



# CITY OF HOUSTON INVITATION TO BID

Issued: October 16, 2020

## **BID OPENING**

Sealed bids (labelled with the company name, address and bid number), in duplicate will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby Street, Houston, Texas 77002, until **10:30 a.m., Thursday, December 3, 2020**. 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. All bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby Street at 11:00 AM on that date for the purchase of:

**RESIDENTIAL PLUMBING REPAIRS AND SERVICES  
FOR HOUSTON PUBLIC WORKS  
BID INVITATION NO.: S78 – L29651  
NIGP CODE: 910-60 / 934-64  
MWBE GOAL: 11%**

## **BUYER**

Questions regarding this solicitation document should be addressed to Katie Moore at **832.393.8710**, or e-mail to [Katie.Moore@houstontx.gov](mailto:Katie.Moore@houstontx.gov).

## **ELECTRONIC BIDDING**

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

## **PRE-BID CONFERENCE**

The City of Houston's Strategic Procurement Division has decided to suspend ALL onsite Pre-Bid Conference until further notices. Therefore, there will be a teleconference for this Pre-Bid on **October 27, 2020 at 10:00 a.m.** The dial in number is **1 – 936-755-1521 – Conference ID No. 621-486-890#**. It is bidder's responsibility to ensure that they have secured and thoroughly reviewed all aspects of the bidding documents prior to the Pre-Bid teleconference.

**Any revisions to be incorporated into this solicitation document arising from discussions before, during and subsequent to the Pre-Bid Conference will be confirmed in writing by Letter(s) of Clarification prior to the bid due date. Verbal responses will not otherwise alter the specifications, and terms and conditions as stated herein.**

Bidding forms, specifications, and all necessary information should be downloaded from the Internet at <https://purchasing.houstontx.gov/>. By registering and downloading this solicitation document, all updates to this solicitation document will be automatically forwarded via e-mail to all registered Bidders.

The place of the bid opening may be transferred in accordance with Paragraph (b), (5) of Section 15-45 of The Code of Ordinances, Houston, Texas. The bid opening meeting may be rescheduled in accordance with Paragraph (b), (6) of said Section 15-3.

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

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

### **\*CONTENTS:**

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

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

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

**SECTION A**



**RESIDENTIAL PLUMBING REPAIRS AND SERVICES  
FOR HOUSTON PUBLIC WORKS  
BID INVITATION NO.: S78 – L29651  
NIGP CODE: 910-60 / 934-64  
MWBE GOAL: 11%**

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

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

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

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

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

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

If the City accepts the foregoing offer, this Bidder shall furnish all labor, supervision, materials, supplies, equipment and tools necessary to provide **Residential Plumbing Repairs and Services** for the City in accordance with attached specifications.

**Documents/forms must be downloaded from the City's Website at**

<http://purchasing.houstontx.gov/forms.shtml>

**Additional Required Forms to be included with this Bid:**

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

<b>TABLE 1 - REQUIRED FORMS</b>
Affidavit of Ownership.doc
Fair Campaign Ordinance.doc
Statement of Residency.doc
Conflict of Interest Questionnaire.doc
Pay or Play-1A, Program Acknowledgement Form
Pay or Play-2, Certification of Agreement Form
M/WBE Signed Letter of Intent
References Form

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

<b>TABLE 2 - DOCUMENTS &amp; FORMS</b>
Drug Forms.doc
EEOC.doc
Formal Instructions for Bid Terms.doc
M/WBE.doc
Sample Insurance Over \$50, 000.pdf
Insurance Endorsements
Pay or Play Office of Business Opportunity & Contract Compliance Requirements
Pay or Play Contractor/Subcontractor Payment Reporting Form
Pay or Play Contractor/Subcontractor Waiver Request
Pay or Play List of Participating Subcontractors
Early Payment Discount

Questions concerning the bid should be submitted by e-mail to **Katie.Moore@houstontx.gov** no later than **4:00 p.m. CST., Friday, November 6, 2020.**

## **SITE INSPECTION**

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

## **QUALITY AND WORKMANSHIP**

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

## **PROTESTS**

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](http://www.houstontx.gov/policies/administrative_policies.html)

## **NO CONTACT PERIOD**

Neither bidder(s) nor any person acting on bidder(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise 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 bidder'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.

## **Minority and Women Business Enterprises**

It is the City of Houston's policy to ensure that Minority and Women Business Enterprises (MWBE) have full opportunity to compete for and participate in City Contracts. Contractor shall comply with the City's MWBE Program as set forth in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts and supply agreements in at least **11 %** of the value of the Agreement to certified MWBEs. Contractor acknowledges that they have reviewed the requirements for good faith efforts on file with the Office of Business Opportunity (OBO), available at <http://www.houstontx.gov/obo/docsandforms/goodfaihefforts.pdf>, and will comply with the set forth requirements.

The Contractor shall maintain records of subcontracts and supply agreements with certified MWBEs, containing language required herein. In addition, Contractor shall submit all disputes that may arise with MWBE subcontractors/supplies to mediation provided by the City, if directed to do so by OBO.

