



CITY OF HOUSTON INVITATION TO BID

Issued: August 15, 2014

BID OPENING

Sealed bids (labelled with the company name, address and bid number), in duplicate, and one (1) additional electronic CD copy of the bids 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 a.m., Thursday, September 4, 2014** 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:

**INSPECTION, MAINTENANCE AND REPAIRS ON OVERHEAD CRANES AND HOISTS
FOR VARIOUS DEPARTMENTS
BID INVITATION NO.: S10-L24837
NIGP CODE: 929-33**

BUYER

Questions regarding this solicitation document should be addressed to Greg Hubbard at **832.393.8748**, or e-mail to greg.hubbard@houstontx.gov.

ELECTRONIC BIDDING

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

PRE-BID CONFERENCE

A Pre-Bid Conference will be held for all Prospective Bidders at 901 Bagby Houston, Texas 77002 City Hall Tunnel Level (Basement) SPD Conference Room-1 at **9:00 a.m. on Wednesday, August 20, 2014**.

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, and 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.

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***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



**INSPECTION, MAINTENANCE AND REPAIRS ON OVERHEAD CRANES AND HOISTS
FOR VARIOUS DEPARTMENTS
BID INVITATION NO.: S10-L24837
NIGP CODE: 929-33**

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 Inspection, Maintenance and Repairs on Overhead Cranes and Hoists 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 cancel this ITB, 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 **Inspection, Maintenance and Repairs on Overhead Cranes and Hoists** for the City in accordance with attached specifications.

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

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
Pay or Play Certification of Agreement to Comply w' the Program
Contractor's Questionnaire
Hire Houston First Application and Affidavit

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
Drug Forms.doc
EEOC.doc
Formal Instructions for Bid Terms.doc
M/WBE.doc
Sample Insurance Over \$50,000.pdf
Insurance Endorsements
Pay or Play Office of Business Opportunity & Contract Compliance Q & A
Pay or Play Office of Business Opportunity & 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
Criminal Justice Information Services (CJIS) Compliance Addendum (Applicable to Houston Police Department (HPD) Occupied Facilities)

Questions concerning the bid should be submitted in writing to: City of Houston, Strategic Purchasing Division, 901 Bagby, Room B-500, Houston, TX 77002, Attn: Greg Hubbard (or) by fax: 832.393.8759 or by e-mail (preferred method) to greg.hubbard@houstontx.gov no later than **3:00 p.m., Friday, August 22, 2014.**

SITE INSPECTION

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

The Bidder/Contractor and its sub-contractor (s) shall be ready for the City's "Inspection Team" within 72 hours of a verbal or written notification from the City Purchasing Agent of designee.

ALL TOOLS, ALL EQUIPMENT, AND THE QUALIFIED STAFF REQUIRED TO DO THE WORK SPECIFIED BY THIS CONTRACT SHALL BE IN PLACE AND FULLY OPERATIONAL AND MEETING THESE SPECIFICATIONS DURING A "SHOP INSPECTION" OF THE BIDDER'S REPAIR FACILITY AND ITS SUBCONTRACTORS.

The Bidder/Contractor shall furnish the City Inspection Team valid documents indicating the facility meets the current OSHA, safety requirements, current EPA, and TNRCC requirements for air and water pollution as related to the equipment at the facility.

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.

PROTEST:

A protest shall comply with and be resolved, according to the City of Houston Procurement Manual http://purchasing.houstontx.gov/docs/Procurement_Manual.pdf and rules adopted thereunder. Protests shall be submitted in writing and filed with both, the City Attorney and the Solicitation contact person. A pre-award protest of the ITB shall be received five (5) days prior to the solicitation due date and a post-award protest shall be filed within five (5) days after City Council approval of the contract award.

