



CITY OF HOUSTON
BEST VALUE BID
RESIDENTIAL WATER METER SERVICES
SOLICITATION NO.: S94-L29632

Date Issued: October 9, 2020

Pre-bid Conference: October 21, 2020 @ 10:00 A.M., CST
Teleconference Meeting
Dial in #: +1 936-755-1521
Conference ID: 786 739 209#

Pre-bid Questions Deadline: October 28, 2020 @ 10:00 A.M., CST

Solicitation Due Date: November 19, 2020 @ 10:30 A.M., CST

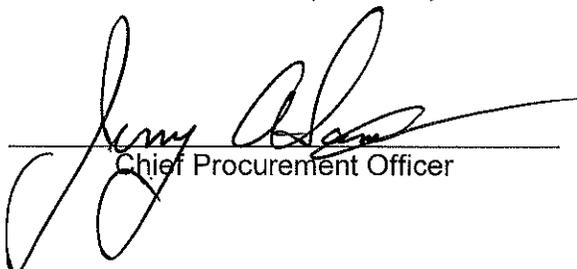
Solicitation Contact Person: Maira Artola
maira.artola@houstontx.gov
832-393-8724

Project Summary: This is for a three (3) year contract with two (2) one-year options to renew annually, for a maximum five-year contract term for Residential Water Meter Services.

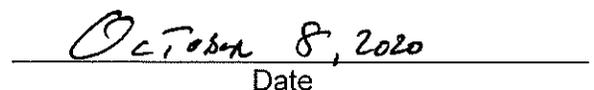
Project Description: This BVB is for Residential Water Meter Services and any supporting resources (excluding meter assembly parts) needed to read, maintain and manage approximately 480,000 water meters, ranging in size from 5/8 to 2-inches, and their associated endpoints.

NIGP Code: 913-92, 961-85, 968-58

MWBE Goal: 11%



Chief Procurement Officer



Date

1.0 GENERAL INFORMATION

The City of Houston (City) is seeking bids to provide Residential Water Meter Services.

1.1 Sealed bids shall consist of the following, each to be labeled with the assigned Solicitation Number L29632, located on the first page of this BVB:

1.1.1 Six (6) hard copies of the bid package, including one (1) printed original signed in blue ink on the Official Signature Page by an authorized officer of the bidder;

1.1.2 Six (6) USB flash drives containing a scanned electronic copy of your original bid package (to include the hard copy of the Electronic Bid Form and all required forms designated in Table-1, Section 2.3 below) in a sealed envelope/box; and

1.1.3 Six (6) hard copies OR Six (6) USB flash drives containing electronic copies of the requested financial information in a separate sealed envelope/ box labeled with "Financial Information," along with the assigned Solicitation Number.

All of the information above should be sent to:

City Secretary's Office
City Hall Annex, Public Level
900 Bagby St.
Houston, Texas 77002

1.2 The deadline for the submittal of the bid to the City Secretary's Office is no later than the date and time indicated on the first page of the BVB document. All bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby St. at 11:00 AM on the solicitation due date. Failure to submit the required number of copies may be cause for disqualification from the BVB process.

Once the award is made, a bid tabulation for this procurement may be posted and made publicly available on the Strategic Procurement Division's website.

1.3 Bidders may elect to mail or personally deliver their bids to the City Secretary's Office. Bidder(s) may submit their bid to the City Secretary's Office any time prior to the stated deadline.

1.4 The City shall bear no responsibility for submitting responses on behalf of any bidder.

2.0 BEST VALUE BID FORMAT

2.1 The bid should be electronically generated, printed and signed in original ink. The bid should not be submitted in elaborate or expensive binders. Legibility, clarity, and completeness are important and essential.

2.2 The bid must be signed by an individual(s) legally authorized to bind the bidder(s), and the City may accept this bid by issuance of a Contract to the said bidder(s) at any time on or before the 180th day following the day this official bid form is opened by the City. This bid 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.

2.3 Documents and Form: The complete bid packet (electronic and hard copy) shall consist of the following information. City-required forms are available at: <http://purchasing.houstontx.gov/forms.shtml>

TABLE 1 – REQUIRED BID FORMS
Signed Official Signature Page Signed in Blue Ink
Hard Copy of Electronic Bid Form (E-bid Website Pricing Form)
Submittal Requirements
Campaign Finance Ordinance
Statement of Residency
Conflict of Interest Questionnaire
Pay or Play Forms
Hire Houston First Designation
References
Affidavit of Ownership
Drug Forms
M/WBE Letter of Intent Form (11% Goal)
Conflict of Interest Questionnaire
Six (6) Electronic Flash Drives
Criminal Justice Information Services (CJIS) Compliance Addendum (Applicable to Houston Police Department (HPD) Occupied Facilities)

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

TABLE 2 - DOCUMENTS & FORMS
EEOC
Certificate of Insurance and Policy Endorsements
M/WBE
Sample Insurance Over \$50,000
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

3.0 PRE-BID CONFERENCE

- 3.1 A Pre-bid Conference will be held at the date, time, and location as indicated on the first page of the BVB document. Interested bidder(s) should plan to attend. It will be assumed that potential bidder(s) attending this meeting have reviewed the BVB in detail and are prepared to bring up any substantive questions not already addressed by the City.

4.0 ADDITIONAL INFORMATION AND SPECIFICATION CHANGES

- 4.1 Requests for additional information and questions should be addressed to the Finance Department, Strategic Procurement Division Buyer, Maira Artola, telephone: 832.393-8724, or by e-mail to: maira.artola@houston.tx.gov, no later than October 28, 2020 at 10:00 A.M. The City shall provide written response to all questions received in writing before the submittal deadline. Questions received from all bidder(s) shall be answered and sent to all bidder(s) who are listed as having obtained the BVB. Bidder(s) shall be notified in writing of any changes in the specifications contained in this BVB.

5.0 LETTER(S) OF CLARIFICATION

- 5.1 All Letters of Clarification and interpretations to this Solicitation shall be in writing. Any Letter of Clarification(s) or interpretation that is not in writing shall not legally bind the City. Only information supplied by the City of Houston in writing or outlined in this BVB should be used in preparing bid responses.
- 5.2 The City does not assume responsibility for the receipt of any Letters of Clarification sent to bidder(s).

6.0 EXAMINATION OF DOCUMENTS AND REQUIREMENTS

- 6.1 Bidders shall carefully examine all BVB documents and thoroughly familiarize themselves with all requirements prior to submitting a bid to ensure that the bid meets the intent of this BVB.
- 6.2 Before submitting a bid, each bidder shall be responsible for making all investigations and examinations that are necessary to ascertain conditions and requirements affecting the requirements of this BVB. Failure to make such investigations and examinations shall not relieve the bidder from obligation to comply, in every detail, with all provisions and requirements of the BVB.

7.0 EXCEPTIONS TO TERMS AND CONDITIONS

- 7.1 A bid that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, or is otherwise non-compliant with the provisions herein, may be rejected.

8.0 ACCEPTANCE AND REJECTION OF BIDS

- 8.1 The City reserves the right to accept or reject, in whole or in part, any or all bids received to the extent non-compliant with the provisions herein and to make award on the basis of individual items or combination of items, as it is deemed most advantageous or in the best interest to the City.

8.2 The City may accept this bid 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 bid 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.