## **HIRE HOUSTON FIRST**

In an effort to promote economic opportunity for Houston businesses and to support job creation, the Hire Houston First Program grants the City of Houston the ability to give a preference to eligible local companies, as long as their pricing is competitive. To be eligible for the preference, a company must be designated as a **City Business (CB) or Local Business (LB)** under the Hire Houston First Program **prior** to submittal of bid. Bidders must submit a completed *Declaration of Hire Houston First Designation* form with the bid.

To complete an application for the Hire Houston First program, visit <http://www.houstontx.gov/obo/hirehoustonfirst.html>. Applications can be submitted to the City of Houston Office of Business Opportunity via the online application system, by e-mail to [HIREHOUSTONFIRST@houstontx.gov](mailto:HIREHOUSTONFIRST@houstontx.gov), by fax to 832-393-0646, or hand delivered.

Note: Participation in the Hire Houston First program is not required to bid on City of Houston contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

### **ANTI-BOYCOTT OF ISRAEL**

The 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.

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

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.

### **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.

## SECTION B

### SCOPE OF WORK/SPECIFICATIONS

#### 1.0 **SCOPE OF WORK:**

- 1.1 This contract is for plumbing / post-work restoration services for the City of Houston (herein referred to as the "City"). Selected Contractor shall have the experience and technical ability to accomplish any plumbing repair or plumbing work needed by the City.
- 1.2 The Contractor shall hold responsibility for all labor, materials, supplies, equipment, tools, transportation, permits, clean-up, and necessary rental of equipment to perform plumbing repairs and new installations.

List of work to be performed includes, but not limited to the following:

- Water Line Repairs/Replacement (private water line leaks beyond meter - point repair or replacement)
- Wastewater Service Line Repairs/Replacement (private HCS – point repair or replacement)
- Domestic Boiler Line Repairs/Replacement
- Fixture Repair/Replacement
- Sprinkler Repairs (sprinkler piping)
- Water fittings replacements
- Damaged wiring for sprinklers (timer)
- Damaged sprinkler heads or other irrigation parts
- Warranty work
- Hose Bibb Repair / Replacement / Inspections
- House Shut-off Valve Repair / Replacement / Inspections
- Back Flow Preventers Repair/Replacement/Inspections

- 1.3 The Contractor must be a licensed plumber who is required to conduct repairs on private water lines if such lines were damaged by City employees or their proxies. This includes services lines, irrigation lines, and fire lines. The plumber must be licensed and bonded to conduct repairs within the Houston, TX service area per City of Houston Ordinance 47.7. [https://library.municode.com/tx/houston/codes/code\\_of\\_ordinances?nodid=COOR\\_CH47WASE\\_ARTIINGE\\_S47-7COWASECO](https://library.municode.com/tx/houston/codes/code_of_ordinances?nodid=COOR_CH47WASE_ARTIINGE_S47-7COWASECO)

- 1.4 Successful bidder shall submit plumber licenses with bid submission or within 5 days upon the department's request.

#### 2.0 **SUITABILITY OF MATERIALS:**

- 2.1 All supplies, materials, repair or replacement parts, equipment or tools used or furnished by the Contractor in the performance of the work specified herein shall be of the type, quality, size, etc., customarily used in the trade for such work. Any such items deemed unsuitable by the Field Supervisor or Designee will be replaced by the Contractor at Contractor's expense.
- 2.2 All repair or replacement parts shall be new, equal to, or better than original equipment and from either the original equipment manufacturer (OEM) or approved equal to OEM parts. Parts must meet or exceed the original equipment manufacturers minimum requirements for particular pieces of equipment. Parts remanufactured to original manufacturer's specifications may be accepted if original OEM or aftermarket parts cannot be obtained.

- 2.3 The Contractor shall maintain a stock of commonly used service parts to ensure immediate availability, and to have a system in place that will ensure that repair parts are on-hand for installation within a twenty-four (24) - hour period. If custom/specialty parts must be ordered to complete a job, Contractor must guarantee to make partial / temporary repairs until the permanent repair can be completed. Contractor shall complete repairs within one (1) calendar day, excluding custom / specialty parts. Contractor shall also have sufficient access to order parts to complete custom parts repairs within ten (10) calendar days.
- 2.4 The Contractor shall obtain and maintain a copy of the Material Safety Data Sheets (MSDS) for all hazardous materials used.