A protest shall include the following:

- The name, address, e-mail, and telephone number of the protester;
- The signature of the protester or its representative who has the delegated authority to legally bind its company;
- Identification of the ITB description and the ITB or contract number;
- A detailed written statement of the legal and factual grounds of the protest, including copies of relevant documents, etc.; and
- The desired form of relief or outcome, which the protester is seeking

NO CONTACT PERIOD:

Neither bidder(s) nor any person acting on bidder(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise gratuities, favors, or anything of value to any appointed or elected official or employee of the City of Houston, their families or staff members. All inquiries regarding the solicitation are to be directed to the designated City Representative identified on the first page of the solicitation. Upon issuance of the solicitation through the pre-award phase and up to the award, aside from bidder's formal response to the solicitation, communications publicly made during the official prebid conference, written requests for clarification during the period officially designated for such purpose by the City Representative, neither bidder(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City of Houston, their families or staff through written or oral

means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information intended to or which could reasonably result in an advantage to any bidder. However, nothing in this paragraph shall prevent a bidder from making public statements to the City Council convened for a regularly scheduled session after the official selection has been made and placed on the City Council agenda for action.

HIRE HOUSTON FIRST

Designation as a City Business or Local Business

To be designated as a City or Local Business for the purposes of the Hire Houston First Program, as set out in Article XI of Chapter 15 of the Houston City Code, a bidder or proposer must submit the **Hire Houston First Application and Affidavit ("HHF Affidavit")** to the Director of the Mayor's Office of Business Opportunities and receive notice that the submission has been approved prior to award of a contract. Bidders are encouraged to secure a designation prior to submission of a bid or proposal if at all possible. **Download the HHF Affidavit** from the Office of Business Opportunities Webpage at the City of Houston e-Government Website at the following location:

<http://www.houstontx.gov/hbsc/hirehoustonfirstaffidavit.pdf>

Award of a Procurement of \$100,000 or More for Purchase of Goods:

THE CITY WILL AWARD THIS PROCUREMENT TO A "CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER.

Award of Procurement under \$100,000 for Purchase of Goods:

THE CITY WILL AWARD THIS PROCUREMENT TO A "CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

Award of Procurement that may be More or Less than \$100,000 for Purchase of Goods:

THE CITY WILL AWARD THIS PROCUREMENT TO A "CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- IF THE BID OF THE CITY BUSINESS IS LESS THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, OR
- IF THE BID OF THE CITY BUSINESS IS MORE THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND

- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER.

Award of Procurement of \$100,000 or More for Purchase of Non-Professional Services, Including Construction Services:

THE CITY WILL AWARD THIS PROCUREMENT TO A "CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- IF THE BID OF THE LOCAL BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A LOCAL BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

Award of Procurement under \$100,000 Purchase of Non-Professional Services Including Construction Services:

THE CITY WILL AWARD THIS PROCUREMENT TO A "LOCAL BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES

- IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A LOCAL BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

Award of Procurement that may be More or Less than \$100,000 for Purchase of Non-Professional Services, Including Construction Services:

THE CITY WILL AWARD THIS PROCUREMENT TO A "LOCAL BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- IF THE BID OF THE LOCAL BUSINESS IS LESS THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, OR
- IF THE BID OF THE LOCAL BUSINESS IS MORE THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A LOCAL BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

