ("Contractor or Vendor"), a corporation doing business in Texas.

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

City

City Purchasing Agent for Director
of Public Works & Engineering Department
City of Houston
P.O. Box 1562
Houston, Texas 77251

Contractor

Balar Holding Corporation
4445 Gulf freeway
Houston, Texas 77023
Phone: 713-926-2300
Fax: 713-926-2307

The Parties agree as follows:

2.0 TABLE OF CONTENTS

2.1 This Agreement consists of the following sections:

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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)
WITNESS: (if not corporation)

Balar Holding Corporation

By: [Signature]
Name: Mark E. Spaulding
Title: President

By: [Signature]
Name: Peter S. EVANS
Title: C.O.O.
Federal Tax ID Number: 73-1640255

ATTEST/SEAL:

[Signature]
City Secretary

CITY OF HOUSTON, TEXAS

Signed by:

[Signature]
Mayor
[Signature]

APPROVED:

[Signature]
City Purchasing Agent

COUNTERSIGNED BY:

[Signature]
City Controller
[Signature]

DATE COUNTERSIGNED:

2-27-09

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

2-2-09
Date

[Signature]
Legal Assistant

II. DUTIES OF CONTRACTOR

1.0 SCOPE OF SERVICES

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

2.0 RELEASE

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

3.0 INDEMNIFICATION

- 3.1 PRIME CONTRACTOR/SUPPLIER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY "THE CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:
- 3.1.1 PRIME CONTRACTOR/SUPPLIER AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 2.1-3.2, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
 - 3.1.2 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND
 - 3.1.3 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.
 - 3.1.4 PRIME CONTRACTOR/SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS CONTRACT AND FOR FOUR YEARS AFTER THE CONTRACT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.
- 3.2 CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

4.0 INDEMNIFICATION PROCEDURES

- 4.1 Notice of Claims. If the City or Prime Contractor/Supplier receives notice of any claim or circumstances, which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:
- 4.1.1 a description of the indemnification event in reasonable detail, and
 - 4.1.2 the basis on which indemnification may be due and
 - 4.1.3 the anticipated amount of the indemnified loss.
- 4.2 This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Prime Contractor/Supplier is prejudiced, suffers loss, or incurs expense because of the delay.
- 4.3 Defense of Claims
- 4.3.1 Assumption of Defense. Prime Contractor/Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Prime Contractor/Supplier shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Prime Contractor/Supplier must advise the City as to whether or not it will defend the claim. If Prime Contractor/Supplier does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.
 - 4.3.2 Continued Participation. If Prime Contractor/Supplier elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Prime Contractor/Supplier may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Prime Contractor/Supplier does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

5.0 INSURANCE

- 5.1 Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverage in the following amounts:
- 5.1.1 Commercial General Liability insurance including Contractual Liability insurance:
\$500,000 per occurrence; \$1,000,000 aggregate
 - 5.1.2 Workers' Compensation including Broad Form All States endorsement:
Statutory amount
 - 5.1.3 Automobile Liability insurance
\$1,000,000 combined single limit per occurrence
Defense costs are excluded from the face amount of the policy
Aggregate Limits are per 12-month policy period unless otherwise indicated

5.1.4	Employer's Liability	
	Bodily injury by accident	\$100,000 (each accident)
	Bodily injury by disease	\$100,000 (policy limit)
	Bodily injury by disease	\$100,000 (each employee)

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

5.2.1 immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or

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

6.0 WARRANTIES

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

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

6.2.1 that all items are free of defects in title, material, and workmanship,

6.2.2 that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,

6.2.3 that each replacement item is new in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and

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

7.0 LICENSES AND PERMITS

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

8.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE

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

9.0 MWBE COMPLIANCE

9.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 0% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them.

10.0 DRUG ABUSE DETECTION AND DETERRENCE

10.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

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

10.2.1 a copy of its drug-free workplace policy,

10.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "D", together with a written designation of all safety impact positions, and

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

10.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "F". Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

10.4 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

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

11.0 ENVIRONMENTAL LAWS

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

12.0 CITY'S CONTRACTOR PAY OR PLAY PROGRAM

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

13.0 CONTRACTOR'S PERFORMANCE

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

14.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

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

III. DUTIES OF CITY

1.0 PAYMENT TERMS

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

2.0 TAXES

- 2.1 The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

3.0 METHOD OF PAYMENT

- 3.1 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 **\$270,791.79** 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:

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

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

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

Signed:
[Signature of City Purchasing Agent or Director]