9.0 GENERAL CONDITIONS

- 9.1 This BVB does not commit the City to award a Contract, issue a Purchase Order, or to pay any costs incurred in the preparation of a bid in response to this request.
- 9.2 The bid will become part of the City's official files without any obligation on the City's part. All bids shall be held confidential from all parties other than the City until after the bids are opened and publicly read. Afterward, the bids shall be available to the public.
- 9.3 The City shall not be held accountable if material from responses is obtained without the written consent of the bidder by parties other than the City, at any time during the bid evaluation process.
- 9.4 In the event a bidder submits trade secret information to the City, the information must be clearly labeled as a "**Confidential.**" The City will maintain the confidentiality of such trade secrets to the extent provided by law.
- 9.5 Bidder(s) shall not offer any gratuities, favors, or anything of monetary value to any official or employee of the City (including any and all members of the bid evaluation committees).
- 9.6 Bidder(s) shall not collude in any manner, or engage in any practices, with any other bidder(s), which may restrict or eliminate competition, or otherwise restrain trade. This is not intended to preclude subcontracts and joint ventures for the purposes of: a) responding to this BVB; or b) establishing a project team with the required experience and/or capability to provide the goods or services specified herein.
- 9.7 Bidder(s), their authorized representatives and their agents are responsible for obtaining, and will be deemed to have, full knowledge of the conditions, requirements, and specifications of the BVB at the time a bid is submitted to the City.
- 9.8 Clerical support and reproduction of documentation costs shall be the responsibility of the Prime Contractor.
- 9.9 Prime Contractor personnel essential to the continuity, and the successful and timely completion of the project should be available for the duration of the project unless substitutions are approved in writing by the City Project Director.
- 9.10 The Prime Contractor will be expected to adhere to all standard contractual requirements of the City which shall include, but are not limited to, provisions for: Time Extensions; Appropriation of Available Funds; Approvals; Term and Termination; Independent Contractor; Business Structure and Assignments; Subcontractors; Parties in Interest; Non-Waiver; Applicable Laws; Notices; Use of Work Products; Equal Employment Opportunity; Force Majeure; and Inspections and Audits.
- 9.11. Prime Contractor must promptly report to the City Project Director any conditions,

transactions, situation, or circumstances encountered by the Prime Contractor which would impede or impair the proper and timely performance of the Contract.

- 9.12 The City reserves the right to waive any minor informality concerning this BVB, or to reject any or all bids or any part thereof to the extent non-compliant with the terms herein.
- 9.13. The City reserves the right to request clarity of any bid after they have been received.
- 9.14 After Contract execution, the successful bidder shall be the Prime Contractor and responsible party for contracting and communicating the work to be performed to subcontractors, and for channeling other information between the City and subcontractors. Any subcontracting must be specified in the BVB. Any subcontracting not specified in the BVB will need prior written approval from the Chief Procurement Officer.
- 9.15. Prime Contractor assumes total responsibility for the quality and quantity of all work performed, whether it is undertaken by the Prime Contractor or is subcontracted to another organization.
- 9.16. If subcontractor involvement is required in the use of license, patent, or proprietary process, the Prime Contractor is responsible for obtaining written authorization from the subcontractor to use the process, or provide another process comparable to that which is required and which is acceptable to the City, all at no additional cost or liability to the City.
- 9.17 The City reserves the right to inspect the bidder's current place of business to evaluate equipment condition and capabilities, staff experience, training and capabilities, and storage capabilities as they relate to the performance of this contract.
- 9.18 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 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.

10.0 SPECIAL CONDITIONS

Bidders should be instructed to provide proof of their Class D TCEQ license when submitting their bid.

10.1 PROTEST

Protests should be filed in accordance with the City of Houston Administrative Policy (A.P. No. 5-12) http://www.houstontx.gov/policies/administrative_policies.html

10.2 NO CONTACT PERIOD

Neither Proposer(s) nor any person acting on Proposer(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or anything of value to any appointed or elected official or employee of the City, 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.

With the exception of Proposer's formal response to the solicitation and written requests for clarification during the period officially designated for such purpose by the City Representative, neither Proposer(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City, their families, or staff through written or oral means in an attempt to persuade or 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 Proposer from the time of issuance of the solicitation through the pre-award phase and up to the date the City Secretary publicly posts notice of any City Council agenda containing the applicable award. 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, or to a City Council committee convened to discuss a recommendation regarding the solicitation.

10.3 MINORITY AND WOMEN BUSINESS ENTERPRISES ("M/WBE")

Bidder shall comply with the City's M/WBE programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Bidder shall make good faith efforts to award subcontracts or supply agreements in at least the value stated in this Agreement to M/WBE's. Bidder acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity (OBO) and will comply with them.

10.4 ANTI-BOYCOTT OF ISRAEL

Bidder certifies that bidder is not currently engaged in, and agrees until the funds are exhausted under this purchase order not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

10.5 ZERO TOLERANCE FOR HUMAN TRAFFICKING

The City has a zero tolerance for human trafficking, and, per Executive Order 1-56, City funds shall not be used to promote human trafficking. City vendors are expected to comply with this Executive Order and notify the City's Chief Procurement Officer of any information regarding possible violation by the vendor or its subcontractors providing services or goods to the City. The Executive Order is available on the City's website: <http://www.houstontx.gov/execorders/1-56.pdf>

10.6 PRESERVATION OF CONTRACTING INFORMATION

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this bid [or solicitation] and the Contractor or vendor agrees that the contract can be terminated if the Contractor or Vendor knowingly or intentionally fails to comply with a requirement of that subchapter."

11.0 SELECTION PROCESS

11.1 The award of this Contract(s) will be made to the bidder (s) offering the best value to the City. The City may make investigations, as it deems necessary, to determine the capabilities of the bidder(s) to supply the required goods and/or services. The bidder(s) shall furnish to the City such data as the City may request for this purpose. The City reserves the right to reject any bid if the evidence submitted by or the investigation of the bidder(s) fails to satisfy the City or the bidder(s) is deemed unqualified to provide the services contemplated. Each bidder will be evaluated on the basis of the following evaluation criteria that are listed in order of importance below:

1.1.1	Experience/Expertise	35%
1.1.2	Past Performance	35%
1.1.3	Equipment and Resources	10%
1.1.3	Cost	20%
1.1.5	M/WBE Compliance	Pass/Fail
1.1.6	Financial Capability	Pass/Fail

Note: The Hire Houston First (HHF) Program can be found in the City of Houston's Code of Ordinances (the "Code"), Ch. 15, Article XI. At the conclusion of scoring bids, preference points shall be distributed in the following manner:

- 5 Points: For bidder's firm residing within the City of Houston city limits.
- 3 Points: For bidder whose firm is a local business residing within the local area as defined by section 15-176 of the Code.
- 0 Points: For bidder whose company does not reside within Houston city limits, or within the local area as defined by section 15-176 of the Code.

11.2 An evaluation committee shall evaluate Bidder's submissions in accordance with the evaluation criteria listed in Item 1.1 above. Upon completion of the evaluation, the committee may develop a short list of bidders(s) meeting the technical competence requirements. The shortlisted bidder(s) may be scheduled for a structured oral presentation, demonstration, interview and negotiations. Following these City-to-bidder(s)' meetings, the evaluation committee will summarize their findings and recalculate their scores, if needed. However, the evaluation committee reserves the right to issue letter(s) of clarification when deemed necessary to any or all Bidder(s). The oral presentations, demonstrations and/or interviews may be recorded and/or videotaped.

11.3 The City reserves the right to request that Bidder(s) provide a final presentation handout of its Submission at their scheduled meeting. No Bidder may attend presentations of any other Bidder. If necessary, Bidders may be scheduled for more than one presentation, demonstration, or interview.

12.0 SUBMITTAL REQUIREMENTS

To simplify the review process, the Respondent(s) must provide the responses to the items set forth below and include this information as requested in their bid packet to allow for the evaluation committee to conduct a thorough assessment of the Respondent(s) experience and capabilities. Moreover, Respondent(s) are encouraged to include additional relevant and supporting information to demonstrate their qualifications.

1.0 EXPERIENCE/EXPERTISE (35 Points)

1.1 Company Experience/Expertise will be evaluated on the summary statement that shall include the below requested information: (20 Points)

- 1.1.0 When the company was founded and its principal business office location.
- 1.1.1 How long has it been in operation and any key background information associated with the requirements of this solicitation?
- 1.1.2 A business summary with relevant financial information.
- 1.1.3 Detailed summary of experience with the items outlined under "Scope of Work" in this document. Please provide detail of specific experience.
- 1.1.4 The Respondent(s) experience and expertise on projects comparable in size, scope and complexity to the Bid Solicitation.
- 1.1.5 Experience with local/state/federal regulatory authorities.
- 1.1.6 Safety record history (last 5 years), with information indicating possession of (or ability to independently get) the following training credentials.

