



CITY OF HOUSTON INVITATION TO BID

Issued: January 22, 2010

BID OPENING

Sealed bids, in duplicate, will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002, until **10:30 AM Thursday February 25, 2010** and all bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby at 11:00 AM on that date for the purchase of:

**AUTOMATIC TRANSMISSION REPAIR/EXCHANGE SERVICES
FOR VARIOUS DEPARTMENTS
BID INVITATION NO.: S11- L23491
NIGP CODE: 060-94**

BUYER

Questions regarding this solicitation document should be addressed to Gloria Jordan-King at **832-393-8750** or e-mail to gloria.king@cityofhouston.net.

ELECTRONIC BIDDING

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

MANDATORY PRE-BID CONFERENCE

A Pre-Bid Conference will be held for all Prospective Bidders at the City Hall, Strategic Purchasing Division, 901 Bagby, Conference Rm. 4 (Basement), Houston, Texas 77002 **at 1:30 PM on Wednesday, February 10, 2010.**

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

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

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

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

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

***CONTENTS:**

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

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

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

SECTION A



**AUTOMATIC TRANSMISSION REPAIR/EXCHANGE SERVICES
FOR VARIOUS DEPARTMENTS
BID INVITATION NO.: S11-L23491
NIGP CODE: - 060-94**

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

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

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

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

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

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

If the City accepts the foregoing offer, this bidder shall furnish all labor, supervision, materials, supplies, equipment and tools necessary to provide **Automatic Transmission Repair/Exchange Services** for the City in accordance with attached Specifications.

Documents/forms must be downloaded from the City's Website at <https://purchasing.houstontx.gov/>

Additional Required Forms to be included with this Bid:

In addition to the Electronic Bid Form and the Official Signature Page, the Forms listed in Table 1 **must be completed and submitted to the Office of the City Secretary on or before the date and time the bid is due.** When submitting bids via UPS/FedEx, etc. please label it with the name: Office of the City Secretary, City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002, along with the bid/proposal number:

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

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

TABLE 2 - DOCUMENTS & FORMS
EEOC.doc
Drug Forms.doc
Formal Instructions for Bid Terms.doc
M/WBE.doc
Sample Insurance Over \$50,000.pdf
Pay or Play Affirmative Action & Contract Compliance Q & A
Pay or Play Affirmative Action & Contract Compliance Requirements
Pay or Play Contractor/Subcontractor Payment Reporting Form
Pay or Play Contractor/Subcontractor Waiver Request
Pay or Play List of Participating Subcontractors
Pay of Play Certification of Agreement to Comply with the Program

Questions concerning the Bid should be submitted in writing to: City of Houston, Strategic Purchasing Division, 901 Bagby, Room B506, Houston, TX 77002, Attn: **Gloria Jordan-King at 832-393-8750 or e-mail (preferred method) to Gloria.King@cityofhouston.net** no later than 3:00 PM, Thursday, February 18, 2010.

CONTRACTOR'S QUESTIONNAIRE

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

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

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

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

SITE INSPECTION:

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

QUALITY AND WORKMANSHIP:

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

POST AWARD MEETING:

Once the contract has been approved by City Council, the departments reserve the right to schedule a Post-Award meeting with the successful Contractor(s) and the departments End Users. This meeting will include Procurement, and the departments Contact Management Department, Accounts Payable, and all other matters related to contract administration.

SECTION B
SCOPE OF WORK/SPECIFICATIONS
For
AUTOMATIC TRANSMISSION REPAIR/EXCHANGE SERVICES

1.0 Scope of Services:

The Contractor shall furnish all labor, tools, supplies, parts, materials, equipment, and facilities necessary to provide automatic transmission repair/exchange services for various departments. The services shall include:

- 1.1 Removing the transmission from the vehicle.
- 1.2 Repairing or exchanging the transmission, flushing or replacing coolers rebuild torque converter; replace case if damaged not due to abuse. In the event of case damage due to abuse, the Fleet Manager may at his/her discretion, supply a case to the contractor or authorize the contractor to add an additional charge for a case.
- 1.3 Installing the transmission in the vehicle
- 1.4 Performing road test
- 1.5 Delivering the vehicle back to location within City limits as specified by Fleet Manager.
- 1.6 Programming/reprogramming the transmission control module.