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

CHANGE ORDER

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

"END OF SECTION III

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IV. TERM AND TERMINATION

1.0 CONTRACT TERM

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

2.0 NOTICE TO PROCEED

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

3.0 RENEWALS

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

4.0 TIME EXTENSIONS

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

5.0 TERMINATION FOR CONVENIENCE BY THE CITY

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

6.0 TERMINATION FOR CAUSE BY CITY

- 6.1 If Contractor defaults under this Agreement, the City Purchasing Agent or Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies, which exist now or in the future. Default by Contractor occurs if:
- 6.1.1 Contractor fails to perform any of its duties under this Agreement;
 - 6.1.2 Contractor becomes insolvent;
 - 6.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
 - 6.1.4 a receiver or trustee is appointed for Contractor.
- 6.1.5 If a default occurs, the City Purchasing Agent or Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent or Director, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's or Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the City Purchasing Agent or Director may terminate this Agreement on the termination date, at no further obligation of the City.
- 6.1.6 To effect final termination, the City Purchasing Agent or Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

7.0 TERMINATION FOR CAUSE BY CONTRACTOR

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

8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS

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

V. MISCELLANEOUS

1.0 INDEPENDENT CONTRACTOR

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

2.0 FORCE MAJEURE

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

3.0 SEVERABILITY

- 3.1 If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

4.0 ENTIRE AGREEMENT

- 4.1 This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding this Agreement.

5.0 WRITTEN AMENDMENT

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

6.0 APPLICABLE LAWS

- 6.1 This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.
- 6.2 Venue for any litigation relating to this Agreement is Harris County, Texas.

7.0 NOTICES

- 7.1 All notices 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 therefore.

EXHIBIT A DEFINITIONS

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

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

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

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

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

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

"Contract Term" is defined in Article IV.

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

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

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

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

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

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

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

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

EXHIBIT B
SCOPE OF WORK/SPECEIFICATION

1.0 General:

- 1.1 The Contractor shall furnish all supervision, personnel, labor, tools, supplies, parts, materials, equipment, and facilities and other items as necessary to provide repair and preventive maintenance services for various types of Sewer Cleaning Equipment operated by the City of Houston Department of Public Works and Engineering as described herein. These include but are not limited to the following brands of equipment: Harben, Vaccon, and Aires Equipment
- 1.2 All repairs must meet OEM specifications. Contractor will be held responsible for any damages caused to the equipment due to mechanic incompetence, negligence, and improper service techniques or installation. The City of Houston (COH) may exercise the option to perform said repairs and bill contractor.

2.0 Repair Technicians:

- 2.1 The Contractor's repair technicians should be trained or certified by the manufacturer in the repair of the particular brand of sewer equipment or be Master ASE certified or be a graduate of an accredited automotive technical school or college, have at least three (3) years of City requested maintenance experience on this type of equipment, and be able to provide proof to City if requested. The Contractor is responsible for technician's certifications and must provide proof to City within 5 days from receipt of a written request from the City to do so.

3.0 Replacement Parts:

- 3.1 The Contractor shall supply all original equipment manufactured (OEM) parts or their equal. Pricing will be on a cost plus basis with the contractor supplying a copy of the original invoice from the manufacturer as proof of cost. Or equal parts must be of equal quality or better than the OEM part and must be approved by the department before substitution. Use of or equal parts without approval by the department will not be accepted by the City. Therefore, if unapproved or equal parts are used to repair the equipment, the contractor shall be required to replace those parts with OEM parts at no additional cost to the City. Use of rebuilt or remanufactured parts using OEM substitutes or "equal" parts without approval from the corresponding department will require the contractor to redo the job using OEM parts at their own expense.

4.0 Repair Facility and Storage of Equipment/Vehicles:

- 4.1 The contractor facility(s) must be of adequate size to support the repair of City vehicles/equipment related to this contract. The equipment must be stored in a secured storage area or a building and must be locked/secured at all times when not being serviced. The Contractor shall be responsible for replacing any and all missing/damaged apparatus from the equipment/vehicles. The City will replace any apparatus, including, but not limited to, light bars, radios, etc., missing from the vehicles and bill the contractor for same. A site inspection may be done to verify that the contractor can meet these standards.

5.0 On-Site Inspection:

5.1 The Public Works & Engineering Department reserves the right to make on-site inspections (when required) for all bidders and potential contract vendors to determine if a vendor actually meets published contract specifications.

6.0 Repair Estimate/Proposal:

6.1 The contractor will complete a Repair Estimate and send it to the Public Works & Engineering Fleet Maintenance outside Service Section Manager for approval before work is started. The Public Works & Engineering Department will send the approved authorization back to the contractor authorizing the work. Work can then begin.

7.0 Completion of Repairs/Warranty Repairs:

7.1 The Contractor shall state on the estimate form the total turn around time for the repairs after authorization to proceed is given by Fleet Maintenance. Completion of repairs/exchanges and/or warranty returns must not exceed ten (10) business days from approval of authorization by the City unless an extension is approved.