SECTION B
SCOPE OF WORK/SPECIFICATIONS

1.0 GENERAL REQUIREMENTS

- 1.1 The Contractor shall furnish all supervision, labor, parts, tools materials, equipment, supplies, facilities, and transportation necessary to provide precision repair services, scheduled inspections, performance tests, and certifications for cranes and hoists of Wastewater Operations, a Division of the Department of Public Works and Engineering and other divisions, Solid Waste and Fleet Maintenance Facilities Departments, and Houston Airport Services. The cranes and hoists are grouped as CRN1, CRN2, CRN3, and CRN5 (no CRN4) to indicate the manufacturer and the size of the units located at City facilities as defined in **Section 16.0 of Exhibit "B" and listed in Exhibits "B-2" and "B-4."**
- 1.2 Contractor shall comply with latest edition of applicable federal standards, OSHA regulations, state and local codes, and industry standards which include mandatory rules relating to crane and hoist inspection, maintenance, repair and certification. They shall include, but shall not be limited to, the following:
- | | | |
|--------|--|--|
| 1.2.1 | NFPA 70 | National Electric Code |
| 1.2.2 | OSHA 1910.179 | Overhead and Gantry Cranes |
| 1.2.3 | OSHA 1910.180 | General Industry Mobile Cranes (for Construction) |
| 1.2.4 | OSHA 1926.550 | Cranes and Derricks |
| 1.2.5 | ANSI B30.2 | Overhead and Gantry Cranes (Top-running Bridge, Multiple Girder) |
| 1.2.6 | ANSI B30.5 | Standards for Cableways, Cranes, Derricks, Hoists, Jacks/Slings |
| 1.2.7 | ANSI B30.17 | Overhead and Gantry Cranes (Top-running Bridge, Single Girder) |
| 1.2.8 | ANSI B30.9 | Slings |
| 1.2.9 | ANSI B30.11 | Monorails and Under-hung Cranes |
| 1.2.10 | ANSI B30.16 | Overhead Hoists |
| 1.2.11 | ANSI HST- 1M | Performance Standards for Electric Chain Hoists |
| 1.2.12 | ANSI HST- 2M | Performance Standards for Hand Chain Manually-Operated Hoists |
| 1.2.13 | ANSI HST- 3M | Performance Standards for Manual Lever Chain Hoists |
| 1.2.14 | ANSI HST- 4M | Performance Standards for Overhead Electric Wire-Rope Hoists |
| 1.2.15 | ANSI HST- 5M | Performance Standards for Overhead Air Chain Hoists |
| 1.2.16 | ANSI HST- 6M | Performance Standards for Air Wired Rope Hoists |
| 1.2.17 | The above referenced standards can be found at www.osha.gov and www.nfpa.org . | |
- 1.3 At a City location, all machinery and equipment which are undergoing maintenance and repair shall be locked-out/tagged-out (LOTO) to protect against accidental or inadvertent operation when such operation could cause injury to personnel or damage to equipment. LOTO shall be carried out only by authorized personnel that may include qualified electricians, mechanics, and operators.
- 1.4 At a City location, the Contractor's repair technicians shall coordinate with the **CONTRACT TECHNICAL REPRESENTATIVE (CTR) AND/OR THEIR DESIGNATED REPRESENTATIVE** to perform all work.
- 1.5 The Contractor shall perform and scheduled preventive maintenance, necessary mechanical repair, electrical adjustments, inspection of cranes, hoists, slings, wire rope, chain, hooks, clamps, and eyes to ensure that all components of the system are in a safe and efficient operating condition.
- 1.6 The Contractor shall perform RATED LOAD TES (PERFORMANCE TEST) and issue certification of cranes and hoists, as often as required by regulation and codes and as requested by the CTR or their DESIGNATED REPRESENTATIVE. The Contractor shall carry out all inspections performance tests in compliance with applicable OSHA regulations, ANSI standards, manufacturer standards, and state and local codes. Contractor shall submit

all test and certification documents to the CTR or their designee with twenty-four (24) hours after completion.

- 1.6.1 Any Load Test shall be approved by the **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE** prior to testing and shall be performed in accordance with ANSI/ASME B30.17 (paragraph 17-2.2.2), B30.11 (paragraph 11-2.2.2), or B30.16 (paragraph 16-2.2.2), as applicable.
- 1.6.2 Departments will require load testing and certification **any time a hoist has a major overhaul performed on a load carrying component (i.e., hoist gear train, gear box or mechanical load brakes). A load test will be required and certification issued upon the completions of said repairs.** Also, the Fleet Department is requiring that anytime a load cable is replaced, the Contractor shall provide a "load-test certificate" from the manufacturer of the cable.
- 1.7 The Contractor shall carry out the inspection, maintenance, and repair procedures by personnel qualified by professional trade, and verified by widely accepted or recognized standards covering the specific skills or knowledge required.
- 1.8 The Contractor shall carry out all inspections and performance tests in compliance with applicable OSHA regulations, ANSI standards, and state and local codes. The Contractor shall ensure that the crane meets manufacturer's standards. The Contractor shall submit all test and certification documents to the **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE** within twenty-four (24) hours after completion.
- 1.9 The Contractor shall immediately report defects resulting in safety hazards in writing to the Contract Technical Representative (CTR) or their designee. The CTR or **DESIGNATED REPRESENTATIVE** shall immediately take the equipment out of service and lockout/tagout.
- 1.10 The City prefers (and the Official Bid Forms shall be based on the understanding) that new "OEM" parts shall be used in the repair of its cranes and hoists. If Contractor plans to use a part other than an OEM part for repair of a cranes and hoists, the Contractor shall submit a request to the **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE** detailing the part and the reason for its use in place of an OEM part for evaluation, review, and approval of the part by the **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE**.
- 1.11 Contractor shall inspect cranes and hoists at a City facility, and if repair can be performed on site, Contractor shall perform the needed repair at a City location. If the needed repair cannot be performed at the City facility, Contractor shall remove the unit from its location, pick up and transport the unit to Contractor's repair facility, disassemble, inspect, prepare scope of work, repair, replace parts with new (OEM)-specified or approved parts, reassemble unit, return the repaired unit to a City facility, put back in its location, start, and perform a test-run of all functions. Contractor shall not remove any equipment from City property without authorized City of Houston "Return Authorization Form."
- 1.12 Contractor shall, unless otherwise instructed by the **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE**, lubricate all bearings with (OEM)-specified greases.
- 1.13 Contractor shall, unless otherwise instructed by the **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE**, fill the gear box with (OEM)-specified lubricant. If gear box lubricant is contaminated, Contractor shall flush the gear box clean and re-fill with (unless otherwise instructed by the **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE**) "OEM"-specified lubricant.
- 1.14 Where applicable, new belts shall be installed. Belts shall be changed in matched sets and be properly tensioned.