2.0 Specifications:

All transmissions that are repaired or exchanged must be remanufactured or rebuilt. Valve bodies must be fully tested to meet OEM specification. The electronic solenoids must be replaced under OEM certified components or their equals. A dynamometer testing report, or equivalent electronic hand held or stationary scanner report print-out, must be furnished with every transmission repair/exchange. All remanufactured or rebuilt transmissions must meet or exceed OEM specifications. The Contractor will be held responsible for any damages caused to the vehicle due to mechanic incompetence or negligence and improper service techniques or installation. COH may exercise the option to perform said repairs and bill the contractor. The Contractor is responsible to programming/reprogramming the transmission control module on all vehicles to meet OEM specification.

3.0 Repair Technicians:

The Contractor's repair technicians should be ASE certified or have at least three (3) years of automotive maintenance and repair experience or other specialized work on equipment, small engines or be a graduate of an accredited automotive technical school or college 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 request from the City to do so.

4.0 Replacement Parts:

The Contractor shall supply all original equipment manufactured (OEM) parts or their equal. Or equal parts must be of equal quality or better than the OEM part and must be approved by the department before substituted. Transmissions repaired or exchanged using equal parts without approval by the department Fleet Manager will not be accepted by the City. Therefore, if unapproved or equal parts were used to repair or exchange a transmission, the contractor shall be required to replace those parts with OEM parts at no additional cost to the City. Transmissions that have been repaired or exchanged using OEM substitutes or "equal" parts without approval from the corresponding department will redo the job using OEM parts at their own expense.

5.0 Storage of Equipment/Vehicles:

The equipment must be stored in a secured storage area or a building and must be lock/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 missing apparatus, including, but not limited to light bars, radios, etc. from the vehicles and bill the contractor.

6.0 Repair Estimate/Proposal

The Contractor will complete an Automatic Transmission Repair Authorization Form (Appendix "B") for each vehicle to be repaired. The Contractor shall provide the user department with an electronic estimate (e.g. scanned estimate sent to the City via e-mail) of the repair needed to be done to the apparatus within one (1) working day from receipt of vehicle. The written estimate shall include the repair labor hours and materials cost dollars. The Contractor's estimate/proposal must be a detailed legible description of parts and labor charges. In order to determine the total repair estimate/proposal amount, the Contractor shall apply the labor rate in the contract fee schedule to the estimated labor hours and add the materials cost. If the Contractor's estimate is determined to be reasonable by the user department, the Contractor shall be given a written authorization to proceed with the repairs by the user department. Additional work beyond the original estimated shall be submitted in writing or by electronic format to the user department. No work shall be performed without prior approval by user department in writing/ mutually agree method.

7.0 Completion of Repairs/Warranty Repairs:

The Contractor shall state on the authorization form the total turn around time for the repairs after authorization to proceed is given by the Fleet Manager. Completion of repairs/exchanges and/or warranty returns must not exceed three (3) business days for HFD and HPD emergency vehicles and five (5) business days for non-emergency City vehicles from approval of authorization form by the City unless the extension is approved.

7.1 The City's emergency vehicles shall have priority over all other vehicle repairs and shall not be used as fill-ins.

7.2 Completion of repairs/exchanges or warranty returns exceeding the require business days in 7.0 Completion of Repairs/Warranty Repairs turnaround time will have a \$50.00 liquidated damages charge for each day it exceeds the require business days turnaround time for repairs. This amount shall be deducted from the Contractor's invoice for services rendered. . In cases where the completion date has exceeded the require business day turnaround time, the vendor may present in writing to the Fleet Manager, justification for the delay. If the City of Houston (COH) agrees that the delay is caused by circumstances beyond the control of the Contractor, the COH may at the discretion of the Fleet Manager, waive or adjust the \$50.00 per day penalty.