7.1.1 The City's equipment shall have priority over other equipment repairs and shall not be used as fill-ins.

7.1.2 Completion of repairs/exchanges or warranty returns exceeding the ten business day turnaround time will have a \$50.00 liquidated damages charge for each day it exceeds the ten business days turnaround time for repairs. This amount shall be deducted from exceeded the ten business day turnaround time; the vendor may present in writing to Fleet Manager, justification for the delay. If that the delay is caused by circumstances beyond the control of the contractor, the Public Works & Engineering Department may at the discretion of the Fleet Manager, waive or adjust the \$50.00 per day liquidated damages.

7.1.3 Contractor may not have more than 10% of the repairs come back for warranty repairs completed within a 12 month period.

8.0 Equipment Acceptance:

8.1 Equipment repairs will be inspected at the time the equipment is delivered to Fleet Maintenance for workmanship, appearance, proper functioning of all equipment and systems, and conformance to all other requirements of this specification. In the event deficiencies are detected, the equipment will be rejected and the Contractor shall be required to make the necessary repairs, adjustments or replacements. Payment and/or the commencement of a discount period (if applicable) will not be made until the corrective action is made, the equipment re-inspected and accepted. If the equipment is accepted after delivery and rejected because of deficiencies, it shall be the Contractor's responsibility to make the necessary corrections per the warranty stipulations.

9.0 Examination of Cost Sheets:

9.1 The designated representative from the department reserves the right to examine the Contractor's parts/material cost invoices upon request.

10.0 **Preventive Maintenance:**

Preventive maintenance shall be performed based on hours of operation as the schedules below:

10.1 **Vaccon Preventative Maintenance Schedule** **(Hydrostatic Vacuum Units)**

Every 250 hours of operation

- 10.1.1 Lubricate vacuum compressor bearings
- 10.1.2 Check hydraulic oil reservoir level
- 10.1.3 Check oil level in water pump crankcase
- 10.1.4 Check water inlet suction strainer
- 10.1.5 Check oil level in auxiliary engine (see note 2)
- 10.1.6 Check coolant level in auxiliary engine (see note 2)
- 10.1.7 Check intake air cleaner maintenance indicator
- 10.1.8 Check belts on auxiliary engine and water pump drive (see note 2)
- 10.1.9 Drain intercooler condensation and oil
- 10.1.10 Inspect for leaks, loose nuts, bolts, hoses, and fittings
- 10.1.11 Lubricate hose reel rotary union
- 10.1.12 Lubricate front hydrostatic pump driveline
- 10.1.13 Lubricate telescopic boom slide seal
- 10.1.14 Lubricate auxiliary engine water pump drive bearings (see note 2)
- 10.1.15 Lubricate hose reel bearings
- 10.1.16 Lubricate hose reel pivot pin
- 10.1.17 Lubricate scissor lift pivots on debris body
- 10.1.18 Lubricate debris body pivots
- 10.1.19 Lubricate boom pivots
- 10.1.20 Lubricate vacuum breaker door shaft
- 10.1.21 Lubricate debris body float level indicator shaft
- 10.1.22 Lubricate hose reel chain
- 10.1.23 Lubricate boom swivel
- 10.1.24 Lubricate rear door safety "T" handle threads
- 10.1.25 Lubricate rear door seal and door locks
- 10.1.26 Lubricate rear door latch bushings
- 10.1.27 Lubricate vacuum system inlet and outlet seals
- 10.1.28 Lubricate level wind guide roller
- 10.1.29 Repair any worn or damaged hoses or fittings**
- 10.1.30 Replace hydraulic filter at heat exchanger (see note 1)
- 10.1.31 Change oil in auxiliary engine (see note 2)
- 10.1.32 Change oil filter in auxiliary engine (see note 2)
- 10.1.33 Clean out vacuum compressor separator box
- 10.1.34 Check operation of safety "T" handle

Every 500 hours of operation

- 10.1.35 Perform 250 hour service
- 10.1.36 Replace fuel pre-filter on auxiliary engine (see note 2)

10.1 Vaccon Preventative Maintenance Schedule (Hydrostatic Vacuum Units)
(Continued)

Every 500 hours of operation

- 10.1.37 Replace fuel filter on auxiliary engine (see note 2)
- 10.1.38 Inspect all flexible fuel lines on auxiliary engine (see note 2)
- 10.1.39 Check auxiliary engine coolant concentration (see note 2)
- 10.1.40 Replace intake air cleaner element (see note 2)
- 10.1.41 Check auxiliary engine monitoring and systems (see note 2)
- 10.1.42 Obtain oil sample of hydraulic oil (see note 2)
- 10.1.43 Inspect auxiliary engine mounting suspension and fasteners (see note 2)

Every 1000 hours of operation

- 10.1.44 Perform 250 and 500 hour service
- 10.1.45 Change oil in water pump crankcase
- 10.1.46 Change hydrostatic filters
- 10.1.47 Check and adjust valve clearance on auxiliary engine (see note 2)
- 10.1.48 Oil samples of the hydrostatic blower drive system should be taken and oil should be changed if the sample so indicates.