- 1.15 Where hourly work is performed on behalf of the City, the Contractor (and subcontractors of the Contractor) shall fully document the start of the work, time spent on the job, and completion of each job. The documentation shall be a punch card/time-clock or shop record or **work order form** or any other mutually agreed method. **These documents shall be submitted for support and verification with final invoice for payment.**
- 1.16 Where hourly work is performed at a City facility, the Contractor (and subcontractors of the Contractor) shall fully document the start of the work, the time spent on the job, and completion of each job. The Contractor shall be paid only for the time worked at the City facility and on the equipment. **Contractor labor hour shall begin when Contractor arrived at the City facility and ends when the Contractor leaves the City facility. The CTR and/or their designated representative shall SIGN and write their employee ID number on the Contractor work order form before the job begins, and before leaving the City of Houston facility.**
- 1.17 Contractor shall ensure the **Dept. ID NO. and/or (EI / DEPT ID NO.)** tag remains attached to the equipment. Contractor shall notify the **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE** if the (EI / DEPT ID NO.) tag is damaged or missing.
- 1.18 The **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE** shall ensure that (MMS) procedures for tracking the Division's equipment are strictly followed.
- 1.19 The **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE** shall ensure the contracted repair expenses (labor, material, equipment) are inserted into **PWE equipment tracking system (7i)**. **THE CTR AND/OR THEIR DESIGNATED REPRESENTATIVE** shall update **(7i)** equipment history at PWE.
- 1.20 Contractor shall use man-lifts at a City location if City has hoisting equipment in good working condition, and are certified.
- 1.21 Contractor shall provide at a minimum a 36-foot, single-man lift at Contractor's expense to gain access for the inspection and maintenance of the overhead hoists and cranes. Additional or specialty equipment required to gain access beyond the 36-foot single man lift to perform services requested by the City shall be charged to the City at the same cost as for those parts scheduled in Years 1 through 5, Parts and Materials, Plus Percentage Markup/Discount (%) on Item No. 1 of the Official Bid Form.
- 1.22 Contractor shall furnish parts needed for maintenance activities by City personnel, if requested by the **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE**. Contractor shall charge the same cost as for those parts scheduled in Years 1 through 5, Parts and Materials, Plus Percentage Markup/Discount (%) on Item No. 1 of the Official Bid Form.

2.0 REPAIR AND REPLACEMENT

- 2.1 The Contractor shall inspect, repair, and/or troubleshoot assemblies and sub-assemblies of the cranes and hoists unit in lieu of replacement, unless the repair cost of the cranes and hoists exceeds seventy percent (70%) of the cost for replacing it with a new item.
- 2.2 If the cost of repair of a crane and hoist unit or a defective part of the unit exceeds seventy percent (70%) of the cost of replacement for such crane and hoist or part, then the Contractor shall promptly notify the **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE** for a determination whether or not to repair the crane and hoist.
- 2.3 The **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE** shall instruct the Contractor of the decision to proceed with either repair, or replace within twenty-four (24) hours.
- 2.4 The Contractor shall reference the Official Bid Form to invoice the replacement cost.