### **3.0 WORK COORDINATION:**

- 3.1 Prior to beginning any work, the Contractor shall request the name and telephone number of the department prime contact charged with the responsibility of authorizing the requested service. Unless otherwise notified, this person shall be the prime contact for that City department during the service period.
- 3.2 When plumbing repair and/or replacement service is needed, the initial procedure shall be as follows:
- 3.3 The Field Supervisor or Designee shall contact the Contractor via a 24-hour telephone number and request plumbing repair and/or replacement services.
- 3.4 The Contractor shall be provided with a work order number for the work being requested per job. For emergency work, a work order number shall be provided no later than the following business day.
- 3.5 The Contractor shall provide a comprehensive cost estimate along with an estimated completion time to the Field Supervisor (or Designee) within two (2) working days. Estimates for emergency services are due by 10 a.m. the next business day.
- 3.6 The Field Supervisor or designee shall review the estimate. If the Field Supervisor or Designee approves the description of services and associated costs, the Field Supervisor or Designee will sign the cost estimate and return it to the Contractor via e-mail or fax. **NO WORK SHALL COMMENCE UNTIL THIS ESTIMATE IS SIGNED.**
- 3.7 The Contractor shall acknowledge receipt of the signed cost estimate by sending an e-mail or fax to the Field Supervisor or Designee.
- 3.8 The Contractor shall immediately dispatch a Project Manager or designee, a minimum of one Journeyman plumber licensed by the State of Texas, and other personnel to the City property. The Journeyman is required to be on the job site for project duration. The Project Manager or designee shall oversee the work through completion. The Project Manager or designee shall not be removed from the project without prior written consent by the Field Supervisor or Designee.
- 3.9 Inspections shall be conducted by a Master or Journeyman plumber as required by the City of Houston or State of Texas.

- 3.10 The Contractor shall complete all work within the time stated in the cost estimate and notify the Field Supervisor or Designee by e-mail or fax when work is complete.
- 3.11 The Contractor shall keep an accurate account of work and cost that has been done in an Excel spreadsheet, and provide the information to the Department as requested.
- 3.12 The Contractor must take pictures of the work performed for documentation (Before, During, and After)
- 3.13 The Contractor must submit a copy of the repair invoice to the resident and original invoice to Distribution System Maintenance for payment.

**4.0 REMOVAL OF EQUIPMENT:**

- 4.1 Any and all equipment removed from City property for off-site repair shall be accompanied by a City of Houston Return Authorization form 7530-0559951-00 (**Exhibit B-1**) or any successor form used for that purpose. The Return Authorization Form shall be provided by the Department. The form shall reflect the Contract and Work Order numbers.

**5.0 DELIVERY OF MATERIAL/EQUIPMENT:**

- 5.1 The Contractor agrees to make deliveries only after cost estimates have been approved by the City representative. Delivery made without such approval shall be at Contractor's risk and the City will not be liable for any incurred costs.

**6.0 MATERIALS, EQUIPMENT AND TOOLS:**

- 6.1 Materials furnished shall be current to commercial trade and shall be of the highest quality. The Manufacturer furnishing the materials shall be experienced in the production of such items and shall furnish evidence of having supplied similar materials that have been in successful use.
- 6.2 The Contractor shall provide and maintain tools, machines, and equipment necessary to perform the work as specified. All equipment must be maintained in a first-class working condition satisfactory to the Contract Manager or Designee. The Contractor shall use all equipment and tools in accordance with the manufacturer's instructions.
- 6.3 The City shall not be held liable for any loss, breakage or damage which may result to tools, equipment, materials, or supplies which the Contractor may be using in the areas serviced.

**7.0 CITY BUILDING CODES:**

- 7.1 All work performed, or equipment installed shall be in strict accordance with the City of Houston Building Codes. (<https://www.houstonpermittingcenter.org/help/codes>). Any deficiencies discovered during work or after completion of work shall be immediately corrected by the Contractor. Failure to correct deficiencies shall result in the City having corrections made at the Contractor's expense.

## **8.0 PERMITS:**

- 8.1 The Contractor shall be responsible for securing any and all permits required for proposed work. Any fee charged for these permits shall be paid by Contractor and shall be reimbursable as a line item on the Contractor's invoice.
- 8.2 The Contractors shall be issue badges to personnel approved by the City. Contractor personnel will display a badge identifying them as Contract Personnel, as well as any required safety badges and shall observe all security and safety regulations in effect, at all times.

## **9.0 WORK STATEMENT:**

- 9.1 All work shall be of the highest standards prevailing in the industry and in compliance with applicable codes, rules and regulations governing the work.

## **10.0 SITE CLEANUP:**

- 10.1 The Contractor shall maintain a worksite free of all rubbish, debris, and waste. All work areas shall be left in a neat, orderly, and presentable condition. The disposal of all rubbish and debris generated as a result of the Contractor's work under this contract shall be the responsibility of the Contractor.
- 10.2 All debris/rubbish shall be considered the property of the Contractor, who then shall dispose of it in a manner consistent with the applicable municipal, state, and federal laws.

## **11.0 ACCEPTANCE OF REPAIR:**

- 11.1 All plumbing repairs and / or replacement services shall be inspected at the time of completion of repairs, or within one (1) working day of completion for workmanship, appearance, proper functioning of all equipment and systems, and conformance to all other requirements within the Contract.
- 11.2 The Project Manager or designee must obtain a signature on a service ticket that includes date and time of arrival, and departure from or completion from a work site. In the event deficiencies are detected after the inspection by the departmental representative, the repair work shall be rejected, and Contractor shall make the necessary repairs, adjustments, or replacements at no additional cost to the City. Payment shall not be made until the corrective action is complete, and when the plumbing repairs and/or replacement services (in question) are re-inspected and accepted.

