# Contract and Contract Exception Chart

This Contract Exception Chart MUST be included with the proposal response or the proposal will not be considered. Below, is an example Exception Chart, which is included for illustrative purposes only.

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>CONTRACT SECTION</th>
<th>CONTRACT LANGUAGE*</th>
<th>REVISED LANGUAGE IN RED-LINE FORMAT</th>
<th>EXPLANATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Monthly Invoices</td>
<td>Contractor shall submit weekly invoices to the City for Products and Services in accordance with the requirements specified in this Section.</td>
<td>Contractor shall submit weekly <strong>monthly</strong> invoices to the City for Products and Services in accordance with the requirements specified in this Section.</td>
<td>Contractor’s system is set up to bill on a monthly basis.</td>
</tr>
<tr>
<td>2</td>
<td>Contract Term</td>
<td>This Agreement is effective on the Countersignature Date and remains in effect for 2 years unless sooner terminated under this Agreement (&quot;Initial Term&quot;).</td>
<td>This Agreement is effective on the Countersignature Date and remains in effect for 3 years unless sooner terminated under this Agreement (&quot;Initial Term&quot;).</td>
<td></td>
</tr>
</tbody>
</table>

Unless a Proposer agrees with and can fulfill all of the conditions and requirements in a contract clause, Proposer must state the exceptions to the clause in this chart and suggest proposed modifications to the specific contract language with which the Proposer disagrees or for which Proposer is unable to satisfy the condition or requirement, including an explanation of the revision (if any). If Proposer does not list an item as a contract exception on this chart, the City reserves the right to hold the Proposer accountable to perform in strict compliance with the proposed contract, if awarded to Proposer.

**Explanation Box**: Proposer should include an explanation to accompany the exception (e.g. the revised language), unless the revision is self-explanatory. Explanations may address a variety of matters, including, but not limited to:

- Distinguishing attributes or benefits associated with the response;
- Rationale for Proposer’s revisions;
- Limitations, special conditions or deviations requested by Proposer;
- Additional descriptive information;
- Suggestions for services or features in addition to those requested by City of Houston; and
- Any matter that Proposer believes would be helpful to the City in reviewing the exception.
AGREEMENT FOR WIRELESS COMMUNICATIONS EQUIPMENT AND SERVICES

THIS AGREEMENT FOR WIRELESS COMMUNICATIONS EQUIPMENT AND SERVICES is made, on the date countersigned by the City Controller, by and between the CITY OF HOUSTON, TEXAS (the “City” or “Customer”), a Texas Home-Rule City of the State of Texas principally situated in Harris County, and [VENDOR] (the “Contractor”), a [STATE] [TYPE OF ENTITY] doing business in Texas.

I. PARTIES

A. Address

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

City
Director of the Houston Information Technology Services Department or Designee
City of Houston
611 Walker Street, 8th Floor
Houston, Texas 77002

Contractor
[VENDOR NOTICE ADDRESS]

The Parties agree as follows:

[REMAINDER OF PAGE IS BLANK]
B. Table of Contents

This Agreement consists of the following sections:

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C. Parts Incorporated

The above described exhibits are incorporated into this Agreement.

D. Controlling Parts

If a conflict among the sections and exhibits arises, the sections shall control over the Exhibits. The order of precedence shall be: this Agreement, then Exhibit B Credits and Spare Parts, then Exhibit C Equipment and Plan Pricing, then Exhibit A Scope of Services, followed by the remainder of the Exhibits in the order in which they appear.

[Remainder of page intentionally left blank.

Signatures appear on following page.]
E. Signatures

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): [VENDOR]
WITNESS (if not a corporation):

By: __________________________
Name: _______________________
Title: _________________________

Federal Tax ID Number:

ATTEST/SEAL

CITY OF HOUSTON, TEXAS
Signed by:

_______________________________
City Secretary

Mayor

APPROVED

Chief Procurement Officer

COUNTERSIGNED BY

City Controller

APPROVED

Chief Information Officer
Houston Information Technology Services

DATE COUNTERSIGNED

APPROVED AS TO FORM

Assistant City Attorney II
L.D. File No.
II. DEFINITIONS

In addition to any words and terms defined elsewhere in this Agreement, the following terms, whether used in the singular or plural, have the meanings set out below:

“Agreement” or “Contract” means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.

“Billing Group” means a set of 1 or more City Departments or Divisional Units that the CIO specifies in writing to Contractor for purposes of billing and invoicing as set forth in this Agreement.

“Chief Procurement Officer” or “CPO” is the Chief Procurement Officer for the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.

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

“City Data” means all data, information, or Documents provided to, received, collected, created, or processed by Contractor, is in Contractor’s possession, or that Contractor may have access to in connection with this Agreement. City Data includes all information collected or developed by Contractor regarding End-Users or information derived specifically from an End-User’s use of the Wireless Services or otherwise provided directly to Contractor by End-Users, such as any location-based information.