1.1.6.A Texas Commission on Environment Quality (TCEQ) Level D of the ability to obtain the TCEQ Level D license. License must be obtained within 15 days of bid submittal or bid will be considered non-responsive.

1.2 Team Experience: Respondent shall provide an organizational chart of proposed team for this contract. Respondent shall provide a list of key staff members and years of experience (sample below) with residential water meter replacement services. (15 Points).

Name	Title	Phone No.	Experience (Years)

1.3 A list of how the respondents' structure and assigns their work teams. Key personnel involved. This should include each member's years of experience with residential water meter replacement services, as well as any certifications, and/or licenses.

2.0 PAST PERFORMANCE (35 Points)

- 2.1 Respondent shall demonstrate they have performed services similar in size and scope to this project. Respondent shall submit as references a list of previously executed contracts for items included in "Scope of Work" in this document along with documented proof of executed contract(s).
- 2.2 References (20 points): The list of references and any referrals from customer receiving this service should be documented on Exhibit A-Contractor's Questionnaire. Include information on any municipality utilities serviced.
- 2.3 Sub-Contractors (15 points): Submit a list of all subcontractors and suppliers used while providing these services. Submit sufficient information to demonstrate its experience with items included in "Scope of Work" in this document.
 - 2.3.1 For evidence of having performed similar services include 3 to 5 work order examples and repair estimates for when the following scope of work was accomplished.
 - 2.3.1.1 Estimated per unit cost to install/replace 5/8"-2" meters.
 - 2.3.1.2 Estimated per unit cost to install/replace 5/8"-2" registers.
 - 2.3.1.3 Estimated per unit cost to locate or read water meters.

3.0 Equipment and Resources (10 points)

- 3.1 Provide list of rolling stock and other equipment available to fulfil the obligations of this contract upon demand. Include any rental agreements which may substitute for actual owned equipment.

4.0 COST (20 Points)

- 4.1 The City of Houston will evaluate bids submitted, to determine whether the proposed costs are considered fair and reasonable. Any proposed costs determined to be unreasonably high or unbalanced may result in the Respondent(s) being ineligible for award.

5.0 FINANCIAL CAPABILITY (Pass or Fail)

- 5.1 If Bidder is an entity that is required to prepare audited financial statements, Bidder shall submit an annual report that includes:
 - 5.1.1 Last two years of audited accrual-basis financial statements, including an income statement, cash flow statement, and balance sheet;
 - 5.1.2 If applicable, last two years of consolidated statements for any holding companies or affiliates;
 - 5.1.3 An audited or un-audited accrual-basis financial statement of the most recent quarter of operation; and
 - 5.1.4 A full disclosure of any events, liabilities, or contingent liabilities that could affect Bidder's financial ability to perform this contract.
- 5.2 If Bidder is a privately-owned entity or sole proprietorship for which audited financial statements are not required, Bidder shall submit an annual report that includes:
 - 5.2.1 Last two years of un-audited accrual-basis financial statements, including an income statement, cash flow statement, and balance sheet;

- 5.2.2 An audited or un-audited accrual-basis financial statement of the most recent quarter of operation; and
- 5.2.3 A full disclosure of any events, liabilities, or contingent liabilities that could affect Bidder's financial ability to perform this contract;

OR

- 5.2.4 Other financial information sufficient for the City, in its sole judgement, to determine if Bidder is financially solvent or adequately capitalized.

6.0 M/WBE PARTICIPATION (Pass or Fail)

6.1 Contractor shall comply with the City's Minority and Women Small Business Enterprise ("MWSBE") 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 the value stated in this Agreement to MWSBE's. Contractors are encouraged to provide meaningful participation to each subcontractor to the fullest extent of its capacity. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity (OBO) and shall comply with them.

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SCOPE OF WORK/SPECIFICATIONS

1.0 SCOPE OF SERVICES:

1.1 The Contractor shall furnish all supervision, labor, tools, transportation, equipment and facilities to provide on-demand maintenance services to the City of Houston water flow metering system. There will be up to 200 work orders per business day. On-demand maintenance shall include the following (see also Exhibit F Fees Schedule):

- Replace/install 5/8" meter assembly and endpoint
- Replace/install 1" meter assembly and endpoint
- Replace/install 1 1/2" meter assembly and endpoint
- Replace/install 2" meter assembly and endpoint
- Replace encoder endpoint only on 5/8" meter
- Replace encoder endpoint only on 1" meter
- Replace encoder endpoint only on 1 1/2" meter
- Replace encoder endpoint only on 2" meter
- Replace pulse endpoint only on 5/8" meter
- Replace pulse endpoint only on 1" meter
- Replace pulse endpoint only on 1 1/2" meter
- Replace pulse endpoint only on 2" meter
- Replace register and endpoint on 5/8" meter
- Replace register and endpoint on 1" meter
- Replace register and endpoint on 1 1/2" meter
- Replace register and endpoint on 2" meter
- Replace/Install 5/8" Water Meter, Register, and Endpoint
- Replace/Install 1" Water Meter, Register, and Endpoint
- Replace/Install 1 1/2" Water Meter, Register, and Endpoint
- Replace/Install 2" Water Meter, Register, and Endpoint
- Upgrade located meter in a single box (can include locating, changing meter, endpoint, box, lid, and/or installing riser)
- Upgrade located meters in a double box (can include locating, changing meter, endpoint, box, lid, and/or installing riser)

- Replace/install single meter box and/or lid
- Replace/install jumbo meter box and/or lid
- Replace/install H65 meter box and/or lid
- Repair leak in 5/8" meter assembly (City side)
- Repair leak in 1" meter assembly (City side)
- Repair leak in 1 1/2" meter assembly (City side)
- Repair leak in 2" meter assembly (City side)
- Pull and Cap 5/8" Water Meters
- Pull and Cap 1" Water Meters
- Read meters visually
- Read meter endpoint using a handheld device/laptop
- Turn off water service on 5/8" meter
- Turn off water service on 1" meter
- Turn off water service on 1 1/2" meter
- Turn off water service on 2" meter
- Turn on water service on 5/8" meter
- Turn on water service on 1" meter
- Turn on water service on 1 1/2" meter
- Turn on water service on 2" meter
- Turn off water service and install lock on 5/8" meter
- Turn off water service and install lock on 1" meter
- Turn off water service and install lock on 1 1/2" meter
- Turn off water service and install lock on 2" meter
- Turn on water service and remove lock on 5/8" meter
- Turn on water service and remove lock on 1" meter
- Turn on water service and remove lock on 1 1/2" meter
- Turn on water service and remove lock on 2" meter
- Relocate 5/8" meter and 3/4" City service line
- Relocate 1" meter and City service line
- Relocate 1 1/2" meter and City service line

- Relocate 2" meter and City service line
- Replace 3/4" curb stop
- Replace 1" curb stop
- Replace 1 1/2" curb stop
- Replace 2" curb stop
- Perform AWWA field (on-site) accuracy test 5/8" meter
- Perform AWWA field (on-site) accuracy test 1" meter
- Perform AWWA field (on-site) accuracy test 1 1/2" meter
- Perform AWWA field (on-site) accuracy test 2" meter

1.2 Services shall be performed in accordance with the same City of Houston Ordinances, policies, procedures, and performance standards as apply to City of Houston employees.

1.3 Services will be initiated, completed and tracked by work orders provided by the City's representative

1.4 Services shall be completed according to mutually agreed production schedules for the type of work order assigned. The City will coordinate these schedules monthly (at a minimum) with the Contractor.

1.5 The Contractor shall supply all resources needed to perform the services listed above, except for the meter assembly material to be installed. Contractor will return to the City any meter assembly material that was removed.

1.6 Contractor shall be reimbursed for providing these services in accordance with the attached Exhibit F Fee Schedule.

1.7 Contractor shall replace identical materials damaged by contractor's employee action at no additional charge to the City.

2 Communications Plan

2.1 COH Project Manager shall be responsible for establishing a communication plan that will be published and filed with the Contract Administrator. The communication plan shall identify and develop a process of communication to convey to impacted parties, both internal and external to City of Houston, implications of the Contractor's Work.