## **12.0 WORK VERIFICATION:**

- 12.1 When scheduled for work, the Contractor's personnel shall check in at the offices of the Facility Managers. The Contractor shall present daily work orders or schedule. At that time, additional instructions, if any, will be provided by the Facility Managers. When the work is completed, or upon cessation of work, the Contractor shall return to the Facility Manager and complete the Contractor Work Verification Form (**Exhibit B-2**) describing services and procedures utilized for the schedule work with appropriate follow-up actions if needed. The Facility Manager will verify and approve the Contractor Work Verification Form and the Contractor's work order. A copy of the signed log and work order, with approval signature and employee ID number, shall be submitted with the Contractor's invoice for payment. Invoices submitted without the appropriate City log and work order approval will not be processed for payment until proper documentation is received. Contractor shall send separate invoices to the individual Facility Managers as requested by Department staff.

**13.0 CONTRACTOR PROJECT MANAGER:**

- 13.1 The Contractor shall designate in writing to the Field Supervisor or Designee, a Project Manager to be approved by the Department prior to start of Work under the Contract.
- 13.2 The Contractor's Project Manager shall have full authority to represent the Contractor in making decisions and in the execution of the services to be performed under the Agreement.
- 13.3 The Contractor shall provide the Field Supervisor or Designee with the business and after hour's phone number of the Project Manager. The Contractor shall provide a toll-free telephone number if the Project Manager resides outside of the 713, 281, 832, or 346 Area Codes.
- 13.4 The Contractor shall provide a dedicated and qualified Project Manager who is skilled and experienced in the plumbing services identified in the Agreement, who will serve as the main point of contact for the Contractor.
- 13.5 The Project Manager shall be available to be on-site at all times during the performance of plumbing services and to provide the level of supervision necessary to ensure full compliance with the Contract specifications.

**14.0 PERSONNEL QUALIFICATIONS:**

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

**15.0 UNIFORMS:**

- 15.1 All Contractor personnel assigned to this Contract shall be required to wear a complete uniform: shirt, pants, belt, safety shoes, and head gear.
- 15.2 When seasonal clothing is required, it shall be part of the uniform.
- 15.3 Uniforms must have the Contractor's name clearly displayed on the front of the shirt and seasonal outerwear.
- 15.4 An identification badge must be worn by Contractor's personnel when on site.

**16.0 DUTIES OF THE CONTRACTOR:**

- 16.1 The Contractor shall ensure all work performed under this Contract, is done in a professional manner; in compliance with the City of Houston Plumbing Codes and shall be performed by trained personnel having experience with plumbing repair services. (<https://houstonpermittingcenter.org/office-city-engineer/design-and-construction-standards#agency-links-1541>).

- 16.2 The Contractor shall be responsible for all re-work costs due to poor workmanship, non-fit, omissions and/or noncompliance with applicable industry standards and codes.
- 16.3 Work shall be inspected after completion for workmanship, appearance, proper functioning of all equipment and compliance with industry standards and codes.
- 16.4 In the event deficiencies are discovered, the repair work shall be rejected, and Contractor shall be notified by the appropriate City of Houston personnel per Department with a statement of deficiencies and a time schedule in which the repair(s) must be completed.
- 16.5 Each City of Houston department shall provide a point of contact authorized to act on the City's behalf.
- 16.6 Payment and/or the commencement of discount period (if applicable) shall not be made until corrective repairs are made and work is re-inspected and approved. Failure to correct the deficiencies within the designated time schedule shall result in the City making corrections at Contractor's expense.

**17.0 ESTIMATES:**

- 17.1 If the City of Houston requires an estimate for a location, the City shall inform the Contractor that this is an estimate only. All estimates where no immediate repairs or replacements shall be made must be performed and provided to the City by the Contractor within three (3) business days. All estimates shall be valid for sixty (60) days upon submittal to the City. There shall be no charge for estimates (Section 16.3).
- 17.2 The Contractor's estimate shall include cost for labor, material, and any other associated work necessary for the repairs. In order to determine the total estimated repair amount, the Contractor shall apply the Contract labor rate to estimated labor hours and the Contractor's price for parts/materials plus markup.
- 17.3 If the Contractor's repair estimate is determined to be reasonable, the Contractor shall be given written e-mail authorization to proceed with the repair by the ordering department's authorized representative.
- 17.4 The signed estimate shall be submitted electronically by e-mail to the Contractor.
- 17.5 If additional work is required beyond the original estimate amount, it shall not be performed without prior approval of the ordering department.
- 17.6 Additional work shall be authorized by the signature of an authorized person on a supplemental estimate. The Contractor shall be furnished with a list of authorized individuals or representatives for City signatures at the post-award conference. Rates for time accrued over an hour will be charged in fifteen (15) minute increments, e.g., 2.5 hours at \$30.00/hour shall be paid \$75.00 for labor.

**18.0 LABOR HOURS TIME DESIGNATIONS:**

- 18.1 REGULAR HOURS shall be 7:00 a.m. through 5:00 p.m. Monday through Friday.
- 18.2 OVERTIME HOURS shall be 5:01 p.m. through 6:59 a.m. Monday through Friday.