3.0 SCOPE OF WORK

- 3.1 Upon start of contract period, and annually thereafter, the Contractor shall make inspections and perform Preventive Maintenance on the cranes and hoists as prescribed in Exhibit "B-1" for the Public Works and Engineering, Fleet Maintenance Facilities, and Solid Waste Departments, along with the Houston Airport System. Additionally, the Contractor shall prepare a cost-estimate to repair all of those deficiencies found during the Inspection and "Preventive Maintenance" phase that are deemed to be either unsafe or that will appreciably affect the operation of the crane. This cost-estimate shall be submitted to the **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE** for review and evaluation to determine the actual repairs that will be made.
- 3.2 Contractor shall inspect cranes and hoists at City's Wastewater Treatment facilities and other City facilities, and document the condition of the units before determining if the repair can be performed at City facility. Contractor shall prepare a scope of the repair work to be carried out at the City location and submit it to the **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE** within forty-eight (48) hours, for approval. The **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE** shall respond within twenty-four (24) hours. The Contractor shall finish the repair work within five (5) business days after receipt of the repair part(s).
- 3.3 If the repair cannot be performed at the City facility, Contractor shall remove the unit from its location. Contractor shall ensure that all remaining parts are protected from damage by idleness or other causes. Contractor shall load on Contractor's vehicle and transport/deliver unit to Contractor's repair facility. If a portable unit, the Contractor shall tow the unit to the Contractor's repair facility. Contractor shall use a hoist, crane, etc., for loading. Contractor shall not remove any equipment from City property without authorized City of Houston "Return Authorization Form."
- 3.4 Contractor shall then disassemble the unit and clean all internal parts. Contractor shall inspect all components of the unit of all critical areas to determine if clearances are within OEM tolerances, and to see if parts meet manufacturer's specifications. Contractor shall determine which parts are to be machined or replaced with new parts. At a minimum, the Contractor shall replace all bearings and seals.
- 3.5 Contractor shall prepare a cost-estimate and fax the estimate within seven (7) business days of the pick-up date from City facility, to the **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE** for approval. Cost-estimate shall include a brief description of the work to be performed, cost for new replacement parts versus costs for reconditioned parts, and estimated labor hours required to repair cranes and hoists. The **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE** shall respond within five (5) business days after receipt of estimate.
- 3.6 Upon acceptance of cost-estimate by the **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE**, Contractor shall proceed with repairs. Repair shall include welding and machining as required. Other services required of Contractor shall include Non-Destructive Examination (NDE), when required. After parts have been repaired, Contractor shall reassemble, test, seal, and paint, as required. All assembled rotating parts shall be dynamically balanced, if applicable. All damaged and replaced parts that are deemed non-repairable shall be retained at the Contractor's facility for thirty (30) business days before disposition. At all times during the repair process, Contractor shall maintain City's equipment in a climate-controlled area. Contractor shall paint the repaired unit to match the OEM paint color.
- 3.7 Contractor shall return the repaired unit to the City facility and re-install.

- 3.8 Contractor shall start and perform a test-run of the unit.
- 3.9 Contractor shall complete the job within twenty-one (21) business days after receiving the go-ahead authorization from the **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE**.

4.0 REPAIR TECHNICIANS

Contractor's repair technicians shall be certified, preferably company factory-trained, and shall have a minimum of five (5) years' experience in repair, service, maintenance, inspection and certification of the cranes and hoists to be serviced by that person. Contractors are encouraged to submit copies of certification(s) with their Bid package. However, if not enclosed and if requested by the City, Contractor shall provide it to the City within five (5) days after notification from the City. Failure to submit these certifications within the five (5) days, the Bid will be considered "Non-Responsive."

5.0 ACCEPTANCE OF REPAIR

- 5.1 Contractor shall re-install the cranes and hoist. The **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE** shall inspect the assembled unit before the performance test can begin. The **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE** shall be on location within two (2) working days after notification by the Contractor to observe the performance test. However, it is the Contractor's responsibility to notify the **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE** for witnessing of the performance test and ensure the repaired crane meets all safety requirements of this specification.
- 5.2 If deficiencies are detected, the repair work shall be rejected and Contractor shall make the necessary repairs, adjustments, or replacements.
- 5.3 The City shall not make payment to the Contractor until "ALL" corrective actions are made, and after the equipment repair is accepted by the **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE**.