“City’s Confidential Information” or “City’s Information” means any City Data; any Documents that the City or Persons acting on the City’s behalf provides, makes available to, or transmits to Contractor in connection with this Agreement; and any Documents that Contractor receives, has access to, creates, develops, or prepares in connection with this Agreement. For purposes of this definition, references to Contractor, the City, and Persons acting on the City’s
behalf shall include the employees, agents, subcontractors, officers, directors, and other Persons acting on behalf of Contractor, the City, or Persons acting on the City’s behalf. The City’s Confidential Information shall not include Contractor’s trade secrets, confidential information, proprietary software, processes, or Equipment.

“City Personnel” means all employees of the City, including elected officials.

“CIO” or “Director” means the City’s Chief Information Officer of the Houston Information Technology Services (“HITS”), or the person he or she designates.

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

“Countersignature Date” means the date shown as the date countersigned by the City Controller on the signature page of this Agreement.

“Department” means a Department of the City.

“Documents” mean any writing, record, or electronically stored information of whatever type and description on which information or data is recorded, produced, or reproduced in any way, including all handwritten, typed, printed, recorded, transcribed, taped, filmed, graphic- or sound-reproduction material, magnetic cards or cartridges, optical storage devices, computer or electronic records, notes, manuals, notebooks, plans, computations, computer databases and diskettes, software, invoices, bills, receipts, records, contracts, tabulations, exhibits, reports, underlying data, data compilations, GPS data or records, charts, analyses, maps, letters, facsimiles, models, forms, photographs, the original tracings of all drawings and plans, other work products (and any modifications or improvements to them), graphs, images, calendars, memoranda, interoffice communication, correspondence, emails, messages, text messages, call
logs, or writings, records, or information that Contractor prepares or provides under this Agreement or in connection with this Agreement.

“Employee Subscriber” means any City Personnel utilizing Wireless Service pursuant to the “Purchases by Employees” section of this Agreement whose account is set up in the employee’s name and for which the employee bears responsibility.

“End-User” means an individual that is utilizing the feature, Wireless Service, or Equipment provided under this Agreement. Unless otherwise noted, End-User refers to City Personnel and not employee-liable accounts.

“FCC” means the Federal Communications Commission or any successor agency.

“Equipment” means any products, including Wireless Equipment, accessories, goods, hardware, software, or other tangible movable object that Contractor provides in connection with its performance under this Agreement. Equipment includes any cabling or other materials sold or leased to City by or through Contractor as a separate item from, or bundled with, a Wireless Service.

“Government Subscriber” means an employee of Customer utilizing Wireless Service whose account is set up in Customer’s name and for which Customer bears payment responsibility.

“Include” and “including,” and words of similar import, shall be deemed to be followed by the words “without limitation.”

“Machine to Machine Service” (“M2M Service”) means the data only service that operates on Contractor’s Network that allows machines to transport or transmit data to wireless devices, computer servers, or other machines (such as parking meters), with limited or no manual intervention or supervision.
“M2M Line” means an individual line or group of lines of M2M Service used under this Agreement which is set up in City’s name and for which the City bears responsibility.

“Manufacturer’s Documentation” means the Equipment manuals, user manuals, technical manuals, training materials, guides, Equipment description, Equipment literature, Equipment specifications, or other Documents that describe the technical specifications, technical requirements, manufacturer’s warranty, design, features, functionality, operation, use and maintenance of the Equipment.

“Network” means the wireless and wireline transmission facilities owned and operated by Contractor or on Contractor’s behalf by third parties or affiliates under agreements with Contractor.

“Notice to Proceed” means a written communication from the CIO that authorizes Contractor to begin performance under this Agreement.

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

“Person” means an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity, but Person does not include the City.

“Professional Service” means any services and professional services (other than Wireless Services) provided to the City by or through Contractor in connection with or as required by this Agreement, including functions, activities, responsibilities, installation, In-Building services, maintenance, support, warranty services, and service level goals that Contractor provides in connection with its performance under this Agreement.

“PUC” means the Public Utility Commission of Texas or any successor agency.

“Purchasing Agent” means the City Purchasing Agent or the person he or she designates.
“RFP” means the Request for Proposal, Solicitation No. S36-T29184 for Cellular and Wireless Mobility Devices and Services (Wireless Communications Equipment and Services).

“RFP Response” shall mean include all written material submitted by Contractor in response to the RFP.

“Service Area” means the markets where the applicable price plans shown in Exhibit D are valid and which Contractor has or intends to provide or apply to regulatory authority to provide.

“Statement of Work” or “SOW” means a document agreed and signed by the CIO and Contractor authorizing Contractor to perform certain services in accordance with and authorized by this Agreement. Unless otherwise specified in this Agreement, all references to “Statement of Work” or “SOW” in this Agreement shall mean a “Statement of Work” or “SOW” issued in accordance with and pursuant to this Agreement.