- 18.3 SATURDAY/SUNDAY REGULAR HOURS shall be 7:00 a.m. through 5:00 p.m., Saturday through Sunday.
- 18.4 SATURDAY/SUNDAY OVERTIME HOURS shall be 5:01 p.m. through 6:59 a.m., Saturday through Monday.
- 18.5 EMERGENCY HOURS shall be any time (24/7).
- 18.6 HOLIDAY HOURS shall be 12:00 a.m. through 11:59 p.m. on an Official City of Houston Holiday approved by Houston City Council.
- 18.7 Project Manager or designee and personnel must be onsite within two (2) hours of notification by the Field Supervisor or Designee. The Project Manager or designee and personnel shall remain at the damaged property for the period of time necessary to complete repairs with available materials or to secure and waterproof damaged areas while materials are being ordered.

**19.0 MATERIALS, EQUIPMENT, PARTS AND RENTAL OF EQUIPMENT MARKUP:**

- 19.1 Markup on any plumbing replacement materials, equipment and parts covered under this agreement shall be limited to 10% above Contractor's actual cost.

**20.0 TEXAS DRIVER'S LICENSE:**

- 20.1 The Contractor's employees performing the 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.

**21.0 TRANSPORTATION AND PARKING:**

- 21.1 The Contractor shall furnish all necessary transportation required to perform the work. The Contractor's vehicle(s) shall be clearly marked with the Contractor's name on each side of the vehicle. Magnetic signs are acceptable for this purpose. Vehicles used must also be identified in accordance with State and local regulations.

**22.0 REGULATORY REQUIREMENTS:**

- 22.1 To protect the life and health of employees and other persons; to prevent damage to property, materials, supplies, and equipment; and to avoid work interruptions, Contractor shall comply with the latest 29 CFR 1910, Occupational Safety and Health Standards (General Industry Standards). Compliance with OSHA and other applicable laws and regulations for the protection of employees is exclusively the obligation of Contractor, and the City assumes no liability or responsibility for Contractor's compliance or noncompliance with such responsibilities. CONTRACTOR SHALL INDEMNIFY THE CITY FOR ANY CLAIMS, FINES, OR DEMANDS RESULTING FROM CONTRACTOR'S FAILURE TO COMPLY WITH OSHA REQUIREMENTS.

**23.0 ACCIDENT REPORTS:**

- 23.1 The Contractor shall comply with all OSHA reporting requirements for record keeping and reporting of all accidents resulting in death, injury, occupational disease, or adverse environmental impact. The Contractor shall provide a verbal report to the Contract Manager or Designee the same day of occurrence.

**24.0 ENVIRONMENTAL REQUIREMENTS:**

24.1 The Contractor shall comply with all applicable federal, state, and local environmental protection laws, regulations, and standards. Contractor shall comply with any other statutory requirements for clean air, clean water, toxic substances control, pollution control, resource conservation and recovery.

**25.0 STOP-WORK:**

25.1 Field Supervisor or Designee and Contractor shall be responsible for the enforcement of all safety requirements for any work performed under the Agreement. If Contractor fails or refuses to promptly comply with safety requirements, the Field Supervisor or Designee may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such order shall be made the subject of a claim for extension of time or for excess costs or damages to Contractor.

**26.0 CONTRACT ADMINISTRATION /CONTRACT COMPLIANCE:**

26.1 The City reserves the right to monitor this contract for compliance to ensure legal obligations are fulfilled, and that acceptable level of service are provided.

26.2 The Contract Manager or Contract Administrators shall provide the Contractor with contact information for the persons who will administer this contract on behalf of the City of Houston.

26.2.1.1 Monitoring may take the form of, but not necessarily limited to:

26.2.1.2 Inspection, testing, and/or sampling of goods delivered or to be delivered.

26.2.1.3 Review of deliveries received for accuracy and timeliness.

26.2.1.4 Review of Supplier's invoices for accuracy.

26.2.1.5 Review of certifications and/or licenses.

26.2.1.6 Site visits.

26.3 The responsibility for monitoring compliance rests with the applicable department's Contract Compliance Section.

**27.0 INVOICING:**

27.1 The Contractor shall submit invoices with supporting documentation for payment no later than 30-days after work is completed by e-mail (electronic mail) or via U.S. Postal System on the Contractor's company stationary with the original signed by an authorized agent of the company. ALL DOCUMENTS SHALL BE ORIGINAL. The invoice number shall not be duplicated during the term of the contract periods. Prior to invoice submission, the contractor should verify accuracy with the COH Field Supervisor or designee to minimize delayed payments due to errors or misinformation. The Contractor shall invoice the City and the City shall make payment after work verification. Contractor invoices must include itemization justifying the amounts as invoiced. The itemization shall be in accordance with the Contract Fee Schedule and shall include, but is not be limited to, the following:

**Each invoice shall detail the following information:**

- 27.1.1 The City Contractor Number, City Ordinance Number, City Release Number, and Contractor's Job Number.
- 27.1.2 The Contractor's Job Number and Contract year shall appear clearly on all time sheets [showing hours worked, break(s) and lunch time], invoices, and suppliers' invoices.
- 27.1.3 Invoices submitted for services performed as the result of Change Order shall require that copies of the applicable Change Order also be attached to the original and one (1) invoice copy.
- 27.1.4 Invoices submitted for services that are performed as the result of Other Work/Services must also include copies of written request for the services and any additional supporting documentation required for the services provided.
- 27.1.5 Detailed description of services rendered and location address
- 27.1.6 Description of Parts or Components repaired or replaced. Provide Part Numbers, listing before and after discount. If Parts are OEM reconditioned or new Non-OEM, the costs must be listed as well as the cost of new OEM replacement Parts.
- 27.1.7 The Contractor's and subcontractor's invoices with detail description of work performed, including related invoices for parts/materials purchased, O&M manuals and equipment rentals; time sheets (showing hours worked) and signed field tickets by the designated City employee, when applicable.
- 27.1.8 Subcontractors' invoices with detailed description of cost of work performed.
- 27.1.9 Subtotal costs for Parts and /or materials and Labor hours separately, with supporting documentation
- 27.1.10 Other information or details as may be requested or specified, in writing by the Field Supervisor or Designee.
- 27.1.11 Each invoice must contain, in addition to the. above, the five-digit Systems Applications and Products (SAP) Contract Number and Service Release Order (SRO) number assigned by the City Controller's Office to the specified contract services; a complete description of the services provided (and complete contract name); and the Contractor's point of contact.

**28.0 HPW INVOICING ADDRESS:**

- 28.1 The Contractor shall submit invoices for payment on Contractor's company stationary with the original signed by an authorized agent of the company. The invoice number shall not be duplicated during the term of the contract periods. Invoices shall be submitted as follows:

[finaccountspayable@houstontx.gov](mailto:finaccountspayable@houstontx.gov).

Houston Public Works

Finance Business Office, Accounts Payable

P.O. Box 3685

Houston, TX 77251-3685

**29.0 CHARGES:**

29.1 Charges for services provided under the Contract shall be in accordance with the prices/rates shown in the Contract Fees and Cost and in such form as may be requested or specified by the Contract Manager or Designee.

29.2 The Contractor shall accept the following types of payments:

- 29.2.1 Purchase Order
- 29.2.2 Service Release Order (SRO).
- 29.2.3 Emergency Purchase Orders (EPO)
- 29.2.4 P-Card

**30.0 INSPECTIONS:**

30.1 The Contract Manager or Designee shall have the right to conduct inspections on all equipment, materials, supplies and tools furnished, all records and logs, and all work performed under the Agreement without prior notice to the Contractor. Equipment, tools, materials, supplies, and services that do not conform to the specifications of this Contract may be rejected. It is the contractor's responsibility to maintain the equipment, materials and tools provided for all aspects of the services being provided hereunder, consistent with applicable State, Federal, environmental, safety and health codes, guidelines and regulations.

30.2 All work performed by the Contractor, which, upon inspection, is found to be faulty, incomplete, or does not meet the specifications of this Agreement, shall be corrected by the Contractor. These corrections shall be at the expense of the Contractor. The Contract Manager or Designee reserves the right to stop the work covered under this Agreement at any time it has deemed the Contractor is unable or incapable of performing the services satisfactorily. In the event of such stoppage, the Contract Manager or Designee shall have the right to arrange for the completion of the services in such manner as necessary, and if costs of doing so exceeds the bid amount, the successful Contractor shall be liable to the City of Houston for any such costs thereof.

30.3 A written report of the results of the inspection and recommendations will be forwarded to the Contractor and shall require the Contractor to take immediate action. Contractor shall correct the deficiency and respond in writing stipulating the corrective action(s) taken within 10 days unless otherwise authorized by the Contract Manager or Designee. The Contract Manager or Designee will determine responsibility for any deficiencies identified through an inspection.

**31.0 DISPUTES:**

31.1 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 Contract Manager shall be final.

**32.0 SUBCONTRACTORS:**

32.1 The Contractor may use only subcontractors approved by the Contract Manager 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 as they are considered extensions of the Contractors.

**33.0 DAMAGE TO PROPERTY:**

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

**34.0 SAFETY:**

34.1 The Contractor shall not allow any person employed in the performance of the Agreement to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous without proper protective equipment.

34.2 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:

- 34.2.1 The Contractor's personnel shall wear applicable personal protection equipment at all times.
- 34.2.2 The Contractor's personnel operating equipment and/or handling materials shall be fully trained in the safe operation of the equipment or materials.
- 34.2.3 The Contractor's personnel shall follow and apply safety practices prevailing in their industry.
- 34.2.4 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.

**35.0 NOTICE TO PROCEED REQUIREMENTS:**

35.1 Within thirty (30) days after the NTP, the Contractor shall certify to the Contract Manager and/or designee in writing that 100% of the Contractor's employees (fully trained and experienced) necessary for the effective and timely accomplishment of the Contractor's obligations under this specification are in place, and all Sub-Contractors, if any, necessary for the effective and timely performance of the Contractor's obligations under this specification have been engaged by the Contractor and have commenced work under their respective subcontracts.

**36.0 ADDITIONS & DELETIONS:**

36.1 The City, by written notice from the City's Chief Procurement Officer to the Contractor, at any time during the term of this contract, may add or delete 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 Contract Fee Schedule.

**37.0 ESTIMATED QUANTITIES NOT GUARANTEED:**

37.1 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.