2.2 Internal communication program will be initiated to ensure City of Houston employees are aware of the Contractor's work and how it could impact their interaction with the customer. Internal communication tools may include but are not limited to the following:

- Briefing Tools
- Employee communication Tools

2.3 External communication will be initiated to ensure other COH departments and the City's residents are aware of the scope of work being completed. External communication tools may include but, are not limited to:

- If customer contact is not made, The Contractor shall place a door hanger provided by COH post successful completion of assigned work order.
- Regular updates to COH Public Works PIO.

3.0 Warranties

3.1 Notwithstanding inspection and acceptance by the City, or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract shall, from the time of acceptance onward, be free from defects in workmanship and conform to the requirements of this contract.

3.2 The City shall give written notice of any defect or non-conformance to the contractor within 120 days from the date of acceptance by the City.

3.1.1 If the Contractor is required to correct or re-work, it shall be performed at no cost to the City.

3.1.2 Any services corrected or re-worked by the Contractor shall be subject to this clause to the same extent as work initially performed.

3.1.3 If the Contractor fails or refuses to correct or re-work, 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.

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

4 Resource Requirements

4.1 Contractor shall provide all tools, equipment, personnel, vehicles and other resources necessary to perform the types of work orders designated in this contract.

4.1.1 Contractor must have a sufficient quantity of these resources immediately available at the time of contract award to meet scheduled demand.

4.1.2 Prospective contractors shall provide acceptable evidence of their ability to obtain these resources, in the required quantities, prior to contract award.

4.2 Contractor is responsible for all matters related to hiring, supervising, compensating, and discharging employees used to execute this contract.

4.2.1 All contractor employees shall be citizens of the United States or resident aliens who have been lawfully admitted, as shown on Alien Registration Receipt Card Form I-551.

4.2.2 The City of Houston's designated representative may require Contractor to remove from working under this contract, any employee(s) the City deems incompetent; a potential threat

to their own health, safety, or security; a potential threat to the health, safety, security or general well-being of any other employee or customer; not in compliance with the City's drug and alcohol policy; or an unacceptable risk to the satisfactory execution of this contract.

5 Licenses, Regulations and Permits

- 5.1 Contractor must have at least one supervisor/manager on staff licensed as Class D certified to operate on public water systems by the Texas Commission on Environmental Quality (TCEQ) Note: Bids that do not contain documentation of or the ability to earn the required valid TCEQ license are non-responsive bids and will not be considered for this contract.
- 5.2 Contractor must be compliant, for the duration of this contract, with Texas Administrative Code (TAC), Title 30, Part 1, Chapter 30, Subchapter K, *PUBLIC WATER SYSTEM OPERATORS AND OPERATIONS COMPANIES*; and with TAC Title 30, Part 1, Chapter 290, *PUBLIC DRINKING WATER*.
- 5.3 Contractor must comply with all applicable City of Houston Ordinances, policies, procedures, and safety standards while performing work for this contract the same as a COH employee would be held.
- 5.4 Contractor shall locate utilities using the 811 locating services, as required by the Texas One-Call Law, when applicable.

6 Coordination and Communication

- 6.1 Contractor shall assign a knowledgeable project manager to serve as the primary liaison with the City of Houston's designated representative.
- 6.2 Contractor and City coordination shall include, but not be limited to, implementing processes that achieve effective and timely:
 - Communication
 - Transmission, receipt and completion of work orders
 - Dispatching and routing
 - Resolution of issues affecting work order completion
 - Reports showing results and progress daily, weekly, monthly, annually
 - Meetings to discuss overall project status and issues
 - Monthly invoice reconciliation with detailed documentation of charges
 - Periodic contractor compliance audits and feedback

7 Prior to Work Order Execution

- 7.1 Contractor shall inspect each site before starting designated work, and notify the City's designated representative of any concerns or issues
 - 7.1.1 If a private or a service line leak is detected, Contractor shall not start/continue work until City's representative has been notified and responded, by telephone, text or email. Contractor

notification will include the address, work order number, meter make, size, serial number, and type of leak.

7.1.1.1 City will coordinate the leak repair and advise Contractor of next steps.

7.1.1.2 Contractor shall only repair service line and/or private leaks if caused by contractor's employee action. This shall be at Contractor's expense.

7.1.2 Contractor shall preserve and protect from damage existing trees, lawns, plants, foliage, sidewalks and associated yard items while performing work. If in question, a picture of before and after should be taken to ensure proper restoration.

7.1.2.1 Contractor will notify City if such items will prevent work order completion.

7.1.2.2 Work site shall be restored to its original (or better) condition

7.1.2.3 Contractor shall be responsible for cost of repairing damage to these items due to contractor employee action.

7.2 City of Houston designated representative shall coordinate interdepartmental support, if needed. Contractor shall verify coordination was completed before starting work.

7.3 Contractor shall ensure its vehicles display the Contractor's company name, COH 311 phone number and the words "City of Houston Contractor" on both sides of the vehicle.

7.4 Contractor shall ensure all supplies, materials, equipment and tools to be used are of the type, size and quality customarily used in the trade for such work. Any such items deemed unsuitable by the City shall be replaced at the Contractor's expense. The City shall not be responsible in any way for damage to or loss of supplies, materials, tools, equipment or personal property belonging to the Contractor or contract employees.

7.5 City of Houston designated representative shall notify City's warehouse of inventory needed to complete the work order.

8 Work Order Execution

8.1 City of Houston's Designated representative shall assign all required work to the Contractor daily using a written or electronic work order prior to Contractor Starting work. Any work not completed that day should be returned to the City for rescheduling.

8.1.1 Contractor shall not perform any work not requested on the work order without written approval from the City's representative.

8.1.2 Any change-order request to perform a service not listed in the Fee Schedule shall require City's representative approval.

8.2 The Contractor shall perform assigned work between 7:00 am and 4:00 pm, Monday through Friday and 7:00 am to 4:00 pm, Saturday and/or Sunday, when workload requires it, not inclusive of City Holidays specified by Council Motion.

8.3 All Contractor vehicles utilized in performing work under this contract, shall have a City supplied decal indicating they are a City contractor.

8.4 All Contractor personnel performing work under this contract shall wear uniforms and display

City issued identification badges in plain sight.

8.4.1 Contractor uniforms must have the company's logo in visible sight.

8.4.2 Use of personal protective equipment is mandatory.

8.5 Contractor shall designate one on-site employee to be responsible for ensuring the work order is completed efficiently, effectively, and in accordance with this contract and City- approved policies, procedures and standards.

8.6 At the start of the business day, Contractor shall pickup issued material from the warehouse at 2700 Dalton St, Houston, TX 77017 and assume full responsibility for its condition until installed or returned.

8.7 Before the end of the business day, Contractor shall return any removed and unused issued material to the City's warehouse at 2700 Dalton St, Houston, TX 77017. Returned material should be properly cleaned and preserved. Severely damaged material shall be tagged and noted with details on the cause and extent of damage.

8.8 Contractor personnel making direct contact with City of Houston customers are expected to answer questions directly related to the meter work being performed.

8.8.1 Questions not related to this work should be directed to Customer Account Services at (713) 371-1400, Monday – Friday, 8am – 7pm.

8.8.2 Door hanging notices may be used if direct customer contact is not possible.

8.9 Contractor shall report any illegal connection and/or unauthorized use to the City's representative that same day. In addition, the Contractor shall indicate this information on the work order completion documentation.

8.10 Contractor shall notify City's representative if any hazardous material or soil is detected during work order execution. The Contractor shall dispose of the hazardous material/soil in strict accordance with federal, state and local regulations. The City shall reimburse the Contractor for its actual cost of disposing of the hazardous material/soil. The Contractor must provide proof of the actual cost of disposal; e.g., invoice/ticket from disposal facility's owner/operator.

9 Materials Management and Inventory

9.1 City of Houston often consigns materials to the Contractor in the work orders issued.

9.1.1 The Contractor shall compensate the City of Houston, in the form of a credit towards the Contractor's invoice, for the replacement costs of any materials or equipment Contractor damaged or lost while performing field services.