“Wireless Service” means all Commercial Mobile Radio Services (“CMRS”), as defined and regulated by the FCC. Wireless Services includes any communications through radio transmissions, including any voice, video, data, text, M2M Service, wireless calling, push to talk, walkie-talkie services, wireless web services, including Internet, e-mail services, mobile messaging services, SMS, MMS, two-way messaging services, text messaging services, and other related services provided under this Agreement. The term Wireless Service also includes any plans or rate plans related to any Wireless Service provided under this Agreement.

“Wireless Equipment” means all products, or devices used in connection with Wireless Services, including any wireless mobile telephones, smart phones, mobile devices, handheld devices, tablets, hot spots, mobile broadband cards, USB modem, embedded modems, handheld devices, wireless cards, handsets, cradles, Bluetooth devices, car kits, hands free kits, spare
batteries, chargers, cases, belt clips, accessories for Wireless Equipment, data cables, and other telecommunication Equipment used in conjunction with Wireless Services or otherwise provided in connection with this Agreement.

III. DUTIES OF CONTRACTOR

A. Scope of Services

1. Services in General

In consideration of the payment specified in this Agreement, Contractor shall provide all labor, materials, and supervision necessary to perform the services described in Exhibit A (Scope of Services), the services specifically described in individual Statements of Work, and other Wireless Services required under this Agreement, including any additional services, if requested.

2. Service Level Agreement

Contractor shall use commercially reasonable efforts to obtain and maintain the Service Levels set forth in Exhibit E (Service Level Agreement) to this Agreement.

3. Statements of Work

Subject to and in accordance with the terms and conditions of this Agreement, the CIO and Contractor may execute and issue under this Agreement one or more Statements of Work setting forth services that Contractor shall perform relating to the matters set forth in this Agreement.

Contractor shall complete the services set forth in and in accordance with each Statement of Work, and/or any authorized amendment thereto, approved and signed by the CIO and Contractor. No additional term or condition added in any Statement of Work, or any authorized amendment thereto, shall conflict with or diminish any term or condition of this Agreement and any such term or condition shall be void and unenforceable.
4. Budget for In-Building Services

Notwithstanding anything to the contrary in this Agreement or any Statement of Work, Contractor shall provide to City a total cumulative budget during the Term of this Agreement not to exceed $1,000,000.00 for In-Building services, as described in Exhibit A and as more specifically set forth in one or more Statements of Work, that Contractor shall perform and provide to City. If the In-Building services requested by the City do not exhaust the $1,000,000.00 budget or if this Agreement terminates or expires prior to the exhaustion of the $1,000,000.00 budget, the City will not be eligible for any credits or refunds associated with the remaining, unused amounts of the budget, and the City will forfeit any remaining, unused budget amounts at the time of termination or expiration of this Agreement.

B. Additions and Deletions

For purposes of this Section, Additions and Deletions, the “Effective Date” means the date on which Contractor receives written notification of any addition(s) or deletion(s), unless otherwise stated in this Agreement or a notice adding or deleting any Equipment or Wireless Services. Contractor and CIO may mutually agree to amend Exhibit C (Equipment and Plan Pricing) pursuant to this Section without amendment of this Agreement, subject to the Allocated Funds provision set forth in this Agreement. No additional term or condition added in any amendment of Exhibit C shall conflict with or diminish any term or condition of this Agreement and any such term or condition shall be void and unenforceable.

1. Additional Equipment and Wireless Services

The CIO may add Equipment and Wireless Services available in the Contractor’s inventory by giving written notification to Contractor. The CIO may add Equipment and Wireless Services for End-User or Department Accounts. As of the Effective Date, each
item added is subject to this Agreement, as if it had originally been a part, but charges for added Equipment and Wireless Services shall only begin in accordance with the terms and conditions of this Agreement.

2. **Deletion of Equipment and Wireless Services**

   The CIO may delete Equipment and Wireless Services by giving written notification to Contractor. The CIO may delete Equipment and Wireless Services for End-User or Department Accounts. As of the Effective Date, Contractor shall discontinue providing the City with Equipment and Wireless Services deleted by the CIO, unless the notice states a different effective date for the deletion. Contractor shall exclude all charges for Equipment or Wireless Services deleted by the CIO from invoices as of the Effective Date of the deletion.

3. **Limitations on Changes**

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

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

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

C. **Coordinate Performance**

   Contractor shall coordinate its performance with the CIO and other City Personnel that the CIO designates. Contractor shall promptly inform the CIO and other person(s) of all significant events relating to the performance of this Agreement, such as but is not limited to (i) substantial network changes, service outages, or scheduled maintenance that Contractor
reasonably expects to negatively impact Wireless Services for a significant time period or, (ii) anything for which Contractor is required to provide prompt notice under this Agreement.

D. Schedule of Performance

The Purchasing Agent, in consultation with the CIO, shall provide Contractor a written Notice to Proceed specifying a date to begin performance (the “Start Date”). Contractor shall begin its performance no later than the Start Date and shall continue to perform diligently until this Agreement is terminated or expires under its own terms, whichever comes first.