Notes

- 1.) Change hydraulic and hydrostatic filters after the first 50 hours of operation and after 50 hours following any component repair or replacement in the hydraulic or hydrostatic system.
- 2.) Applies only to units equipped with auxiliary engine.

10.2 Harben Sewer Jet Preventive Maintenance Schedule

- 10.2.1 Check hydraulic oil reservoir level
- 10.2.2 Check oil level in water pump crankcase
- 10.2.3 Check water inlet suction strainer
- 10.2.4 Check oil level in auxiliary engine (see note 2)
- 10.2.5 Check coolant level in auxiliary engine (see note 2)
- 10.2.6 Check intake air cleaner maintenance indicator
- 10.2.7 Check belts on auxiliary engine and water pump drive (see note 2)
- 10.2.8 Drain intercooler condensation and oil
- 10.2.9 Inspect for leaks, loose nuts, bolts, hoses, and fittings
- 10.2.10 Lubricate hose reel rotary union
- 10.2.11 Lubricate front hydrostatic pump driveline
- 10.2.12 Lubricate auxiliary engine water pump drive bearings (see note 2)
- 10.2.13 Lubricate hose reel bearings
- 10.2.14 Lubricate hose reel pivot pin
- 10.2.15 Lubricate hose reel chain
- 10.2.16 Lubricate level wind guide roller
- 10.2.17 Repair any worn or damaged hoses or fittings**
- 10.2.18 Replace hydraulic filter at heat exchanger (see note 1)
- 10.2.19 Change oil in auxiliary engine (see note 2)
- 10.2.20 Change oil filter in auxiliary engine (see note 2)

10.2 Harben Sewer Jet Preventive Maintenance Schedule (continued):

Every 500 hours of operation

- 10.2.21 Perform 250 hour service
- 10.2.22 Replace fuel pre-filter on auxiliary engine (see note 2)
- 10.2.23 Replace fuel filter on auxiliary engine (see note 2)
- 10.2.24 Inspect all flexible fuel lines on auxiliary engine (see note 2)
- 10.2.25 Check auxiliary engine coolant concentration (see note 2)
- 10.2.26 Replace intake air cleaner element (see note 2)
- 10.2.27 Check auxiliary engine monitoring and systems (see note 2)
- 10.2.28 Obtain oil sample of hydraulic oil (see note 2)
- 10.2.29 Inspect auxiliary engine mounting suspension and fasteners (see note 2)

Every 1000 hours of operation

- 10.2.30 Perform 250 and 500 hour service
- 10.2.31 Change oil in water pump crankcase
- 10.2.32 Change hydrostatic filters
- 10.2.33 Check and adjust valve clearance on auxiliary engine (see note 2)

Notes

- 1.) Change hydraulic and hydrostatic filters after the first 50 hours of operation and after 50 hours following any component repair or replacement in the hydraulic or hydrostatic system.
- 2.) Applies only to units equipped with auxiliary engine.

11.0 Fleet:

The following vehicles will be initially involved in this service contract:

	Unit_No	TechSpec	Year	Make	Model	Vin	Type
1	35879	2085-06-001	2006	FORD	CUTAWAY	1FDXE45P96DA24047	Aires
2	29352	2085-98-002	1998	FORD	CUTAWAY	1FDXE47F4WHB37322	Aires
3	29353	2085-98-002	1998	FORD	CUTAWAY	1FDXE47F6WHB01986	Aires
4	29354	2085-98-002	1998	FORD	CUTAWAY	1FDXE47F4WHB01985	Aires
5	19570	9260-92-001	1992	HARBEN	300THS-H	1H9T09201NC122024	HARBEN
6	19578	9260-92-001	1992	HARBEN	300THS-H	1H9T09200NC122029	HARBEN
7	19580	9260-92-001	1992	HARBEN	300THS-H	1H9T09201NC122038	HARBEN
8	19582	9260-92-001	1992	HARBEN	300THS-H	1H9T0920XNC122037	HARBEN
9	30466	2475-00-001	2000	INTERNATIONAL	2554 4X2	1HTGBADRXYH699340	Vaccon
10	31578	2475-01-002	2001	INTERNATIONAL	2554 4X2	1HTGBADR41H248409	Vaccon
11	31579	2475-01-002	2001	INTERNATIONAL	2554 4X2	1HTGBADR31H271888	Vaccon
12	28084	2475-98-001	1998	INTERNATIONAL	2554 4X2	1HTGBADR8WH561308	Vaccon
13	28085	2475-98-001	1998	INTERNATIONAL	2554 4X2	1HTGBADR6WH561307	Vaccon
14	29550	2475-99-003	1999	INTERNATIONAL	2554 4X2	1HTGBADR4XH625247	Vaccon
15	29582	2475-99-003	1999	INTERNATIONAL	2554 4X2	1HTGBADR8XH625249	Vaccon
16	29583	2475-99-003	1999	INTERNATIONAL	2554 4X2	1HTGBADR4XH625250	Vaccon
17	36060	3260-07-001	2007	PETERBILT	335	1NPALU0X67N667001	Vaccon
18	36061	3260-07-001	2007	PETERBILT	335	1NPALU0X87N667002	Vaccon
19	30693	3320-00-003	2000	INTERNATIONAL	2554 4X2	1HTGBADR5YH699360	Vaccon
20	25145	3320-95-001	1995	FORD	LN8000	1FDZW82E2SVA77953	Vaccon
21	26604	3320-97-001	1997	FORD	LNT8000	1FDZW82E2VVA10550	Vaccon

12.0 Invoicing:

- 12.1 Invoices shall be submitted as follows:
The Contractor shall submit for payment in triplicate (one original and two copies) invoices that are on Contractor's company stationery with original signed by an authorized agent of the company. The invoice number shall not be duplicated during the contract period. On invoices that reflect remedial work where there is a charge for parts/material mark up, contractors will submit with their billing invoice, a copy of the original OEM invoice that reflects what the contractor paid for the OEM parts. Each invoice shall detail the following information:
- 12.2 City contract number and work order number
 - 12.2.1 Unit number
 - 12.2.2 Work order number
 - 12.2.3 Mileage
 - 12.2.4 Hour meter reading
- 12.3 Address of facility where services were performed.
- 12.4 Beginning and ending date of service.
- 12.5 Detailed description of service rendered.
- 12.6 Itemized listing of new equipment, parts/part numbers, materials or components installed or repaired. If equipment and/or parts are reconditioned, the cost to recondition parts must be listed.
- 12.7 Itemized labor hours and rates.
- 12.8 Subtotal costs for parts and labor listed separately.
 - 12.8.1 Contractor supplying a copy of the original invoice from the manufacturer as proof of cost.
- 12.9 Total invoice cost.

12.0 Invoicing: (continued)

12.10 A copy of the following will be attached to the invoice:

12.10.1 The detailed job estimate with approval signature of the user Department's authorized representative authorizing commencement of work.

12.10.2 Copy of "Completion of Work" report with required acceptance signature of the user department's representative.

12.10.3 Invoices must be submitted with the applicable copies of the Contractor's daily work orders attached, which must have the approval signature of the user department's Assistant Director or his/her designated representative.

12.10.4 Invoices submitted for services performed resulting from Extra Work/Services shall require copies of the user department's representative written request attached to the original and each of the two (2) invoice copies.

12.10.5 Invoices shall reference Contractor's contact person for invoice irregularities.

12.10.6 Invoice to be submitted to the following locations:

City of Houston
Public Works & Engineering Department
Accounts Payable Attn. Craig Foster
P.O. Box 61489
Houston, Texas 77208-1485

13.0 Additions & Deletions:

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

14.0 Estimated Quantities Not Guaranteed:

14.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of sewer cleaning equipment maintenance, repair and replacement parts 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.

15.0 Warranty:

- 15.1 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.
- 15.2 "Correction" as used in this clause, means the elimination of a defect.
- 15.3 Notwithstanding inspection and acceptance by the City or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract.
- 15.4 If the Contractor is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost incurred by the City, or make an equitable adjustment in the contract price.
- 15.5 A minimum 12-month warranty on all parts and workmanship is required.

16.0 Local Presence/Source:

The contractor with any respect to any goods, material, equipment, supplies and parts furnished shall have authorized facility(s) located within the Houston Galveston Region (Harris County and its seven adjacent counties Brazoria, Chambers, Fort Bend, Liberty, Galveston, Montgomery and Waller).

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, Peter S EVANS C.O.O. as an owner or officer of
(Name) (Print/Type) (Title)
Balar Holding Corporation (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 8/19/08

Contractor Name Balar Holding Corporation

Signature 

Title C.O.O.