9.1.2 Contractor shall return damaged items daily, appropriately tagged and packaged, to the City of Houston warehouse at 2700 Dalton St., Houston, TX 77017.

9.1.3 Material and equipment replacement costs shall be based on the most current contractual price between the City of Houston and the applicable vendor of that item. Contractor can get a copy of that price list from the City's representative.

10 Payment and Invoicing

10.1 City of Houston and Contractor shall reconcile compensation monthly.

10.2 Contractor failure to comply with performance or other requirements outline in this contract may result in delayed payment until services have been satisfactorily performed.

10.3 All invoices shall be submitted in triplicate (one original and two copies). All invoices shall be original invoices, or certified invoices on Contractor's company stationary, signed by an authorized agent of the company. Payment of invoices shall be made within 30 days of invoice receipt, assuming satisfactory service was received. The city reserves the right to review all invoices received for accuracy and compliance with the terms, conditions and fee schedule of this contract. The city further reserves the right to reject invoices received without proper documentation, where applicable.

10.4 Invoices shall contain the following information:

- Contract number and Ordinance number
- Address where service was provided
- Date service was provided
- Description of service provide
- Work order number
- Cost for service provided (per the Fee Schedule)
- Total invoice cost

10.5 Contractor shall send electronic copy invoices to the following email address:

- finaccountspayable@houstontx.gov

10.6 Contractor shall mail paper invoices to the following address:

Department of Houston Public Works
Fin Business Office, Accounts Payable
P.O. Box 3685
Houston, TX 77251-3685

11 Contract Compliance

11.1 Houston Public Works reserves the right to monitor this contract for compliance to ensure legal obligations are fulfilled and that an acceptable level if service is provided. Monitoring may take the form of, but not necessarily limited to:

- Site visits
- Testing and sampling of goods and services
- Review of deliveries received for accuracy and timeliness
- Review of permits, certifications and/or licenses
- Review of contractor's invoices for accuracy

- The responsibility for monitoring compliance rests with the Contract Compliance Section, Procurement Service Branch, Houston Public Works.

12 **Contract Performance**

- 12.1 The Contractor shall begin work within 48 hours from issuance of each work order. Failure to complete and/or return any work order within 18 calendar days from issue date will result in liquidated damages of \$100.00 a day for each outstanding work order until such work order is completed and return to the COH.
- 12.2 The Contractor shall be required to meet a minimum Contract Performance goal of 97% accuracy in field installation services performed. Any work performed not in conformance with established quality standards and/or published field operations procedures resulting in COH exercising contract Warranty of Services provisions, will count against the annual performance goal. Annual compliance reviews, starting 12 months from the initial notice to proceed date, will be conducted to ascertain Contractor's unacceptable work as a ratio of total work performed to establish annual performance results. Failure to meet the minimum requirement will result in a contract penalty charge to the Contractor by the City of Houston in the amount of .5% of the total amount paid Contractor in the preceding year not to exceed \$2,000. The penalty charge will in the form of a credit on the next invoice following notification to the Contractor of the performance deficiency.

13 **Site Visit**

- 13.1 When deemed necessary, an inspection may be made by Houston Public Works to determine whether a bidder has a physical facility at the location they listed in their bid document.

14 **Post Award Meeting**

- 14.1 Once the contract has been approved by City Council, Houston Public Works reserves the right to schedule a Post Award meeting with the successful vendor and HPW end users. The meeting may include representatives from SPD, PSB, Accounts Payable, and others as deemed necessary.

15.0 **PERSONNEL QUALIFICATIONS:**

- 15.1 The Contractor shall provide only qualified personnel with experience in the assigned tasks. The Contractor is responsible for ensuring that certified trained personnel and necessary materials, tools, equipment and supplies will be available to meet the pest control services requirements of this Agreement. The Contractor may change personnel only with equally certified personnel and with Director's approval. Contractor shall furnish documentation that includes assigned personnel's qualifications and certifications. The Director shall have the authority to instruct the Contractor to remove unsatisfactory personnel from performing work on this contract for just cause. The Director's decision shall be final in all cases.

16.0 **TEXAS DRIVER'S LICENSE:**

- 16.1 The Contractor's employees performing work for the City must possess a valid Texas driver's license for

the type of vehicle or equipment operated. Contractor shall ensure employees meet this requirement.

17.0 DISPUTES:

17.1 In all cases of misunderstanding and disputes, verbal arrangement will not be considered binding and Contractor shall produce written documentation in support of its contentions. The decision of the Director shall be final.

18.0 SUBCONTRACTORS:

18.1 The Contractor may use only subcontractors approved by the Director in connection with the performance of work under the Agreement, and the Contractor shall be completely responsible to the City for such subcontractors and their acts and omissions to the same extent as if there were no subcontractors.

19.0 DAMAGE TO CITY PROPERTY:

19.1 The Contractor shall be responsible for the repair and cost thereof, of all damages to City property caused by carelessness or neglect on the part of the Contractor, its agents or employees.

20.0 SAFETY:

20.1 The Contractor shall not require any person employed in the performance of the Agreement to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to their health or safety, or contrary to any provision of the Occupational Health and Safety Administration Standards for the products being used (OSHA).

20.2 The Contractor shall be completely familiar with, and shall enforce all City, State of Texas and Federal OSHA regulations and requirements as applicable for services performed under the Agreement, including but not limited to the following:

20.2.1 The Contractor's personnel shall wear applicable personal protection equipment at all times.

20.2.2 The Contractor's personnel operating equipment and/or handling materials shall be fully trained in the safe operation of the equipment or materials.

20.2.3 The Contractor's personnel shall follow and apply safety practices prevailing in their industry.

20.3 The Contractor shall develop, implement and maintain an on-going safety program concerned with equipment, maintenance work, and related procedures. Safety warnings shall be posted on equipment as necessary to ensure safe operations. Equipment shall never be installed, tested or operated in an unsafe condition.

20.4 The Contractor shall be responsible for the proper operation and maintenance of all safety equipment associated with its pest control system.

21.0 INCREASE OR DECREASE OF WORK:

21.1 The City has the right to increase or decrease the number and/or frequency of Basic Services; the costs from the Contract Fee and Costs Schedule shall be used to determine the increase or decrease in cost. If costs are not provided, costs will be as mutually agreed upon between City and Contractor.

22.0 PRE-PERFORMANCE CONFERENCE:

22.1 Subsequent to contract approval/execution, the Contractor(s) shall be required to attend a performance conformance. The Strategic Procurement Division or the primary user department will host the pre-performance conference. 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. Items to be addressed shall include, but are not limited to, the following:

- Start-up and phase-in and performance schedule
- Contract administration
- Facilities utilization
- Channels of communication
- Procedures to be used to ensure Contract requirements are met to meet all the requirements of the Contract.

23.0 ADDITIONS & DELETIONS:

23.1 The City, by written notice from the City Chief Procurement Officer 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.

24.0 ESTIMATED QUANTITIES NOT GUARANTEED:

24.1 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.

25.0 INTERLOCAL AGREEMENT:

25.1 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.

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

26.1 The Houston Police Department 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, the Houston Police Department is required to document and investigate access requests to be sure access is necessary and permitted. bidders, therefore, agree 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.

EXHIBIT A- CONTRACTOR'S QUESTIONNAIRE
COMPLETE AND SUBMIT WITH BID

In order to receive bid award consideration, the bidder must be able to demonstrate that they currently have or have had at least two (2) contracts, as a prime contractor, providing the required services. To be eligible for award consideration, the bidder must be able to demonstrate satisfactory proof of capacity and ability to perform the services herein required. Such proof may include but is not limited to: inspection of bidder facility and equipment, financial statements, references, and performance of similar contracts.