E. Time Extensions

If Contractor requests an extension of time to complete its performance or if the CIO determines that it is in the City’s best interest for Contractor to continue its performance for a carry-over or transition period beyond the expiration or termination of this Agreement, then the CIO may, in his or her sole discretion, extend the time of performance under this Agreement so long as the extension does not exceed 90 days. The extension must be in writing and shall be upon the same terms and conditions of this Agreement, unless otherwise agreed to in writing by Contractor, CIO, and City Attorney; but the extension does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

F. Contractor’s Performance

Contractor shall make satisfaction of citizens and City Personnel, including a priority in providing Wireless Services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with citizens and City personnel when performing services under this Agreement. 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 opinion of the CIO, Contractor is not interacting in a positive and polite manner with citizens or City Personnel, he or she shall direct Contractor to take all remedial steps to conform to these standards.

G. Pricing and Changes

1. Firm Pricing

   a. Throughout the Term, the prices, rates, and charges for all Equipment and Wireless Services shall remain firm and shall not be subject to any increases, except for regulatory price adjustments as described below.

   b. Any prices, rates, and charges for Equipment or Wireless Services not reflected in this Agreement but required to fully perform this Agreement shall be deemed a hidden cost, and Contractor shall provide these Equipment and Wireless Services to the City at no additional cost for the Term of this Agreement, including any renewals or extensions thereto.

2. Price Reductions

   a. Prices shall be decreased at any time during the Initial Term or any renewals or extensions thereto in accordance with this subsection or as a result of a regulatory price adjustment.

   b. If, at any time during the Term of this Agreement, Contractor provides lower pricing (1) to any other Texas governmental entity, (2) under contract with substantially similar expenditure volumes as under this Agreement, (3) for substantially similar products or services to the Equipment and Wireless Services available under this Agreement, then the pricing for the Equipment and Wireless Services under this Agreement shall be adjusted to that lower price.
Contractor shall switch the City to the adjusted lower price no later than thirty (30) days after the CIO’s written request and pursuant to the Additions and Deletions process set forth in this Agreement. Contractor’s monthly invoices to the City shall reflect the adjusted lower price within one billing cycle following the date the City is switched to the adjusted lower price. Further, the adjusted lower price shall replace or supplement the pertinent pricing set forth in Exhibit C and shall become a part of this Agreement effective the date on which the City is switched to the adjusted lower price.

H. Taxes and Telecommunications Fees and Surcharges

1. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax (“Exempt Taxes”). Contractor’s invoices to the City must not contain assessments of any of these taxes. The CIO will furnish the City’s exemption certificate and federal tax identification number to Contractor if requested.

2. Telecommunications Fees and Surcharges

In no event shall Contractor charge the City any FCC, PUC, or other telecommunications taxes, fees, or surcharges applicable to any Wireless Service provided under this Agreement. Contractor shall promptly correct any incorrect billings of telecommunications taxes, fees, and surcharges on the next invoice immediately following Contractor’s discovery of the error or Contractor’s receipt of written notice from the CIO identifying the erroneous billing.

I. No Other Fees, Charges & Surcharges
Notwithstanding anything to the contrary in this Agreement, Contractor shall not bill or invoice the City, and the City shall have no duty to pay, any costs, expenses, fees, reimbursements, or compensation for any of the following items:

1. activation fees or termination fees or any other termination penalty;
2. early termination fees, all of which shall be waived for the City;
3. Exempt Taxes;
4. roaming charges for any use while on Contractor’s nationwide Network;
5. standard shipping and handling;
6. restocking fees;
7. travel expenses; and
8. any amount that results from non-compliance of Contractor or its subcontractors with any requirement of this Agreement.

J. No Minimum Term for Wireless Service

Notwithstanding anything to the contrary in this Agreement, Contractor shall not require any minimum term commitments for Wireless Service, and the City shall have no duty to maintain Wireless Service for any Wireless Equipment for any minimum term.

K. Wireless Equipment and Wireless Services

1. Contractor shall prepare and maintain a list of the Wireless Equipment and Wireless Services available under the Basic Services as described in Exhibit C (Equipment and Plan Pricing). Contractor shall provide the City List online for access and review by the CIO and other City Personnel that the CIO designates. Contractor shall revise and update Exhibit C to reflect Wireless Equipment or Wireless Services that the CIO adds or deletes or that the CIO otherwise directs Contractor to place in Exhibit C.
Contractor shall use best efforts to make the CIO aware of new products or services as they are launched for use by the general public.

2. Contractor shall, at its sole expense, provide the CIO with no less than 5 sample units, per 30-day period, of new products for evaluation by the CIO and/or such City Personnel that the CIO designates. Contractor shall activate each sample unit at no cost to City for a trial period of 30 days in accordance with Exhibit G (Demo Agreement). The City will keep the equipment for use in demonstrating the product to City End-Users. This trial period should occur during the pre-launch or initial phase of product introduction. The product should be activated and available for full network use. There shall be no cost for Wireless Service or Wireless Equipment on these units. Contractor shall offer City the opportunity to participate in any beta trials for all new services or Equipment introduced by Contractor, so long as City qualifies under Contractor’s requirements for beta trials. Contractor shall provide equipment for demonstration and testing purposes in accordance with the Demo Agreement attached to this Agreement as Exhibit G. Contractor’s duties under this Section K.2 are subject to receipt by Contractor of a Demo Agreement, substantially in the form of Exhibit G, signed by CIO; provided, however, that Contractor and CIO may mutually agree to administrative changes to Exhibit G without the need to amend this Agreement.