EXHIBIT E

N/A

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

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

as an owner or officer of _____ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

_____ Date

_____ Contractor Name

_____ Signature

_____ Title

N/A

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

I, _____
(Name - Print/Type)

as an owner or officer of _____ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Safety impact position means a Contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

_____ Date

_____ Contractor Name

_____ Signature

_____ Title

**EXHIBIT "F"
DRUG POLICY COMPLIANCE DECLARATION**

I, Peter S EVANS C.O.O as an owner or officer of
 (Name) (Print/Type) (Title)
Balar Holding Corporation (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 Feb 20, 2008 to Aug 20, 2008.

PSE
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).

PSE
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.

PSE
Initials

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

PSE
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 NIA - New Contract.

PSE
Initials

From 2/20/08 to 8/20/08 the following test has occurred
 (Start date) (End date)

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

PSE
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. NIA New Contract

PSE
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.

8/20/08
(Date)

Peter S EVANS
(Typed or Printed Name)
[Signature]
(Signature)
C.O.O.
(Title)

**EXHIBIT G
FEES AND COSTS**

YEAR ONE (1)

Group II: Labor and Preventive Maintenance for Harben Equipment

Item #	Description	Unit of Measure	Unit Price
1	Standard labor - Harben Equipment	Hour	\$89.00
2	Over-Time Labor Harben Equipment	Hour	\$99.00
3	Emergency Labor for Harben Equipment	Hour	\$99.00
4	Maintenance, Preventative for Harben Equipment, in accordance to the Technical Specification in Section "B" 10.2.	Each	\$307.00
5	Maintenance, Preventative for Harben Equipment in accordance to the Technical Specification in Section "B" 10.2.	Each	\$436.00
6	Maintenance, Preventative for Harben Equipment in accordance to Section "B" Technical Specification 10.2.	Each	\$565.00

Group V: Labor and Preventive Maintenance for Vaccon Equipment

Item #	Description	Unit of Measure	Unit Price
7	Standard Labor - Vaccon	Hour	89.00
8	Over-Time Labor - Vaccon	Hour	99.00
9	Emergency Labor - Vaccon	Hour	99.00
10	Maintenance, Preventative for Vaccon Equipment, in accordance with the Technical Specification Section "B" 10.1. (Should Include Service and parts.)	Each	505.00
11	Maintenance, Preventative for Vaccon Equipment, in accordance with the Technical Specification Section "B" 10.1. (Should Include Service and parts.)	Each	644.00
12	Maintenance, Preventative for Vaccon Equipment, in accordance with the Technical Specification Section "B" 10.1. (Should Include Service and parts.)	Each	1351.00

Group VII: Labor for Aires

Item #	Description	Unit of Measure	Unit Price
13	Standard Labor Aires	Hour	\$89.00
14	Over-Time Labor Aires	Hour	\$99.00
15	Emergency Labor Aires	Hour	\$99.00

Group IX: Harben Parts and material as needed at Cost Plus Mark-up Percentage (37.5%).

Item #	Description
16	Harben Parts and material

**EXHIBIT G
FEES AND COSTS (continued)**

YEAR ONE (1) (CONTINUED)

Group XII: Vaccon Parts and material as needed at Cost Plus Mark-up Percentage (37.5%)

Item #	Description
17	Vaccon Parts and material

Group XIV: Aires Parts as needed at Actual Cost Plus Mark-up Percentage (37.5%)

Item #	Description
18	Aires Parts and material

YEAR TWO (2)

Group II: Labor and Preventive Maintenance for Harben Equipment

Item #	Description	Unit of Measure	Unit Price
1	Standard labor - Harben Equipment	Hour	\$90.00
2	Over-Time Labor Harben Equipment	Hour	\$100.00
3	Emergnecy Labor for Harben Equipment	Hour	\$100.00
4	Maintenance, Preventative for Harben Equipment, in accordance with the Technical Specification Section "B" 10.2 (Should Include Service and parts.)	Each	\$307.00
5	Maintenance, Preventative for Harben Equipment, in accordance with the Technical Specification Section "B" 10.2 (Should Include Service and parts)	Each	\$436.00
6	Maintenance, Preventative for Harben Equipment, in accordance with the Technical Specification Section "B" 10.2 (Should Include Service and parts)	Each	\$565.00

Group V: Labor and Preventive Maintenance for Vaccon Equipment

Item #	Description	Unit of Measure	Unit Price
7	Standard Labor - Vaccon	Hour	90.00
8	Over-Time Labor - Vaccon	Hour	100.00
9	Emergency Labor - Vaccon	Hour	100.00
10	Maintenance, Preventative for Vaccon Equipment in accordance with the Technical Specification in Section "B" 10.1	Each	505.00
11	Maintenance, Preventative for Vaccon Equipment in accordance with the Technical Specification Section "B" 10.1 (Should Include Service and parts.)	Each	644.00
12	Maintenance, Preventative for Vaccon Equipment, in accordance with the Technical Specification Section "B" 10.1 (Should Include Service and parts.)	Each	1351.00