1. Bidder must submit a maximum of five (5) and a minimum of two (2) successful contracts that best demonstrate experience, as a prime contractor, for Meter Installation/Replacement, Meter Reading, Register replacement, End Point Replacement, Repair Leaks, Replace Meter Boxes, Relocate Meter and Service Line, Replace curb stop, Perform field accuracy tests, and Turn on/off water service.
 - a. The experience must have occurred within the last five (5) years, measured backwards from the issue date of this solicitation.
 - b. **Bidder must have references documenting that it has performed the above-mentioned services.** The reference(s) and contracts should be included in the space provided below. Referrals should include a qualitative description of the work performed and degree of customer satisfaction. If references are not included with the bid, the bidder must provide such references to the City of Houston within five working days from receipt of a written request from the City of Houston to do so.
2. Consideration will be given only to bidders who can demonstrate that their background and technical abilities/competence comply with the specifications. **Qualifications and or experience must meet the minimum requirements for this specification outlined in this questionnaire and/or listed in the scope of work.**

EXPERIENCE RECORD:

CURRENT OF PREVIOUS CONTRACT EXPERIENCE 1:

Contract Description:	
Contract Start Date:	
Contract Location Address:	
Contract Duration (calendar days):	
If completed, provide completion date:	
Contract Owner:	
City:	
Contract Beginning Amount:	
Contract Ending Amount:	
Contract Total Amount:	
Contract Owner's Contract Representative contact information (Name, E-mail, Phone number)	
If contract is currently ongoing, provide percentage complete:	
If contract time extensions were added to contract, as a result of Bidder responsibilities, provide short explanation of each:	
How does this contract relate to the scope of work of this solicitation?	

CURRENT OF PREVIOUS CONTRACT EXPERIENCE 2:

Contract Description:	
Contract Start Date:	
Contract Location Address:	
Contract Duration (calendar days):	
If completed, provide completion date:	
Contract Owner:	
City:	
Contract Beginning Amount:	
Contract Ending Amount:	
Contract Total Amount:	
Contract Owner's Contract Representative contact information (Name, E-mail, Phone number)	
If contract is currently ongoing, provide percentage complete:	
If contract time extensions were added to contract, as a result of Bidder responsibilities, provide short explanation of each:	
How does this contract relate to the scope of work of this solicitation?	

CURRENT OF PREVIOUS CONTRACT EXPERIENCE 3:

Contract Description:	
Contract Start Date:	
Contract Location Address:	
Contract Duration (calendar days):	
If completed, provide completion date:	
Contract Owner:	
City:	
Contract Beginning Amount:	
Contract Ending Amount:	
Contract Total Amount:	
Contract Owner's Contract Representative contact information (Name, E-mail, Phone number)	
If contract is currently ongoing, provide percentage complete:	
If contract time extensions were added to contract, as a result of Bidder responsibilities, provide short explanation of each:	
How does this contract relate to the scope of work of this solicitation?	

CURRENT OF PREVIOUS CONTRACT EXPERIENCE 4:

Contract Description:	
Contract Start Date:	
Contract Location Address:	
Contract Duration (calendar days):	
If completed, provide completion date:	
Contract Owner:	
City:	
Contract Beginning Amount:	
Contract Ending Amount:	
Contract Total Amount:	
Contract Owner's Contract Representative contact information (Name, E-mail, Phone number)	
If contract is currently ongoing, provide percentage complete:	
If contract time extensions were added to contract, as a result of Bidder responsibilities, provide short explanation of each:	
How does this contract relate to the scope of work of this solicitation?	

CURRENT OF PREVIOUS CONTRACT EXPERIENCE 5:

Contract Description:	
Contract Start Date:	
Contract Location Address:	
Contract Duration (calendar days):	
If completed, provide completion date:	
Contract Owner:	
City:	
Contract Beginning Amount:	
Contract Ending Amount:	
Contract Total Amount:	
Contract Owner's Contract Representative contact information (Name, E-mail, Phone number)	
If contract is currently ongoing, provide percentage complete:	
If contract time extensions were added to contract, as a result of Bidder responsibilities, provide short explanation of each:	
How does this contract relate to the scope of work of this solicitation?	

THE STATE OF TEXAS §
COUNTY OF HARRIS §

BID # _____
ORDINANCE # _____
CONTRACT# _____

AGREEMENT FOR RESIDENTIAL WATER METER SERVICES

ARTICLE 1. PARTIES

THIS AGREEMENT FOR RESIDENTIAL WATER METER SERVICES (this "Agreement") is made on the date countersigned by the City Controller between the **CITY OF HOUSTON, TEXAS** (the "City"), a home-rule city of the State of Texas principally situated in Harris County and _____ ("Contractor"), a _____ doing business in Texas.

1.01 **ADDRESS:**

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

<u>City</u>	<u>Contractor</u>
Director or Designee _____	_____
Department _____	_____
City of Houston _____	_____
P. O. Box 1562 _____	_____
Houston, Texas 77251 _____	Attention: _____

The Parties agree as follows:

1.02 **TABLE OF CONTENTS**

1.02.1 This Agreement consists of the following sections:

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- "F" FEES AND COSTS

1.03 PARTS INCORPORATED

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

1.04 CONTROLLING PARTS

1.04.1 If a conflict between the sections or exhibits arises, the sections control over the exhibits.

1.05 DEFINITIONS

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

1.06 **SIGNATURES**

1.06.1 The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

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

Name:
Title:

CONTRACTOR:

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

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

Director, _____ Department

City Controller

APPROVED:

COUNTERSIGNATURE DATE:

Chief Procurement Officer

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

APPROVED AS TO FORM:

Legal Assistant
Date: _____

Assistant City Attorney
L.D. File No. _____

ARTICLE 2. DUTIES OF CONTRACTOR

2.01 SCOPE OF SERVICES

2.01.1 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".

2.02 COORDINATE PERFORMANCE

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

2.03 TIME EXTENSIONS

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

2.03.2 If the Director requests an extension of time to complete Contractor's performance, then the CPO may, upon consultation with the Director involved, extend the time so long as the extension does not exceed 90 calendar 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).

2.04. REPORTS

2.04.1 Contractor shall submit all reports and progress updates required by the Director or CPO.

2.05 PAYMENT OF SUBCONTRACTORS

2.05.1 In accordance with the Texas Prompt Payment Act, Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment by, through, or under Contractor in the performance of this Agreement.

2.05.2 **IN ACCORDANCE WITH THE TEXAS PROMPT PAYMENT ACT, CONTRACTOR SHALL MAKE TIMELY PAYMENTS TO ALL PERSONS AND ENTITIES THAT CONTRACTOR HAS HIRED TO SUPPLY LABOR, MATERIALS, OR EQUIPMENT FOR THE PERFORMANCE OF THIS AGREEMENT. CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS REGARDLESS OF WHETHER THE FAILURE TO PAY IS CAUSED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), OR GROSS NEGLIGENCE, (WHETHER SOLE, JOINT OR CONCURRENT), STRICT LIABILITY, INTENTIONAL ACTS, OR OTHER CONDUCT OR**

LIABILITY OF THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES.

2.05.3 Failure of Contractor to pay its employees as required by law shall constitute a default under this Agreement, for which Contractor and its surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.

2.06 RELEASE

2.06.1 CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. CONTRACTOR HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.

2.07 INDEMNIFICATION

2.07.1 CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

2.07.1.1 CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS 2.07.1.1 THROUGH 2.07.1.3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

2.07.1.2 THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND

2.07.1.3 THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

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

2.08 SUBCONTRACTOR'S INDEMNITY

2.08.1 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.

2.09 INDEMNIFICATION PROCEDURES

2.09.1 Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving Party shall give written notice to the other Party within 30 days. The notice must include the following:

2.09.1.1 a description of the indemnification event in reasonable detail;

2.09.1.2 the basis on which indemnification may be due; and

2.09.1.3 the anticipated amount of the indemnified loss.

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 30-day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

2.09.2 Defense of Claims

2.09.2.1 Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. Contractor shall then control the defense and any negotiations to settle the claim, subject to the City Attorney's consent or agreement to the settlement, which consent or agreement shall not unreasonably be withheld. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

2.09.2.2 Continued Participation. If Contractor 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.

2.10 **INSURANCE**

2.10.1 **Risks and Limits of Liability.** Contractor shall maintain the following insurance coverages in the following amounts:

<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> • Bodily Injury by Accident \$500,000 (each accident) • Bodily Injury by Disease \$500,000 (policy limit) • Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$2,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit for: (i) Any Auto; or (ii) All Owned, Hired, and Non-Owned Autos
Professional Liability (if applicable)	\$1,000,000 per occurrence; \$2,000,000 aggregate
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	\$1,000,000
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

2.10.2 **Insurance Coverage.** At all times during the term of this Agreement and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Agreement requirements. Prior to beginning performance under the Agreement, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay: (i) all premiums; and (ii) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

2.10.3 **Form of insurance.** The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never: (i) excuse non-compliance with the terms of this Section; or (ii) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall: (i) have a Certificate of Authority to transact insurance business in Texas; or (ii) 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 Best's Key Rating Guide.