L. Authorized Purchases and Activities

Contractor shall provide and activate Wireless Equipment and Wireless Services in Exhibit C (Equipment and Plan Pricing) upon receipt of a written request from the CIO. Notwithstanding anything to the contrary in this Agreement, Contractor shall not bill or invoice the City, and the City shall have no duty to pay, any amount for any Wireless Equipment or
Wireless Service unless: (1) Contractor receives an order authorized and approved in writing by the CIO or an order through the City’s telecommunications expense management software (“TEMS”); and (2) the Wireless Equipment or Wireless Service is in Exhibit C at the time Contractor receives the order. When changing calling plans/features, depending upon the calling plan/feature selected, the changes can be:

a. Backdated to the beginning of the billing cycle;

b. Future dated to the beginning of the next billing cycle; or

c. Made effective that day and therefore prorated based on the number of days the service is provided, rather than billing for the entire bill cycle.

Contractor shall immediately deactivate any Wireless Equipment and terminate any Wireless Service upon receipt of a written request from by the CIO, unless the notice states a different effective date for the deactivation and termination. Notwithstanding anything to the contrary in this Agreement, Contractor shall not bill or invoice the City, and the City shall have no duty to pay, any amount for any Wireless Service or any Wireless Equipment after the date that Contractor receives of a written request from the CIO, unless the notice states a different effective date for the deactivation and termination. If Contractor has billed the City for any deactivated or terminated Wireless Equipment or Wireless Service after the effective date of deactivation or termination, Contractor shall immediately issue a credit to the City on the next subsequent invoice following Contractor’s or the City’s discovery of the error, or if discovery is made during the period of time covered by the last invoice under this Agreement, Contractor shall issue a refund payment to the City within 30 days.

M. Term of Lines
Term of Lines (“Line Term”): The term for each line (the “Line Term”) begins on the date Wireless Service is activated for that line and continues for the period required by the calling plan or Equipment selected for that line. When the Line Term expires, Wireless Service continues on a month-to-month basis. Notwithstanding anything herein to the contrary, the Line Term shall not be construed to be a term commitment by the City for any Equipment purchased under this Agreement.

N. Purchases by Employee Subscribers

Contractor shall allow Employee Subscribers to purchase Equipment and activate new or register existing lines of Wireless Service on plans, options, features, and applications that Contractor makes generally available to consumers and obtain the applicable discounts on Equipment, Wireless Service, Eligible Plans, and Eligible Data Features. Employee Subscribers shall receive at least a ____% discount off the monthly access fee on eligible calling plans for primary lines. Employee Subscribers are also eligible to receive a ____% discount off the retail price of eligible accessories, as well as any then-current consumer equipment rebates or promotions that may be available at the time of purchase.

O. Area of Service Coverage

Contractor shall provide Wireless Service covering the entire Service Area in accordance with Exhibit D (Service Area Maps). Contractor shall use commercially reasonable efforts to meet service levels in Exhibit E (Service Level Agreement) for the Service Area depicted in Exhibit D. Contractor shall use commercially reasonable efforts to meet service levels in Exhibit E for In-Building coverage in City buildings designated by the CIO.

P. Credits for Retention and New Activations
Contractor shall provide to City the Transition and Deployment Credits specified in Exhibit B (Credits and Spare Parts).

Q. Acceptance of Wireless Equipment

Upon receipt of any Equipment or Wireless Service from Contractor, the City (including its CIO and any End-Users) are permitted to try the Equipment or Wireless Service for 30 days from activation of the Equipment or Wireless Service (the “Performance Testing Period”), and if the Equipment or Wireless Service is found to be inadequate or unacceptable, for any reason in the City’s sole discretion, the Equipment or Wireless Service may be terminated by the CIO, and the City will receive the Return Credits defined below. On or before the last day of the Performance Testing Period, the CIO shall notify Contractor to cancel Equipment or Wireless Service, if any.

R. Return of Equipment or Wireless Services

If the CIO rejects or cancels any Equipment or Wireless Service, in accordance with the terms of this Agreement, including a cancelation as part of the Performance Testing Period, the City will return the Equipment, if any, to Contractor within approximately 14 days after the return notice. Contractor shall pay all ground transportation and freight charges associated with the City returning any Equipment within such 14-day period, for any reason as set forth above. Contractor shall issue a credit to City for the total amount the City paid for the Wireless Equipment within 30 days of receipt of the rejected Equipment that is not damaged by City or End-Users beyond normal wear and tear. The City reserves all other available rights at law or in equity in connection with any rejected or cancelled Equipment.
Upon receipt of a returned or rejected Equipment, Contractor shall issue the following credits (collectively “Return Credits”) to the City on the next invoice immediately following the month in which Contractor receives the Equipment:

1. refund for the total amount the City paid to purchase the Equipment, including any accessories; and

2. all applicable taxes associated with the above returned or rejected Equipment.