7.3 Contractor may not have more than 10% of the repairs come back for warranty repairs.

8.0 Equipment Acceptance:

The apparatus repairs will be inspected by the user department 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 vehicle(s) will be rejected to make the necessary repairs, adjustments, or replacements. It shall be the Contractor's responsibility to make the necessary corrections and resubmit the vehicle(s) for re-inspection and acceptance. Payment will not be made until the corrective action is completed and the vehicle(s) is/are re-inspected and accepted.

9.0 Examination of Cost Sheets:

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

EXHIBIT "BB" VEHICLE TYPES

10.0 **Fleet:**

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

Vehicles	Production Years	Police Dept. Est. Qty.	Fire Dept. Est. Qty.	PWE Est. Qty.
Buick Century	1998-2005	6	NA	1
Buick Regal	1999-2005	5	NA	1
Buick Roadmaster	1993	NA	NA	1
Chevy Camaro	1994-1999	6	NA	1
Chevy Caprice	1993-1996	NA	0	1
Chevy Cavalier	1995-1999	2	NA	1
Chevy Impala	2000-2009	290	2	1
Chevy Lumina	1990-1998	4	NA	1
Chevy Lumina	1995-2005	66	NA	1
Chevy Malibu	1998-2007	10	53	1
Chevy Malibu Hybrid	2009	10		
Chevy Monte Carlo	1995-2005	11	NA	1
Chevy Astro Van	1995-2005	17	NA	1
Chevy Suburban	1990-	NA	NA	1
Chevy Suburban	1994-2009	5	42	1
Chevy Suburban – 4L8E w/ slip yoke	1998-2001	NA	NA	1
Chevy Tahoe	1999-2009	15	NA	1
Chevy Tahoe (Diesel)		NA	NA	1
Chevy Tahoe (4-Wheel Drive)		NA	NA	1
Chevy S-10 Truck	1995-2005	2	NA	1
Chevy/GMC ½ Ton Truck/Van	1995-1998	55	NA	1
Chevy/GMC ½ Ton Truck/Van	1999-2009	25	NA	1
Chevy/GMC ¾ Ton Truck/Van	1990-2009	20	29	7
Chevy/GMC 1 Ton Truck/Van	1995-2009	7	75	12
Chevy/GMC 1 Ton Ambulance	2007-2009	NA	56	1
Chevy C-2500 (Diesel)	1995	NA	NA	1
Chevy C-3500 (4x4)	1996-1999	NA	7	1
Chevy Trailblazer	2008	3		
Vehicles	Production	Police	Fire	PWE

	Years	Dept.	Dept.	
		Est. Qty.	Est. Qty.	Est. Qty.
Chevy Corvette	1995	1		
Chevy Z71	1999	1		
Chevy Uplander	2007	1		
Chevy Malibu Hybrid	2009	10		
Pontiac Trans Am	2001	1		
Cadillac Seville	1998-2000	2		
Cadillac Escalade	2002-2004			
Dodge Avenger	2009	NA	4	1
Dodge Dakota	1996-2005	13	NA	1
Dodge Intrepid	1996-2005	7	NA	1
Dodge Neon	1996-2005	8	NA	
Dodge Ram – Model 46RE	1999	NA	NA	1
Dodge Stratus	2000-2005	77	NA	1
Dodge 2500 – Model Torque Flight	1997-2001	NA	6	1
Dodge ½ Ton Truck	1995-2005	12	NA	1
Dodge ½ Ton Van	1990-2005	8	NA	1
Dodge ¾ Ton Truck	1995-2009	25	NA	1
Dodge ¾ Ton Van	1990-2005	6	1	1
Dodge 1 Ton Truck	1990-2005	15	2	1
Dodge 1 Ton Van	1990-2008	7	1	1
Dodge Venture	2009	NA	4	1
Dodge Caravan	1997-2009	12	4	1
Dodge Charger-Marked Hemi	2007	10		
Dodge Charger-Unmarked 6 cyl.)	2007-2008	237		
Dodge Sprinter Van	2008	6		
Dodge Durango	2000-2008	9		
Ford Aerostar	1993-2005	15	NA	1
Ford Crown Victoria (non-police)	1995-2008	51	NA	NA
Ford Crown Victoria Police/Fire Pursuit	1995-2009	1669	28	NA
Ford Contour	1995-2005	3	NA	1
Ford Escape	2001-2005	5	NA	1
Ford Escape Hybrid	2006	18		
Vehicles	Production Years	Police Dept.	Fire Dept.	PWE