2.10.4 **Required Coverage.** The City shall be an Additional Insured under this Agreement, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Agreement provisions. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement. If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative, evidence of extended reporting period coverage for a period of two years after substantial completion or a project liability policy for the Project covered by this Agreement with a duration of two years after substantial completion. All certificates of insurance submitted by Contractor shall be accompanied by endorsements for: (i) Additional Insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and (ii) Waivers of Subrogation in favor of the City for Commercial General Liability, Automobile Liability and Workers' Compensation/Employers' Liability policies. The Director will consider all other forms on a case-by-case basis.

2.10.5 **Notice.** **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

2.10.6 **Other Insurance.** If requested by the Director, Contractor shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Contractor's operations under this Agreement.

2.11 WARRANTIES

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

2.11.2 With respect to any parts and goods it furnishes, Contractor warrants:

- 2.11.2.1 that all items are free of defects in title, design, material, and workmanship;
- 2.11.2.2 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;
- 2.11.2.3 that each replacement item is new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new); and
- 2.11.2.4 that no item or its use infringes any patent, copyright, or proprietary right.

2.12 **CONFIDENTIALITY**

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

2.13. **USE OF WORK PRODUCTS**

2.13.1 The City may use all Documents that Contractor prepares or obtains under this Agreement. In addition, Contractor shall provide the Director with supporting schedules, flow charts or other analysis necessary to understand the reported findings and recommendations. Generally, this information is attached as exhibits to the final report; however, if requested by the Director, Contractor shall provide this information from its work paper files.

2.13.2 Contractor warrants that it owns the copyright to the Documents.

2.13.3 Contractor shall deliver the original Documents to the Director on request. Within five working days after this Agreement terminates, Contractor shall deliver to the Director the original Documents, and all other files and materials Contractor produces or gathers during its performance under this Agreement.

2.14 **LICENSES AND PERMITS**

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

2.15 **COMPLIANCE WITH LAWS**

2.15.1 Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances in its performance under this Agreement.

2.16 **COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY ORDINANCE**

2.16.1 Contractor shall comply with City's Equal Employment Opportunity Ordinance as set out in in Section 15-17 of the Code of Ordinances.

2.17 **MWBE COMPLIANCE**

2.17.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 11% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO") and will comply with them.

2.17.2 Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

[Name of MWBE subcontractor] shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Office of Business Opportunity Director (the "Director").

[Name of MWBE subcontractor] shall permit representatives of the City of Houston, at all reasonable times, to perform: (i) audits of the books and records of the subcontractor, and (ii) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

Within five Business Days of execution of this subcontract, Contractor and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

Any controversy between the Parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract may be submitted to the Director. The Director may prescribe procedures to provide dispute resolution by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

2.18. DRUG ABUSE DETECTION AND DETERRENCE

- 2.18.1 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 (the "Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- 2.18.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
- 2.18.2.1 a copy of its drug-free workplace policy;
 - 2.18.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "C", together with a written designation of all safety impact positions; and
 - 2.18.2.3 if applicable (e.g., no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "D".
- 2.18.3 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 "E". Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or, if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.
- 2.18.4 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.
- 2.18.6 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

2.19 CONFLICTS OF INTEREST

- 2.19.1 If an actual or potential conflict arises between the City's interests and the interests of other client(s) Contractor represents, Contractor shall immediately notify the Director in writing. The City Controller shall issue a letter of consent or non-consent to Contractor's representation, potential or otherwise, of the other client(s) within 10 Business Days after receipt of Contractor's notice. If the City Controller issues a non-consent letter, Contractor shall immediately terminate its representation, potential or otherwise, of the other client(s) whose interests are or may be in conflict with those of the City.

2.20. **PAY OR PLAY**

2.20.1 The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7, as revised, and shall comply with its terms and conditions.

2.21. **CONTRACTOR'S PERFORMANCE**

2.21.1 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

2.22. **ADDITIONS AND DELETIONS**

2.22.1 Additional Products and Services. Subject to the allocation of funds, the CPO may add similar equipment, supplies, services, or locations, within the scope of this Agreement, to the list of equipment, supplies, services, or locations to be performed or provided by giving written notification to Contractor. For purposes of this Section, the "Effective Date" means the date specified in the notification from the CPO. As of the Effective Date, each item added is subject to this Agreement, as if it had originally been a part, but the charge for each item starts to accrue only on the Effective Date. In the event the additional equipment, supplies, services, or locations are not identical to the items(s) already under this Agreement, the charges therefor will then be Contractor's normal and customary charges or rates for the equipment, supplies, services, or locations classified in the Fees and Costs (Exhibit "F").

2.22.2 Exclusion of Products and Services. If a deliverable or service that is subject to this Agreement is deleted, lost, stolen, destroyed, damaged, sold, replaced, or otherwise disposed of, the CPO may exclude it from the operation of this Agreement by notifying Contractor in writing. The notice takes effect immediately on its receipt by Contractor. More than one notice may be given. When a notice is received, Contractor shall delete the charge for the excluded deliverable or service from the sum(s) otherwise due under this Agreement.

2.22.3 The total charges for additions and deletions to this Agreement must never exceed 25% of the original contract amount unless:

2.22.3.1 The additions are exempt from the competitive bidding or proposal requirements set forth in Tex. Local Govt. Code Chapter 252; or

2.22.3.2 The City acquires the additions from Contractor through a competitive bid or competitive proposal.

2.23. CHANGES

2.23.1 At any time during the Agreement Term, the CPO 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.

2.23.2 The CPO will issue the Change Order in substantially the following form:

<u>CHANGE ORDER</u>	
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 CPO]

2.23.3 The CPO may issue more than one Change Order, subject to the following limitations:

2.23.3.1 The City Council expressly authorizes the CPO to approve a Change Order up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.

2.23.3.2 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.

2.23.3.3 The total of all Change Orders issued under this section may not increase the original contract amount by more than 25%.

2.23.4 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 CPO's decision regarding a time extension is final.

2.23.5 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.

2.23.6 Change Orders are subject to the Allocated Funds provisions of this Agreement.

2.24 **ENVIRONMENTAL LAWS**

2.24.1 Contractor shall comply with all rules, regulations, statutes, and orders of the Environmental Protection Agency, the Texas Commission on Environmental Quality, and any other governmental agency with the authority to promulgate environmental rules and regulations (the "Environmental Laws"). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply with Environmental Laws.

2.24.2 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 Laws. "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.

2.25 **ANTI-BOYCOTT OF ISRAEL**

2.25.1 Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

2.26 **ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES**

2.26.1 The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of the Countersignature Date. Contractor shall notify the CPO, City Attorney, and the Director of any information regarding possible violation by Contractor or its subcontractors providing services or goods under this Agreement within 7 days of Contractor becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

2.27 **PRESERVATION OF CONTRACTING INFORMATION**

2.27.1 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that this Agreement can be

terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Agreement, then for the duration of this Agreement (including the initial term, any renewal terms, and any extensions), Contractor shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Contractor shall provide any Contracting Information related to this Agreement that is in the custody or possession of Contractor. Upon the expiration or termination of this Agreement, Contractor shall, at the Director's election either (a) provide, at no cost to the City, all Contracting Information related to this Agreement that is in the custody or possession of Contractor, or (b) preserve the Contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or City policy.

2.27.2 If Contractor fails to comply with any one or more of the requirements of this Section, Preservation of Contracting Information, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Contractor and may terminate this Agreement. To effect final termination, the Director must notify Contractor in writing with a copy of the notice to the CPO. 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.