For returns of Equipment, the City will be responsible for all actual voice, data, and text usage charges including within the applicable Wireless Services (on a pro rata basis if the return notice provided before the end of the full Performance Testing Period), unless the charge qualifies for a Return Credit.

S. City-Wide Migration to New Equipment

1. Contractor shall supply the City, at Contractor’s sole expense and no cost or expense to the City, with upgrades and replacements for a complete change-out and migration to new Equipment on a City-wide basis (“City-Wide Migration”) no more than once every eighteen months, unless CIO and Contractor otherwise mutually agree. Contractor shall use best efforts to notify the CIO in writing within a reasonable time before discontinuing any models in use by the City under this Agreement.

2. Within thirty (30) days of the CIO’s request for a City-Wide Migration or Contractor’s proposal to CIO for a City-Wide Migration, Contractor shall submit to the CIO, for his or her review and approval, a plan for the City-Wide Migration. The City-Wide Migration plan must include the upgrade or replacement Equipment for change-out and migration, the Contractor personnel to implement the plan, proposed timeframe for the City-Wide Migration, benefits or disadvantages, if any, to the City by conducting the City-Wide Migration, and
anything else reasonably necessary for implementing the plan. Contractor shall have sufficient Contractor personnel on site, at locations designated by the CIO to ensure a smooth transition in accordance with the City-Wide Migration plan approved by the CIO. As part of the City-Wide migration, Contractor shall provide training materials and training, in a train-the-trainer format to the City, upon the CIO’s request. Contractor, at its sole cost and expense, shall bear all costs relating to the City-Wide Migration, including preparation of the City-Wide Migration plan, return shipping, travel expenses, training and training materials for the City, and availability of Contractor personnel on-site at locations designated by the City.

T. Individual Equipment Upgrades and Replacements

Upgrade Terms. At no cost, Contractor shall supply upgrades for Equipment purchased by the City where such Equipment have been activated for at least eighteen (18) months or if Contractor recommends an upgrade to the City due to changes or upgrades in Contractor’s Network. Contractor shall use best efforts to notify the CIO in writing within a reasonable time before discontinuing any models in use by the City under this Agreement.

U. Billing and Invoicing

1. Monthly Invoices

Contractor shall submit monthly invoices to the CIO for Equipment and Wireless Services in accordance with the requirements specified in this Section.

2. Billing Groups

Contractor shall submit a single monthly invoice for each Billing Group reflecting all charges for Equipment and Wireless Services for each Billing Group for the preceding billing month period, as further specified in this Section.
3. **Billing Month Period**

Contractor shall submit all monthly invoices for billing month periods consisting of: (1) the period from the first day of each calendar month to the last day of such month; or (2) such other period from a given day of each calendar month to a given day of the next calendar month as the CIO specifies in writing.

4. **Invoice Submission Dates**

Contractor shall submit all monthly invoices on or before the expiration of: (1) 15 days after the last day of the applicable preceding billing month period; or (2) such other number of days after the last day of the applicable preceding billing month period as the CIO specifies in writing.

5. **Monthly Invoice Content and Format**

Contractor shall include the following in each monthly invoice:

a. a summary of all charges for Equipment and Wireless Services for each Billing Group;

b. within each Billing Group invoice, a separate self-contained sub-invoice for each Department (if more than 1) in the Billing Group reflecting all charges for each Department.

c. within each Department sub-invoice, a summary of all charges for Equipment and Wireless Services for the Department; and

d. within each Department sub-invoice, a separate section for each End-User account reflecting all charges for such account as well as the rates for all charges.
6. **Delivery of Hard-Copies of Invoices**

Upon CIO’s request, Contractor shall submit printed paper hard-copies of any or all monthly invoices by mail to the following address or such other address(es) as the CIO specifies in writing:

Chief Information Officer  
Houston Information Technology Services  
611 Walker Street, 8th Floor  
Houston, Texas 77002

7. **Hard-Copies of Department Sub-Invoices**

Upon CIO’s request, along with each Billing Group invoice, Contractor shall also submit to the CIO at least 3 hard-copies of each Department sub-invoice (if more than 1) contained within such Billing Group invoice. Contractor shall also submit, at no additional cost to the City, such number of additional hard-copies of each Department sub-invoice that the CIO specifies in writing.

8. **Electronic Copies of Invoices**

Contractor shall submit invoices in a manner directed by the CIO that facilitates an interface or direct connection with TEMS, at no cost to the City.