6.0 LOCAL PRESENCE:

The City intends to inspect each equipment item during the course of its repair. The successful Contractor shall satisfy the City that the Contractor maintain a repair facility located within a radius of fifty (50) miles of City Hall in the City of Houston, and to be fully staffed with qualified personnel.

7.0 RESPONSE TIME

Contractor shall be accessible to the City by telephone during normal business hours and shall be available at a City facility, where the unit requires repair twenty-four (24) hours of receiving the call for service.

8.0 SILENCE OF SPECIFICATIONS

The apparent silence of these specifications as to any detail, or apparent omission from it of a detailed description concerning any point, shall be defined as meaning that only the best commercial practice is to prevail, and that only material and workmanship of the finest quality are to be used. All interpretations of these specifications shall be made on the basis of this statement.

9.0 LABOR RATE

- 9.1 The labor rate specified by the Contractor shall cover "ALL" labor required to repair the City's equipment. The rate shall include all fringe benefits and overtime.
- 9.2 All labor hours performed at Contractor or subcontractor facility shall be supported with

original time cards and/or Contractor work order form, along with final invoice. Contractor labor hour shall begin when Contractor arrives at the City of Houston facility, and ends when the Contractor leaves the City of Houston facility. (Contractor shall have the **CTR AND/OR THEIR DESIGNATED REPRESENTATIVE SIGN** and write their employee ID number on the Contractor work order.

10.0 ADDITIONAL SERVICES

- 10.1 Prior to commencement of any "Additional Services," Contractor shall submit a written proposal describing the work to be performed including a good-faith estimate of the cost. The proposal shall include, at a minimum, a list of repairs, sub-contractor(s), and a schedule of the repairs. Contractor shall perform "Additional Services" on a reimbursable cost-plus basis. Timing of any "Additional Services" shall be mutually agreed upon between the CTR and the Contractor.
- 10.2 Contractor shall provide sealed engineer drawings for any **modification to structures** of the cranes.

11.0 WARRANTIES

Contractor shall observe the highest standards of diligence and care in the performance of repair services and shall meticulously follow the standards and procedures required by the equipment manufacturer. The Contractor further warrants that all service and replacement parts it provides shall be in strict compliance with all applicable regulations. A minimum warranty of 12 months is required upon completion of repair services. The warranty period shall begin after a satisfactory performance test-run and the day the City officially accepts the repairs. Any warranty work shall be started by Contractor within twenty-four (24) hours after notification, and shall be completed within seventy-two (72) hours.

12.0 INVOICES

- 12.1 Contractor shall submit invoices for payment in triplicate (one original and two copies) that are on Contractor's company stationary with the original signed by an authorized agent of the company. The invoice number shall not be duplicated during the term of the Contract periods. Each invoice shall detail the following information:
- 12.1.1 City Contract number and work order number.
 - 12.1.2 Facility address where services were performed.
 - 12.1.3 Beginning and ending service dates, and number of labor hours.
 - 12.1.4 Detailed description of services rendered.
 - 12.1.5 Parts or components repaired or replaced. Provide part numbers listing before and after discount. If parts are reconditioned, the costs to recondition parts must be listed.
 - 12.1.6 Labor hours and rates.
 - 12.1.7 Subtotal costs for parts and labor listed separately.
 - 12.1.8 Total invoice costs.
 - 12.1.9 All unit prices for labor and parts shall be easily identified against the quoted Contract pricing.
 - 12.1.10 Mail invoices to the following Departments:
 - 12.10.1 City of Houston
Public Works & Engineering Department
Accounts Payable – Service Contracts
Attn: Craig Foster
P.O. Box 61449
Houston, Texas 77208-1449

- 12.10.2 Solid Waste Department
Attn: Wealthia White
P.O. Box 1562
Houston, Texas 77002
- 12.10.3 Fleet Management Department
Accounts Payable
P.O. Box 3685
Houston, Texas 77251-3685
- 12.10.4 Houston Airport System
COH Department of Aviation
Accounts Payable
P.O. Box 60106
Houston, Texas 77205-0106

13.0 ADDITIONS AND DELETIONS

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

14.0 ESTIMATED QUANTITIES NOT GUARANTEED

The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of services during the term of this Contract. The quantities may vary depending upon the actual needs of the 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.