ARTICLE 3. DUTIES OF CITY

3.01 PAYMENT TERMS

3.01.1 Subject to all terms and conditions of this Agreement, the City agrees to pay for the services described in Exhibit "B" that are rendered by Contractor based upon monthly invoices showing the number of individual tasks and related services performed at the rates set forth in Exhibit "F". The fees must only be paid from Allocated Funds as provided below.

3.01.2 Early Payment Discount. 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 (Tex. Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from Contractor as follows:

Payment Time - 10 Days: 2% Discount
Payment Time - 20 Days: 1% Discount

3.01.3 If the City fails to make a payment according to the early payment schedule above, but does make the payment within the time specified by the Prompt Payment Act, the City shall not receive the discount, but shall 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.

3.02 **TAXES**

3.02.1 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.

3.03 **METHOD OF PAYMENT**

3.03.1 The City shall pay on the basis of monthly invoices submitted by Contractor and approved by the Director showing the services performed and the attendant fee. The City shall make payment to Contractor within 30 days of the receipt and approval by the City of such invoices. If the City disputes any item 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 any 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.

3.04 **LIMIT OF APPROPRIATION**

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

3.04.2 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 during the City's current fiscal year (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds (each a "Supplemental Allocation" and collectively, the "Supplemental Allocations") for this Agreement, but they are not obligated to do so. Therefore, the Parties have agreed to the following procedures and remedies:

3.04.2.1 The City has not allocated supplemental funds or made a Supplemental Allocation for this Agreement unless the City has issued 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 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.

\$ _____

3.04.2.2 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.

3.05 ACCESS TO SITE

3.05.1 Contractor may enter and leave the premises at all reasonable times without charge. Contractor and its employees may use the common areas and roadways of the premises where it is to perform the services together with all facilities, equipment, improvements, and services provided in connection with the premises for common use. This excludes parking for Contractor's personnel. Contractor shall repair any damage caused by it or its employees as a result of its use of the common areas.

3.06 ACCESS TO DATA

3.06.1 The City shall, to the extent permitted by law, allow Contractor to access and make copies of documents in the possession or control of the City or available to it that are reasonably necessary for Contractor to perform under this Agreement.

3.06.2 The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Contractor's use.

3.06.3 For any raw data created, assembled, used, maintained, collected, or stored by Contractor for or on behalf of the City, Contractor shall provide the City either the raw data itself or the ability to extract the raw data in a format mutually agreed upon by both Parties at no additional cost to the City.

ARTICLE 4. TERM AND TERMINATION

4.01. AGREEMENT TERM

4.01.1 This Agreement is effective on the Countersignature Date and shall remain in

effect for ___ years, unless sooner terminated under this Agreement (the "Initial Term").

4.02 **NOTICE TO PROCEED**

4.02.1 Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the CPO or Director.

4.03. **RENEWALS**

4.03.1 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for _____ successive 1-year terms on the same terms and conditions. If the Director chooses not to renew this Agreement, he or she shall notify Contractor and the CPO of non-renewal at least 30 days before the expiration of the then-current term.

4.04. **TERMINATION FOR CONVENIENCE BY CITY**

4.04.1 The Director may terminate this Agreement at any time by giving 30 days' written notice to Contractor, with a copy of the notice to the CPO. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies, which exist now or in the future.

4.04.2 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 this Agreement unless the fees exceed the allocated funds remaining under this Agreement.

4.04.3 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.

4.05. **TERMINATION FOR CAUSE BY CITY**

4.05.1 If Contractor defaults under this Agreement, the Director may terminate this Agreement after providing Contractor written notice and an opportunity 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 that exist now or in the future. Default by Contractor occurs if:

4.05.1.1 Contractor fails to perform any of its material duties under this

Agreement;

4.05.1.2 Contractor becomes insolvent;

4.05.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or

4.05.1.4 a receiver or trustee is appointed for Contractor.

4.05.2 If a default occurs and the Director determines that the City wishes to terminate the Agreement, then the Director must deliver a written notice to Contractor describing the default and the proposed termination date, with a copy of the notice to the CPO. The date must be at least 30 days after Contractor receives notice. The Director, at his or her sole option, may extend the termination date to a later date. If Contractor cures the default before the proposed termination date, then the proposed termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation of the City.

4.05.3 To effect final termination, the Director must notify Contractor in writing, with a copy of the notice to the CPO. 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.

4.06 **TERMINATION FOR CAUSE BY CONTRACTOR**

4.06.1 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. The date must be at least 30 days after the Director receives the 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.

4.07. **REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS**

4.07.1 Upon expiration or termination of this Agreement, Contractor is permitted 10 days within which to remove contractor-owned material and equipment from the City's premises. This 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.

ARTICLE 5. MISCELLANEOUS

5.01 INDEPENDENT CONTRACTOR

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

5.02 FORCE MAJEURE

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

5.02.2 This relief is not applicable unless the affected Party does the following:

5.02.2.1 uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure, and

5.02.2.2 provides the other Party with prompt written notice of the cause and its anticipated effect.

5.02.3 The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days.

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

5.02.5 If the Force Majeure continues for more than 7 days from the date performance is affected, the Director may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

5.03 **SEVERABILITY**

5.03.1 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.

5.04 **ENTIRE AGREEMENT**

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

5.05 **WRITTEN AMENDMENT**

5.05.1 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 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.

5.06 **GOVERNING LAW AND VENUE**

5.06.1 This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

5.07 **NOTICES**

5.07.1 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, 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 Article 1 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.

5.08 **CAPTIONS**

5.08.1 Captions contained in this Agreement are for reference only and therefore have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

5.09 **NON-WAIVER**

5.09.1 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.

5.09.2 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.

5.10 **INSPECTIONS AND AUDITS**

5.10.1 City representatives may perform, or have performed: (i) audits of Contractor's books and records; and (ii) 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 three years after this Agreement terminates. If the books and records are located outside of Harris County, Texas, Contractor agrees to make them available in Harris County, Texas. This provision does not affect the applicable statute of limitations.

5.11 **ENFORCEMENT**

5.11.1 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.

5.12 **AMBIGUITIES**

5.12.1 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.

5.13 **SURVIVAL**

5.13.1 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.

5.14 **PUBLICITY**

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

5.15 **PARTIES IN INTEREST**

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

5.16 **SUCCESSORS AND ASSIGNS**

5.16.1 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.

5.17 **BUSINESS STRUCTURE AND ASSIGNMENTS**

5.17.1 Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the 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 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the Director and CPO 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.

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

5.18 **REMEDIES CUMULATIVE**

5.18.1 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 that exist now or in the future. Neither Party may terminate its duties under this Agreement except in accordance with its provisions.

5.19 **CONTRACTOR DEBT**

5.19.1 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, HE OR SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

EXHIBIT "A"

DEFINITIONS

In addition to the words and terms defined elsewhere in this Agreement, the following terms have the meanings set out below. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural. The word "shall" is always mandatory and not merely permissive.

1. "Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
2. "Business Day" means any calendar day except Saturdays, Sundays and full-day holidays for employees of the City (as designated by City Council).
3. "Chief Procurement Officer" ("CPO") means the Chief Procurement Officer of the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.
4. "City" is defined in the preamble of this Agreement and includes its successors and permitted assigns.
5. "Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.
6. "Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.
7. "Director" means the Director of the City of Houston _____ Department or such other person as he or she designates.
8. "Documents" mean notes, manuals, notebooks, plans, computations, computer databases and diskettes, software, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.
9. "Effective Date" means the date this Agreement is countersigned by the City Controller.
10. "Notice to Proceed" means a written communication from the Director or the CPO to Contractor instructing Contractor to begin performance.
11. "Party" or "Parties" means one or all of the entities set out in the Preamble who are bound by this Agreement.

EXHIBIT "B"
SCOPE OF SERVICES

EXHIBIT "C"

DRUG POLICY COMPLIANCE AGREEMENT

I, _____, _____,
(Name) (Title)

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

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date

Contractor Name

Signature

Title

EXHIBIT "D"

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

I, _____, _____,
(Name) (Title)

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

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved in performing _____.
(Project)

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

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "F"
FEES AND COSTS