9. **Billing for Equipment**

Contractor shall not bill or invoice the City, and the City shall have no duty to pay, for the cost of any Wireless Equipment until the month following the month in which the Wireless Equipment was activated. Contractor shall include the cost of the activated Wireless Equipment in the monthly invoice submitted for payment for the month following the month in which the Wireless Equipment was activated.
10. **Assumed Billing Name or Address**

Whenever the CIO instructs Contractor to provide Equipment or Wireless Services by “an assumed billing name or address,” then Contractor shall ensure that any charges for providing Equipment or Wireless Services for such “an assumed billing name or address” shall not appear on any monthly invoice or report in order to protect the identity of certain City law enforcement or investigative personnel. Contractor shall classify information regarding Equipment or Wireless Services provided to “an assumed billing name or address” as confidential since disclosure of such information could jeopardize official on-going City investigations and may endanger the lives of City personnel involved in undercover or covert operations.

V. **Reports**

1. **Ad Hoc Reporting**

At no cost to the City, Contractor shall also provide routine and ad hoc reporting and progress updates as required by the CIO. Contractor shall provide real-time, web accessible reporting or reporting dashboards to the CIO. Upon the CIO’s request, Contractor shall, at no cost to the City, timely provide special analyses, reports, and reviews relating to the Equipment and Wireless Services, including all invoices, expenses, and costs for Equipment and Wireless Services.

2. **Status Reporting**

Contractor shall submit to the CIO or the Deputy CIO-Infrastructure (whichever the CIO desires) monthly status reports, both in electronic and hardcopy formats, on the status of all issues and activities affecting the City account. Contractor shall submit the
reports at the CIO’s status meetings. The reports, at a minimum, shall include the following:

a. unit count;
b. problems encountered and tasks that are behind schedule, along with proposed solutions to remedy such problems;
c. work planned to be accomplished during the following month;
d. any other issues concerning the implementation of Wireless Services;
e. equipment sales report, showing the number, type, of Equipment purchased separated by each Billing Unit and End-User;
f. Upgrade eligibility report for each Equipment; and
g. any other matter requested by the CIO.

3. Rate Plan and Equipment Analysis

Contractor shall, on a quarterly basis or as otherwise requested by CIO, provide City with a rate plan and Equipment analysis (“Rate Plan and Equipment Analysis”) of all Wireless Services and Equipment subscribed to by the City of all the users and provide this information electronically to the City. The analysis should consider all published rate plans and all Equipment in the Contractor’s inventory meeting the City’s requirements by End-Users and Department. All information necessary for the City to determine the most effective plan(s) will be presented by the Contractor.

Contractor shall include in each Rate Plan and Equipment Analysis a proposal and plan for instant migration of all users to these optimum rate plans upon request by CIO.
4. **Other Reports**

Contractor shall also submit the following reports to the CIO in the format and at the frequency that the CIO directs:

a. Billing reports;

b. Use Reports by City Departments & City end-users;

c. City-wide consolidated reports;

d. On-line real time charges for each end-user; and

e. Any other report in the format requested by the CIO.

W. **Prompt Payment of Subcontractors**

In accordance with the Texas Prompt Payment Act, Contractor shall make timely payments to all persons and entities supplying 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.** Failure of Contractor to pay its employees as required by law shall constitute a default under this Agreement.

X. **RELEASE**
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 AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.

Y. INDEMNIFICATION

1. GENERAL

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:

a. CONTRACTOR’S AND/OR ITS AGENTS’, EMPLOYEES’, OFFICERS’, DIRECTORS’, CONTRACTORS’, OR SUBCONTRACTORS’ (COLLECTIVELY IN LETTERED PARAGRAPHS a.-c., “CONTRACTOR”) ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

b. THE CITY’S AND CONTRACTOR’S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND

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

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES.

2. INTELLECTUAL PROPERTY INDEMNIFICATION AND RELEASE

CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY’S USE OF
ANY SOFTWARE, EQUIPMENT, PROCESS, DOCUMENT, OR SERVICES THAT CONTRACTOR PROVIDES UNDER THIS AGREEMENT INFRINGES ON ANY INTELLECTUAL PROPERTY RIGHT; INFRINGES ON A PATENT, COPYRIGHT, SERVICE MARK, OR TRADEMARK; OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

CONTRACTOR SHALL RETAIN DEFENSE COUNSEL WITHIN TEN (10) BUSINESS DAYS OF THE CITY’S WRITTEN NOTICE THAT THE CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY. CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS THAT PREVENT THE CITY FROM USING ANY SOFTWARE, EQUIPMENT, OR SERVICES THAT CONTRACTOR PROVIDES UNDER THIS AGREEMENT (“CONTRACTOR SOFTWARE, EQUIPMENT, OR SERVICES”) WITHOUT PRIOR WRITTEN CONSENT FROM THE CIO AND CITY ATTORNEY.