		Est. Qty.	Est. Qty.	Est. Qty.
Ford Excursion	2004-2005	6	34	1
Ford Excursion (4X4)	2000	NA	1	1
Ford Expedition	1995-2008	80	11	1
Ford Focus	2000-2005	12	8	1
Ford Fusion	2000-2008	NA	8	1
Ford Freestar	2004-2005	4	NA	1
Ford Mustang	1995-2007	14	NA	1
Ford Ranger	1994-2005	12	NA	1
Ford Taurus	1995-2006	348	35	1
Ford Windstar	1998-2005	4	4	1
Ford F150 ½ Ton Truck	1990-2007	64	NA	1
Ford F250 ¾ Ton Truck	1990-2005	8	8	2
Ford F350 1 Ton Truck (4x4)	1997-2006	5	4	1
Ford F350 1 Ton Ambulance (Diesel)	2004	10	42	1
Ford F350 1 Ton Truck	1990-2007	20	4	1
Ford E250 ¾ Ton Van	1990-2007	5	1	NA
Ford E350 1 Ton Van	1990-2007	30	NA	NA
Ford E350 1 Ton Van (Diesel)	2006-2008	NA	3	NA
Ford F550 (Diesel)	2003-2007	1	3	NA
Jeep Cherokee (4-Wheel Drive)	1993-2005	35	NA	9
Lincoln Town Car	1998-2005	5	NA	NA
Pontiac Grand Prix	2000-2005	15	NA	NA
Pontiac Grand Am	2004-2005	7	NA	NA
Pontiac Trans AM	2001	1		
Toyota Prius (Hybrid Synergy Drive, (HSD))	2001-2009	50	117	1
Toyota Camry Hybrid	2009	10		
Toyota Highlander Hybrid	2009	6		

Vehicles	Production Years	Police Dept.	Fire Dept.	PWE
		Est. Qty.	Est. Qty.	Est. Qty.
Nissan Maxima	1993 – 2005	2		
Nissan Infinity	1999 – 2006	3		
Nissan Xterra	200 – 2002	2		
Nissan Altima	2005	1		
Nissan Q56	2005	1		
Mirsubishi Lancer	2003	1		
Honda Accord	1996 – 2006	6		
Honda Civic	2001	1		
Lexus	1998 – 2007	3		
BMW X5	2000 – 2002	3		
BMW 365	2005			
Mazda Protégé	2000	1		
Mercedes S5000	2000	1		
Toyota Camry	2000-2007	3		
Toyota Tundra	2000	1		
Toyota Tacoma	2003	1		
Isuza Rodeo	2001 – 2002	2		
Kia Sorrento	2004	2		

NOTE: Police/Fire Pursuit Vehicles (cars equipped with P71 police package) require more frequent repair/exchanges.

11.0 Warranty:

A minimum 24-month/75,000 mile warranty is required for Police/Fire Pursuit Cars and Ambulances. A 36-month/36,000 mile warranty is required for all other vehicles.

11.1 The warranty period shall commence at the time of final vehicle acceptance by the City.

11.2 If, during the warranty period, any defect or faulty materials are found, the Contractor shall upon notification by the use department proceed at its own expense to replace and repair same, together with any damages to all finishes, fixtures, equipment and furnishings that may have been damaged as a result of this defective equipment or workmanship. This warranty work must be completed within five (5) business days after receipt of unit.