**38.0 WARRANTY OF SERVICES:**

38.1 Definitions: "Acceptance" as used in this clause, means the act of an authorized representative of the City by which the City assumes for itself, approval of specific services, as partial or complete performance of the Contract.

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

38.3 Notwithstanding inspection and acceptance by the City or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this Contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Contract. The City shall give written notice of any defect or nonconformance to the Contractor within a one-year period from the date of acceptance by the City. This notice shall state either (1) that the Contractor shall correct or re-perform any defective or non-conforming services at no additional cost to the City, or (2) that the City does not require correction or re-performance.

38.4 If the Contractor is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost incurred by the City.

**39.0 PRE-PERFORMANCE MEETING:**

39.1 After contract approval/execution, the Contractors shall be required to attend a pre-performance meeting. The primary user department will schedule and host the pre-performance meeting. The purpose of the pre-performance meeting 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 representative.

**40.0 INTERLOCAL AGREEMENT:**

40.1 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 shall be drawn to reflect the needs of each participating entity.

**EXHIBIT B-1**

**Houston Return Authorization Form 7530-0559951-00**

FORM 7530-0159951-00

No.

**CITY OF HOUSTON**  
P.O. BOX 1562  
HOUSTON, TEXAS 77251

**CITY OF HOUSTON  
RETURN AUTHORIZATION**

Please show Return Authorization number and Purchase Order number on all correspondence or credit relating to shipment.

COH ORIGINATOR NAME		TELEPHONE NO.		DATE	
DEPARTMENT NAME		DEPT. NO.		LOCATION	
SHIP TO:				RETURN FORM <input type="checkbox"/> CREDIT <input type="checkbox"/> EVEN EXCHANGE <input type="checkbox"/> REPAIR <input type="checkbox"/> OTHER (see comments)	
PURCHASED ON CITY OF HOUSTON PURCHASE ORDER					
PURCHASE ORDER NUMBER		DATE		INVOICE NO.	
DATE		INVOICE NO.		DATE	
QTY	U/M	COMMODITY/MAKE/MODEL/SN	DESCRIPTION	UNIT PRICE	TOTAL
CREDIT ACCOUNT NUMBER				TOTAL	
SHIP VIA		TRUCK NO.		DATE SHIPPED	
VENDOR PICK UP BY/SENT BY (SIGNATURE)		DATE			
VENDOR RETURN AUTHORIZATION NUMBER			DATE		SHIPPED BY:
COMMENTS:					DATE

## EXHIBIT B-2

### CONTRACTOR WORK VERIFICATION FORM

Street Address \_\_\_\_\_ Company Name: \_\_\_\_\_  
 Address 2 \_\_\_\_\_ Technicians Name: \_\_\_\_\_  
 City, ST ZIP Code \_\_\_\_\_

Employee: \_\_\_\_\_ Employee phone: \_\_\_\_\_  
 Manager: \_\_\_\_\_ Managers Phone: \_\_\_\_\_

Day	Date	Regular Hours	Overtime Hours	Total		
Monday						
Tuesday						
Wednesday						
Thursday						
Friday						
Saturday						
Sunday						
Total hours						

\_\_\_\_\_  
 Employee signature Date

\_\_\_\_\_  
 Manager signature Date

EXHIBIT B-3

CERTIFICATE OF WARRANTY

WARRANTY OF INSTALLATION, REPLACEMENT,  
AND MAINTENANCE

BID NO: L29651  
OUTLINE AGREEMENT NO: [No.]

TO: [Contractor's Company Name]  
Contractor and [Contractor's Address]  
Address for Written Notice

---

1.01 DATE OF SUBSTANTIAL COMPLETION

The Work performed under the Contract was inspected on [Date inspected], and found to be substantially complete. The Date of Substantial Completion of the Work is hereby established as [Date of Substantial Completion]. This is the start date of Warranty.

1.02 WARRANTY PERIOD

The Contractor fully warrants labor for installation, replacement, and maintenance of city provided parts from the date of acceptance by the City of Houston for a (12) twelve-month period.

1.03 CONTRACTOR'S ACKNOWLEDGEMENT

Signature of Contractor, or its agent, acknowledges Warranty Work and the terms of Warranty Period referenced under Warranties, Paragraph 2.0.

_____ Contractor	_____ Signature	_____ Date
_____ Customer Account Services	_____ Signature	_____ Date
_____ Customer Account Services	_____ Signature	_____ Date
_____ Customer Account Services	_____ Signature	_____ Date
_____	_____	_____