EXHIBIT G

FEEES AND COSTS (CONTINUED)

YEAR TWO (2) (CONTINUED)

Group VII: Labor for Aires

Item #	Description	Unit of Measure	Unit Price
13	Standard Labor Aires	Hour	
14	Over-Time Labor Aires	Hour	90.00
15	Emergency Labor Aires	Hour	100.00
			100.00

Group IX: Haben Parts and material as needed at Cost Plus Mark-up Percentage (37.5%)

Item #	Description
16	Harben Parts and Material

Group XII: Vaccon Parts and material as needed at Cost Plus Mark-up Percentage (37.5%)

Item #	Description
17	Vaccon Parts and Material

Group XIV: Aires Parts as needed at Actual Cost Plus Mark-up Percentage (37.5%)

Item #	Description
18	Aires Parts and Material

YEAR THREE (3)

Group II: Labor and Preventive Maintenance for Harben Equipment

Item #	Description	Unit of Measure	Unit Price
1	Standard labor - Harben Equipment		
2	Over-Time Labor Harben Equipment	Hour	91.00
3	Emergnecy Labor for Harben Equipment	Hour	101.00
4	Maintenance, Preventative for Harben Equipment, in accordance with the Technical Specification in Section "B" 10.2 (Should Include Service and parts.)	Hour	101.00
5	Maintenance, Preventative for Harben Equipment, in accordance with the Technical Specification in Section "B" 10.2 (Should Include Service and parts	Each	307.00
6	Maintenance, Preventative for Harben Equipment, in accordance with the Technical Specification in Section "B" 10.2 (Should Include Service and parts	Each	436.00
		Each	565.00

EXHIBIT G

FEEES AND COSTS (CONTINUED)

YEAR THREE (3)

Group V: Labor and Preventive Maintenance for Vaccon Equipment

Item #	Description	Unit of Measure	Unit Price
7	Standard Labor - Vaccon	Hour	91.00
8	Over-Time Labor - Vaccon	Hour	101.00
9	Emergency Labor - Vaccon	Hour	101.00
10	Maintenance, Preventative for Vaccon Equipment, in accordance with the Technical Specification in Section "B" 10.1 (Should Include Service and parts.)	Each	505.00
11	Maintenance, Preventative for Vaccon Equipment, in accordance with the Technical Specification in Section "B" 10.1 (Should Include Service and parts.)	Each	644.00
12	Maintenance, Preventative for Vaccon Equipment, in accordance with the Technical Specification in Section "B" 10.1 (Should Include Service and parts.)	Each	1351.00

Group VII: Labor for Aires

Item #	Description	Unit of Measure	Unit Price
13	Standard Labor Aires	Hour	91.00
14	Over-Time Labor Aires	Hour	101.00
15	Emergency Labor Aires	Hour	101.00

Group IX: Haben Parts and material as needed at Cost Plus Mark-up Percentage (37.5%)

Item #	Description
16	Harben Parts and material

Group XII: Vaccon Parts and material as needed at Cost Plus Mark-up Percentage (37.5%)

Item #	Description
17	Vaccon Parts and material

Group XIV: Aires Parts as needed at Actual Cost Plus Mark-up Percentage (37.5%)

Item #	Description
18	Aires Parts and material

EXHIBIT G

FEES AND COSTS (CONTINUED)

YEAR FOUR (4)

Group II: Labor and Preventive Maintenance for Harben Equipment

Item #	Description	Unit of Measure	Unit Price
1	Standard labor - Harben Equipment	Hour	92.00
2	Over-Time Labor Harben Equipment	Hour	102.00
3	Emergency Labor for Harben Equipment	Hour	102.00
4	Maintenance, Preventative for Harben Equipment, in accordance with the Technical Specification in Section "B" 10.2 (Should Include Service and parts.)	Each	317.00
5	Maintenance, Preventative for Harben Equipment, in accordance with the Technical Specification Section "B" 10.2 (Should Include Service and parts)	Each	446.00
6	Maintenance, Preventative for Harben Equipment, in accordance with the Technical Specification in Section "B" 10.2 (Should Include Service and parts)	Each	575.00