12.0 Invoicing:

Invoices shall be submitted as follows:

The Contractor shall submit for payment in triplicate (one original and two copies) invoices that are on Contactor'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 were there is a charge for parts/material mark up, vendors will submit with their billing invoice, a copy of the original OEM invoice that reflects what the vendor paid for the OEM parts. Each invoice shall detail the following information:

12.1 City contract number and work order number.

12.2 Address of facility where services were performed.

12.3 Beginning and ending date of service.

- 12.4 Detailed description of service rendered.
- 12.5 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.
- 12.6 Itemized labor hours and rates based on classification under Exhibit "G"
- 12.7 Subtotal costs for parts and labor listed separately.
- 12.8 Total invoice cost.
- 12.9 A copy of the following will be attached to the invoice:
 - 12.9.1 The detailed job estimate with approval signature of the user department's authorized representative authorizing commencement of work.
 - 12.9.2 Copy of "Completion of Work" report with required acceptance signature of the user department's representative.
- 12.10 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 Director or its designated representative.
- 12.11 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.
- 12.12 Invoices shall reference the Contractor's contact person for invoice irregularities.
- 12.13 Invoice to be submitted to the following locations:

City of Houston
 Houston Police Dept.
 Budget & Finance
 1200 Travis
 Houston, Texas 77002

City of Houston
 Houston Fire Dept.
 Attn: Accounts Payable
 PO BOX 3625
 Houston, Texas 77253

City of Houston
 Public Works & Engineering Dept.
 Attn. Accounts Payable –Craig Foster
 P.O. Box 61449
 Houston, Texas 77208-1449

13.0 Additions & Deletions:

The City by written notice from the City Purchasing Agent to the Contractor, at anytime during the term of this contract, may add or delete like or similar vehicles and/or services to the list of vehicles 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 vehicle and/or service is not identical to any item already under contract, the charges therefor will then be the Contractor's prevailing charges or rates for the equipment/vehicle, locations and/or services classified in the fee schedule.

14.0 Estimated Quantities Not Guaranteed:

The estimated quantities specified herein are not a guarantee equipment/vehicle of actual quantities, as the City does not guarantee any particular quantity of automatic transmission repair/exchange 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 all the quantities specified herein.

15.0 Warranty of Services:

- 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. The City shall give written notice of any defect or nonconformance to the Contractor within a one-year period from the date of acceptance by the City. This notice shall state either (1) that the Contractor shall correct or re-perform any defective or non-conforming services at no additional cost to the City, or (2) that the City does not require correction or re-performance.
- 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 occasioned to the City thereby, or make an equitable adjustment in the contract price.
- 15.5 If the City does not require correction or re-performance, the City shall make an equitable adjustment in the contract price.
- 15.6 All Contractor work shall be warranted on all parts for a minimum of twelve (12) months.

16.0 Confidentiality Statement: (Appendix "A")

Once a Vendor is selected and awarded the bid, a Confidentiality Statement must be signed by the Contractor prior to rendering services. The Contractor shall not disclose or make available customer payment data to other entities or individuals except pursuant to valid legal process, without the prior written consent of the City. The Contractor shall treat such information as confidential and will not use said information other than in connection with its performance or its obligations.

17.0 Local Presence/source:

- 17.1 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).

Attachments: 1.) Appendix "A" Confidentiality Agreement
2.) Appendix "B" Automatic Transmission Repair Estimated Authorization Form

APPENDIX "A"

Confidentiality Agreement Automatic Transmission Repair/Exchange Services

The vendor whom the City selects and awards a contract under this bid document shall be required to sign and comply with the following confidentiality requirements:

Contractor, its agents, employees, 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 City Purchasing Agent or Director of the Appropriate Department authorizes it in writing. This requirement precludes Contractor from disclosing or disseminating information concerning specific City-owned items for which Contractor is to provide maintenance and repair services under this Agreement (Specific Item Information"), unless such disclosure or dissemination has been approved in advance by the City Purchasing Agent or Director of the Appropriate Department. Such Specific Item Information shall include, but shall not be limited to, the following:

- (1) information identifying specific City-owned items that is contained in any document created, obtained, or used by Contractor or its agents, employees, contractors, or subcontractors in the performance of the maintenance and repair services under this Agreement, including invoices, requisitions, and parts order forms,
- (2) any information concerning either the presence of specific City-owned items at Contractor's facilities or the transportation of specific City-owned items to or from Contractor's facilities, and
- (3) information concerning any City requirement that specific City-owned items be available for the City's use on a specific date or time, or that the maintenance or repair of specific City-owned items be completed according to a certain schedule or by a specific date or time.

Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms of this section.

Contractor

APPENDIX "B"

1.1 Automatic Transmission Repair Estimate/Authorization Form

2.0 Contract Number

Request for Service (City Dept)

Date of Request by City Department: _____

Type and year model of vehicle: _____

Vehicle Shop (City Identification) Number: _____

Location of Vehicle: _____

Department Contact Name: _____

Department Contact Phone: _____ Fax: _____

Due Date of Estimate/Proposal: _____

Contractor Acknowledgement/Estimate

Date Work Order Received by Contractor: _____

Estimated Pick-Up Date/Time by Contractor: _____

Date vehicle received at Contractors Shop: _____

Estimated cost of repair of repair/exchange (per contract): _____

Towing Cost for Non-Transmission Related Problems: _____

Estimated Labor Cost Non-Transmission Problems: _____

Estimated Parts/Materials/Cost Non-Transmission Problems: _____

Total Cost of Non-Transmission Repairs: _____

Turn around time (after receipt of this Estimate/Proposal): _____

Contractor: _____

Signature of Contractor Representative: _____

City of Houston Acceptance of Estimate

Employee Signature: _____

Department: _____ Phone: _____ Fax: _____

Date of Approval: _____

Note: An approved copy of this Authorization Form must be attached to each invoice submitted by the Contractor for payment by the City of Houston.

**SECTION C
GENERAL TERMS & CONDITIONS**

THE STATE OF TEXAS

BID #S11 – L23491

ORDINANCE # _____

COUNTY OF HARRIS

CONTRACT # _____

II. PARTIES

1.0 ADDRESS

THIS AGREEMENT for **Automatic Transmission Repair/Exchange Services** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and _____ ("Contractor or Vendor"), a corporation doing business in Texas.

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

City

City Purchasing Agent for Director
of Various Department
City of Houston
P.O. Box 1562
Houston, Texas 77251

Contractor

Phone: _____
Fax: _____

The Parties agree as follows:

2.0 TABLE OF CONTENTS

2.1 This Agreement consists of the following sections:

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APPENDICES:

- *A. CONFIDENTIALITY AGREEMENT
- *B. REPAIR ESTIMAT/AUTHORIZATION FORM

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

3.0 PARTS INCORPORATED

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

4.0 CONTROLLING PARTS

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

5.0 DEFINITIONS

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

6.0 SIGNATURES

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

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

By: _____
Name:
Title:

By: _____
Name:
Title:
Federal Tax ID Number: _____

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

City Purchasing Agent

City Controller

DATE COUNTERSIGNED:

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

Date

Legal Assistant

III. 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" & "BB".

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

5.0 INDEMNIFICATION PROCEDURES

5.1 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:

5.1.1 a description of the indemnification event in reasonable detail, and

5.1.2 the basis on which indemnification may be due and

5.1.3 the anticipated amount of the indemnified loss.

5.2 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.

5.3 Defense of Claims

5.3.1 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.

5.3.2 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.

6.0 INSURANCE

6.1 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:

6.1.1 Commercial General Liability insurance including Contractual Liability insurance:
\$500,000 per occurrence; \$1,000,000 aggregate

6.1.2 Workers' Compensation including Broad Form All States endorsement:
Statutory amount

6.1.3 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

6.1.4 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)

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

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

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

7.0 WARRANTIES

7.1 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.