16.0 SITE VISITS BY CONTRACTOR

- 16.1 All prospective Bidders are encouraged to visit the City facilities and job sites where cranes and hoists covered by this contract are located prior to submitting their bids. A site visit will be arranged during normal working hours:

16.1.1	Wastewater Operations:	Rachael Patrick	832.395.3500
16.1.2	Drinking Water Operations:	Ericka Brooks	832.395.2833
16.1.3	Solid Waste Location:	Karen Bledsoe	713.699.7927
16.1.4	Fire Logistic Command Center:	Pamela Scott	832.393.0973
16.1.5	Fleet Management	Pamela Scott	832.393.0973
16.1.5	Houston Airport System:	Robert Lamy	281.230.8780

17.0 STATE OF TEXAS ELECTRICAL CONTRACTOR'S LICENSE

- 17.1 Contractor must submit proof of this license with their Bid package. Failing to do, and if requested by the City, Contractor shall provide it within five (5) days after notification from the City. Failure to submit this license and Contractor's license within the allotted five (5) days, the Contractor shall be considered "Non-Responsive."
- 17.2 Any electrical work being performed during the course of this contract shall be performed only by a Texas Licensed Electrical Contractor.

18.0 CONTRACT COMPLIANCE

- 18.1 The City reserves the right to monitor this contract to ensure that the Contractor is providing the goods or services required in strict accordance contract specifications, as well as complying with the contract terms and conditions.
- 18.2 Monitoring may take the form of, but not limited to:
- 18.2.1 Inspection, testing, and/or sampling of goods delivered or to be delivered.
 - 18.2.2 Review of deliveries received for accuracy and timeliness.
 - 18.2.3 Review of Contractor's invoices for accuracy.
 - 18.2.4 Review of certifications and/or licenses.
 - 18.2.5 Site visits.
 - 18.2.6 The Contract Compliance Section of the applicable department(s) shall be responsible for contract compliance on this contract.

19.0 PRE-PERFORMANCE MEETING

Subsequent to the contract approval/execution, the Contractors shall be required to attend a pre-performance meeting. The Public Works and Engineering Department shall host the pre-performance meeting. The purpose of the pre-performance conference is for the Contractor to introduce his or her project manager to the City staff and for City staff to introduce the contract end-users, contract compliance, and accounts payable representatives.

20.0 INTERLOCAL AGREEMENT:

20.1 Under the same terms and conditions hereunder, the contract may be expanded to other government entities through inter-local agreements between the City of Houston and the respective government entity that encompass all or part of the products/services provided under this contract. Separate contracts will be drawn to reflect the needs of each participating entity.

21.0 CRIMINAL JUSTICE INFORMATION SYSTEMS (CJIS) COMPLIANCE (Applicable to Houston Police Department (HPD) Occupied Facilities:

21.1 The Houston Police Department (HPD) recognizes that by allowing physical or logical (electronic) access to HPD facilities or network resources, people may gain access to information or systems they are statutorily prohibited from accessing. To comply with state and federal regulations, HPD is required to document and investigate access requests to be sure access is necessary and permitted. The Contractor therefore agrees to review the Criminal Justice Information Systems (CJIS) process and related documents located at <http://www.houstontx.gov/police/cjis/hpdvendorcertification.htm> and shall comply with the terms and requirements therein.

**SECTION C
GENERAL TERMS & CONDITIONS**

THE STATE OF TEXAS

BID # _____

COUNTY OF HARRIS

ORDINANCE # _____

CONTRACT # _____

I. PARTIES

1.0 ADDRESS

THIS AGREEMENT for **Inspection, Maintenance and Repairs on Overhead Cranes and Hoists** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a Texas home-rule city 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 the Public Works and Engineering 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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- * H. FEES AND COSTS
- * I. CITY'S CONTRACTORS PAY OR PLAY PROGRAM

* Note: These Exhibits 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:

Director, Public Works & Engineering
Department

City Controller

APPROVED:

DATE COUNTERSIGNED:

City Purchasing Agent

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

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

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.