Group V: Labor and Preventive Maintenance for Vaccon Equipment

Item #	Description	Unit Measure	of Unit Price
7	Standard Labor - Vaccon	Hour	92.00
8	Over-Time Labor - Vaccon	Hour	102.00
9	Emergency Labor - Vaccon	Hour	102.00
10	Maintenance, Preventative for Vaccon Equipment, in accordance with the Technical Specification in Section "B" 10.1 (Should Include Service and parts.)	Each	515.00
11	Maintenance, Preventative for Vaccon Equipment, in accordance with the Technical Specification in Section "B" 10.1 (Should Include Service and parts.)	Each	654.00
12	Maintenance, Preventative for Vaccon Equipment, in accordance with the Technical Specification in Section "B" 10.1 (Should Include Service and parts.)	Each	1361.00

YEAR FOUR (4) (CONTINUED)

Group VII: Labor for Aires

Item #	Description	Unit of Measure	Unit Price
13	Standard Labor Aires	Hour	
14	Over-Time Labor Aires	Hour	92.00
15	Emergency Labor Aires	Hour	102.00
			102.00

Group IX: Haben Parts and material as needed at Cost Plus Mark-up Percentage (37.5%)

Item #	Description
16	Harben Parts

Group XII: Vaccon Parts and material as needed at Cost Plus Mark-up Percentage (37.5%)

Item #	Description
17	Vaccon Parts

EXHIBIT G

FEES AND COSTS (CONTINUED)

YEAR FOUR (4) (CONTINUED)

Group XIV: Aires Parts as needed at Actual Cost Plus Mark-up Percentage (37.5%)

Item #	Description
18	Aires Parts and material

YEAR FIVE (5)

Group II: Labor and Preventive Maintenance for Harben Equipment

Item #	Description	Unit of Measure	Unit Price
1	Standard labor - Harben Equipment		
2	Over-Time Labor Harben Equipment	Hour	93.00
3	Emergency Labor for Harben Equipment	Hour	103.00
4	Maintenance, Preventative for Harben Equipment, in accordance with the Technical Specification in Section "B" 10.2 (Should Include Service and parts.)	Hour	103.00
5	Maintenance, Preventative for Harben Equipment, in accordance with the Technical Specification in Section "B" 10.2 (Should Include Service and parts)	Each	317.00
6	Maintenance, Preventative for Harben Equipment, in accordance with the Technical Specification in Section "B" 10.2 (Should Include Service and parts)	Each	446.00
		Each	575.00

Group V: Labor and Preventive Maintenance for Vaccon Equipment

Item #	Description	Unit of Measure	Unit Price
7	Standard Labor - Vaccon		
8	Over-Time Labor - Vaccon	Hour	93.00
9	Emergency Labor - Vaccon	Hour	103.00
10	Maintenance, Preventative for Vaccon Equipment, in accordance with the Technical Specification Section "B" 10.1 (Should Include Service and parts.)	Hour	103.00
11	Maintenance, Preventative for Vaccon Equipment, in accordance with the Technical Specification in Section "B" 10.1 (Should Include Service and parts.)	Each	525.00
12	Maintenance, Preventative for Vaccon Equipment, in accordance with the Technical Specification in Section "B" 10.1 (Should Include Service and parts.)	Each	664.00
		Each	1371.00

EXHIBIT G

FEEES AND COSTS (CONTINUED)

YEAR FIVE (5) (CONTINUED)

Group VII: Labor for Aires; Item Nos.

Item #	Description	Unit of Measure	Unit Price
13	Standard Labor Aires	Hour	93.00
14	Over-Time Labor Aires	Hour	103.00
15	Emergency Labor Aires	Hour	103.00

Group IX: Year Five Haben Parts and material as needed at Cost Plus Mark-up Percentage (37.5%)

Item #	Description
16	Harben Parts and material

Group XII: Year Five Vaccon Parts and material as needed at Cost Plus Mark-up Percentage (37.5%)

Item #	Description
17	Vaccon Parts and material

Group XIV: Year Five Aires Parts as needed at Actual Cost Plus Mark-up Percentage (37.5%)

Item #	Description
18	Aires Parts and material

EXHIBIT H

PAY OR PLAY

ATTACHMENT A



CERTIFICATION OF AGREEMENT TO COMPLY WITH PAY OR PLAY PROGRAM

Contractor Name: Balar Holding Corporation \$ _____
(Contractor/Subcontractor) (Amount of Contract)

Contractor Address: 4445 Gulf Freeway Houston TX 77023

Project No.: [GFS/CIP/AIP/File No.] 511-L22535

Project Name: [Legal Project Name] Sewer Cleaning Equipment Maintenance, Repair and Replacement Parts Services.

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

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

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

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

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

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

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

Peter S. Evans
CONTRACTOR (Signature)

8/19/08
DATE

Peter S. EVANS C.O.O.
NAME AND TITLE (Print or type)