## TABLE OF CONTENTS

	<u>Page No.</u>
<b>ARTICLE 1. PARTIES .....</b>	<b>1</b>
1.01 ADDRESS.....	1
1.02 TABLE OF CONTENTS .....	1
1.03 PARTS INCORPORATED.....	3
1.04 CONTROLLING PARTS.....	3
1.05 DEFINITIONS .....	3
1.06 SIGNATURES.....	4
<b>ARTICLE 2. DUTIES OF CONTRACTOR.....</b>	<b>5</b>
2.01 SCOPE OF SERVICES.....	5
2.02 COORDINATE PERFORMANCE.....	5
2.03 TIME EXTENSIONS.....	5
2.04 REPORTS.....	5
2.05 PAYMENT OF SUBCONTRACTORS .....	5
<b>2.06 RELEASE .....</b>	<b>6</b>
<b>2.07 INDEMNIFICATION .....</b>	<b>6</b>
<b>2.08 SUBCONTRACTOR'S INDEMNITY.....</b>	<b>7</b>
<b>2.09 INDEMNIFICATION PROCEDURES .....</b>	<b>7</b>
2.10 INSURANCE .....	8
2.11 WARRANTIES .....	9
2.12 CONFIDENTIALITY .....	10
2.13 USE OF WORK PRODUCTS .....	10
2.14 LICENSE AND PERMITS.....	10
2.15 COMPLIANCE WITH LAWS.....	11
2.16 COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY ORDINANCE .	11
2.17 MWBE COMPLIANCE.....	11
2.18 DRUG ABUSE DETECTION AND DETERRENCE .....	12
2.19 CONFLICTS OF INTEREST.....	12
2.20 PAY OR PLAY .....	13
2.21 CONTRACTOR'S PERFORMANCE .....	13
2.22 ADDITIONS AND DELETIONS .....	13
2.23 CHANGES .....	14
2.24 ENVIRONMENTAL LAWS .....	15
2.25 ANTI-BOYCOTT OF ISRAEL .....	15
2.26 ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES.....	15
2.27 PRESERVATION OF CONTRACTING INFORMATION.....	15
<b>ARTICLE 3. DUTIES OF CITY.....</b>	<b>16</b>
3.01 PAYMENT TERMS .....	16
3.02 TAXES .....	17
3.03 METHOD OF PAYMENT.....	17
3.04 LIMIT OF APPROPRIATION.....	17
3.05 ACCESS TO SITE.....	18
3.06 ACCESS TO DATA.....	18
<b>ARTICLE 4. TERM AND TERMINATION.....</b>	<b>18</b>

4.01	AGREEMENT TERM .....	18
4.02	NOTICE TO PROCEED .....	19
4.03	RENEWALS .....	19
4.05	TERMINATION FOR CONVENIENCE BY CITY.....	19
4.06	TERMINATION FOR CAUSE BY CITY .....	19
4.07	TERMINATION FOR CAUSE BY CONTRACTOR .....	20
4.08	REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS .....	20
<b>ARTICLE 5.</b>	<b>MISCELLANEOUS .....</b>	<b>21</b>
5.01	INDEPENDENT CONTRACTOR.....	21
5.02	FORCE MAJEURE.....	21
5.03	SEVERABILITY.....	22
5.04	ENTIRE AGREEMENT.....	22
5.05	WRITTEN AMENDMENT .....	22
5.06	GOVERNING LAW AND VENUE .....	22
5.07	NOTICES .....	22
5.08	CAPTIONS.....	22
5.09	NON-WAIVER.....	22
5.10	INSPECTIONS AND AUDITS.....	23
5.11	ENFORCEMENT.....	23
5.12	AMBIGUITIES .....	23
5.13	SURVIVAL .....	23
5.14	PUBLICITY.....	23
5.15	PARTIES IN INTEREST.....	23
5.16	SUCCESSORS AND ASSIGNS .....	23
5.17	BUSINESS STRUCTURE AND ASSIGNMENTS .....	24
5.18	REMEDIES CUMULATIVE.....	24
5.19	CONTRACTOR DEBT.....	24

**EXHIBITS**

- “A” DEFINITIONS
- “B” SCOPE OF SERVICES
- “C” DRUG POLICY COMPLIANCE AGREEMENT
- “D” CERTIFICATION OF NO SAFETY IMPACT POSITIONS
- “E” DRUG POLICY COMPLIANCE DECLARATION
- “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:

<b><u>COVERAGE</u></b>	<b><u>LIMIT OF LIABILITY</u></b>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> <li>• Bodily Injury by Accident \$500,000 (each accident)</li> <li>• Bodily Injury by Disease \$500,000 (policy limit)</li> <li>• Bodily Injury by Disease \$500,000 (each employee)</li> </ul>
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
<b>Aggregate Limits are per 12-month policy period unless otherwise indicated.</b>	

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 \_\_\_\_% 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.
- 2.18.5 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:

<b><u>CHANGE ORDER</u></b>	
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:	
<u>[Signature of CPO]</u>	

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 Orders 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 "E"**

**DRUG POLICY COMPLIANCE DECLARATION**

I, \_\_\_\_\_ as an owner or  
(Name) (Print/Type) (Title)  
officer of \_\_\_\_\_ (Contractor) (Name of Company), have personal knowledge and full  
authority to make the following declarations:

This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_, \_\_\_\_\_.

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

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

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

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

\_\_\_\_\_ From \_\_\_\_\_ [Start date] to \_\_\_\_\_ [End date] the following test has occurred:  
Initials

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

\_\_\_\_\_ Any employee who tested positive was immediately removed from the City worksite  
Initials consistent with the Mayor's Policy and Executive Order No. 1-31.

\_\_\_\_\_ I affirm that falsification or failure to submit this declaration timely in accordance with  
Initials established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this  
declaration are within my personal knowledge and are true and correct.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

**EXHIBIT "F"**  
**FEES AND COSTS**