5.2.3 All certificates of insurance submitted by Contractor shall be accompanied by endorsements for additional insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability policies. For a list of pre-approved endorsement forms see <http://purchasing.houstontx.gov/forms.shtml>. The Director will consider all other forms on a case-by-case basis.

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 manufacturers 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 M/WBE COMPLIANCE

9.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("M/WBE") 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 **5%** of the value of this Agreement to M/WBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the Mayor's Office of Business Opportunity (MOBO) and will comply with them.

9.2 M/WBE subcontracts must contain the terms set out in Exhibit "D."

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 "E," 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 "F."

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 "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.

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 workforce.

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.
- 12.2 The Pay or Play Program for various departments will be administered by the City of Houston Office of Business Opportunity designee and for a Department specific contract; the Department's designated contract administrator will administer the Pay or Play Program.

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.

1.2 The City of Houston's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tx. Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from vendor as follows:

Payment Time	Discount	Payment Time	Discount
10 days	2%	20 days	1%

1.3 A vendor may elect not to offer a discount for early payment and the City will make payment net 30 days. Discounts will not be considered in the award evaluation.

1.4 If the City fails to make a payment according to the early payment schedule above, but does make the pay no other penalty. When the payment date falls on a Saturday, Sunday, or official holiday when City offices are closed and City business is not expected to be conducted, payment may be made on the following business day.

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 upon 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.

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 automatic 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 180 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

5.0 TERMINATION FOR CONVENIENCE BY THE CITY

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

6.0 TERMINATION FOR CAUSE BY CITY

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

7.0 TERMINATION FOR CAUSE BY CONTRACTOR

- 7.1 Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a

written notice to the Director describing the default and the proposed termination date.

- 7.2 The date must be at least 30 days after the Director receives notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS

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

V. MISCELLANEOUS

1.0 INDEPENDENT CONTRACTOR

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

2.0 FORCE MAJEURE

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

3.0 SEVERABILITY

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

4.0 ENTIRE AGREEMENT

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

5.0 WRITTEN AMENDMENT

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

6.0 APPLICABLE LAWS

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

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

7.0 NOTICES

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

8.0 NON-WAIVER

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

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

9.0 INSPECTIONS AND AUDITS

9.1 City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 4 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:

"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.

"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 Technical Representative" (CTR) is the one overseeing the contractor performance and ensures that the performance is fulfilling the need contract entered into to fulfill. Evaluates performance, handles scheduling, recommends payment and has primary responsibility to ensure payment is made.

"Contract Term" is defined in Article IV.

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

"COR" is defined as Contractor Office Representative.

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

"Cost Estimate" shall include a detailed cost to repair all items found during the inspection and Preventive Maintenance phase that are deemed to be either unsafe or that will appreciably affect the effective operation of the crane. Cost estimates shall include travel time, if applicable.

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

"Cranes and Hoists Groups" shall mean the cranes and hoists of the sizes as tabulated in the spreadsheet, attachment to Exhibit B-4. They are grouped such as to represent the manufacturer and the size of the units:

Group CRN1: Cranes and Hoists by Various Manufacturers:	Fractional to 3-Ton
Group CRN2: Cranes and Hoists by Various Manufacturers:	4-Ton to 7.5-Ton
Group CRN3: Cranes and Hoists by Various Manufacturers:	8-Ton to 22-Ton
Group CRN4: Mobile Cranes by Various Manufacturers:	7-Ton
Group CRN5: Mobile Cranes by Various Manufacturers:	17-Ton

"Director" shall 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 are bound by this Agreement.

"Performance Test" shall mean actions carried out on a piece of equipment to ensure that it can perform its required function(s).

"Travel-Time" shall mean a single roundtrip made by Contractor to and from Contractor's facility to a City facility where Contractor is to perform work. Whenever used, only one travel-time is allowed in a day.

"User Department Representative" (UDR) is defined as the one handling the day to day aspects of the contract, including all of the incidental aspects, routine inspections, etc.

**EXHIBIT B
SCOPE OF SERVICES**

(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
[M/WBE 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)