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

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

7.2.2 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,

7.2.3 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

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

8.0 LICENSES AND PERMITS

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

9.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE

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

10.0 MWBE COMPLIANCE

10.1 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 **10%** 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.

- 10.2 Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration in Houston, Texas if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "D". If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

11.0 DRUG ABUSE DETECTION AND DETERRENCE

- 11.1 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.
- 11.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
 - 11.2.1 a copy of its drug-free workplace policy,
 - 11.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E", together with a written designation of all safety impact positions, and
 - 11.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F".
- 11.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G". Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.
- 11.4 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.
- 11.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

12.0 ENVIRONMENTAL LAWS

- 12.1 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.
- 12.2 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.

13.0 CITY'S CONTRACTOR PAY OR PLAY PROGRAM

- 13.1 The requirement and terms of the City of Houston Pay or Play Policy, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.
- 13.2 The Pay or Play Program for various departments will be administered by the City of Houston Affirmative Action Division's designee and for a Department specific contract; the Department's designated contract administrator will administer the Pay or Play Program.

14.0 CONTRACTOR'S PERFORMANCE

- 14.1 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.

15.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

- 15.1 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.
- 15.2 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.
- 15.3 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.

IV. 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 \$_____ to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
- 5.3 The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

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

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

6.0 CHANGES

- 6.1 At any time during the Agreement Term, the City Purchasing Agent or Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in

accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.

- 6.2 The City Purchasing Agent or Director will issue the Change Order in substantially the following form:

CHANGE ORDER

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

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

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

Signed:
[Signature of City Purchasing Agent or Director]

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

V. 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 writing of non-renewal at least 30 days before the expiration of the then current term.

4.0 **TIME EXTENSIONS**

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

5.0 **TERMINATION FOR CONVENIENCE BY THE CITY**

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

6.0 TERMINATION FOR CAUSE BY CITY

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

7.0 TERMINATION FOR CAUSE BY CONTRACTOR

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

8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS

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

VI. MISCELLANEOUS

1.0 INDEPENDENT CONTRACTOR

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

2.0 FORCE MAJEURE

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

3.0 SEVERABILITY

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

4.0 ENTIRE AGREEMENT

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

5.0 WRITTEN AMENDMENT

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

6.0 APPLICABLE LAWS

6.1 This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

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

7.0 NOTICES

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

8.0 NON-WAIVER

8.1 If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

8.2 An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

9.0 INSPECTIONS AND AUDITS

9.1 City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 3 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

10.0 ENFORCEMENT

10.1 The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

11.0 AMBIGUITIES

11.1 If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

12.0 SURVIVAL

12.1 Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

13.0 PARTIES IN INTEREST

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

14.0 SUCCESSORS AND ASSIGNS

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

15.0 BUSINESS STRUCTURE AND ASSIGNMENTS

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

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

16.0 REMEDIES CUMULATIVE

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

17.0 CONTRACTOR DEBT

17.1 If Contractor, at any time during the term of this agreement, incurs a debt, as the word is defined in Section 15-122 of the Houston City Code of Ordinances, it shall immediately notify the City Controller in writing. If the City Controller becomes aware that Contractor has incurred a debt, she shall immediately notify contractor in writing. If Contractor does not pay the debt within 30 days of either such notification, the City Controller may deduct funds in an amount equal to the debt from any payments owed to Contractor under this agreement, and Contractor waives any recourse 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

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

**EXHIBIT BB
VEHICLE TYPES**

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

EXHIBIT C
EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

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

**EXHIBIT D
MWBE SUBCONTRACT TERMS**

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

**EXHIBIT E
DRUG POLICY COMPLIANCE AGREEMENT**

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

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

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

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

Date

Contractor Name

Signature

Title

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

I, _____
(Name - Print/Type)

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

Date

Contractor Name

Signature

Title

**EXHIBIT G
DRUG POLICY COMPLIANCE DECLARATION**

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

**EXHIBIT H
FEES AND COSTS**

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

**EXHIBIT I
PAY OR PLAY**

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