IN ADDITION TO CONTRACTOR’S INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION AND DEFENSE REQUIREMENTS UNDER THIS AGREEMENT, IF IN CONTRACTOR’S OPINION AN INFRINGEMENT CLAIM IS LIKELY TO OCCUR OR WITHIN THIRTY (30) DAYS AFTER BEING NOTIFIED OF AN INFRINGEMENT CLAIM, CONTRACTOR SHALL, AT ITS EXPENSE,
EITHER: (A) PROCURE FOR THE CITY THE RIGHT TO CONTINUE USING THE SOFTWARE, EQUIPMENT, PROCESS, DOCUMENT, OR SERVICES PROVIDED BY CONTRACTOR; OR (B) IF BOTH PARTIES AGREE, CONTRACTOR SHALL REPLACE OR MODIFY THE SOFTWARE, EQUIPMENT, OR SERVICES PROVIDED BY CONTRACTOR SO THAT THEY BECOME NON-INFRINGEMENT WHILE PROVIDING FUNCTIONALLY EQUIVALENT PERFORMANCE. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE SOFTWARE, EQUIPMENT, DOCUMENT, OR SERVICES PROVIDED BY CONTRACTOR OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND ANY AND ALL AMOUNTS THE CITY HAS PAID UNDER THIS AGREEMENT LESS THE PRO-RATED AMOUNT OF FEES THE CITY PAID FOR ITS USE PRIOR TO RETURNING THE SOFTWARE, EQUIPMENT, OR SERVICES PROVIDED BY CONTRACTOR.

THE INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION APPLIES TO ALL SOFTWARE, EQUIPMENT, PROCESS, DOCUMENTS, OR SERVICES THAT CONTRACTOR PROVIDES, FURNISHES, SUPPLIES, USES, OR SELLS TO THE CITY UNDER THIS AGREEMENT WHETHER MANUFACTURED BY CONTRACTOR OR A THIRD PARTY. CONTRACTOR REPRESENTS THAT, TO THE BEST OF ITS KNOWLEDGE, THE CITY’S USE OF SOFTWARE, EQUIPMENT, PROCESS, DOCUMENTS, OR SERVICES PROVIDED BY CONTRACTOR DOES NOT CONSTITUTE AN INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS AND THE CITY HAS THE LEGAL RIGHT TO USE THE SOFTWARE, EQUIPMENT,
PROCESS, DOCUMENTS, OR SERVICES PROVIDED BY CONTRACTOR. THE CITY ENTERS INTO THIS AGREEMENT RELYING ON THIS REPRESENTATION.

THE INTELLECTUAL PROPERTY INDEMNIFICATION SURVIVES THE TERMINATION OR EXPIRATION OF THIS AGREEMENT INCLUDING ANY INFRINGEMENT CURE THAT CONTRACTOR PROVIDES PURSUANT TO THE INTELLECTUAL PROPERTY INDEMNIFICATION SECTION.

3. **SUBCONTRACTOR’S INDEMNITY**

CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

4. **INDEMNIFICATION PROCEDURES**

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 calendar days. The notice must include the following:
   a. a description of the indemnification event in reasonable detail,
   b. the basis on which indemnification may be due, and
   c. the anticipated amount of the indemnified loss.

   This notice does not estop 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. **Defense of Claims**
   
   a. **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.

   b. **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. **Z. Insurance**

   Contractor shall provide and maintain certain insurance in full force and effect at all times during the Term of this Agreement and any extensions thereto. Such insurance is described as follows:

   1. **Risks and Limits of Liability**

      Contractor shall maintain the following coverage and limits of liability:

      | **Coverage**             | **Limit of Liability**                      |
      |--------------------------|---------------------------------------------|
      | Workers’ Compensation    | Statutory for Workers’ Compensation         |
      | Employer’s Liability     | • Bodily Injury by Accident $500,000 (each accident) |
      |                          | • Bodily Injury by Disease $500,000 (policy limit) |
2. **Insurance Coverage**

At all times during the term of this Contract and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Contract requirements. Prior to beginning performance under the Contract, 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 (a) all premiums and (b) 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.

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 (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) 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.

4. Required Coverage

The City shall be an Additional Insured under this Contract, 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 Contract provisions. Contactor 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 Contract. 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 Contract with a duration of two years after substantial completion.

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.

6. Other Insurance

If requested by the CIO, Contractor shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Contractor’s operations under this Agreement.

AA. Warranties

Contractor warrants that its performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the Equipment and Wireless Services Contractor provides under this Agreement. Contractor shall perform all Services using trained and skilled persons having substantial experience performing the Wireless Services required under this Agreement.

With respect to any Equipment that it furnishes, Contractor warrants:

1. that all items are free from defects in title, design, material, and workmanship,
2. that each item meets or exceeds the Manufacturer’s Documentation and specifications for that item and requirements for the equipment, structure, or other improvement in which the item is installed,

3. that each replacement item is new, in accordance with original equipment Manufacturer’s Documentation and specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new),

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

5. each item shall perform in accordance with the Manufacturer’s Documentation,

6. each item shall meet the service levels as described in this Agreement and any attachments to it, and

7. During the first 12 months after delivery, each Equipment shall perform according to its Manufacturer’s Documentation.

Contractor warrants that it shall provide the CIO with all Manufacturer’s Documentation, for any Wireless Services and Equipment that Contractor provides under this Agreement.

Contractor shall thoroughly test and inspect each Equipment and Wireless Service to verify that such Equipment and Wireless Service meets the warranties set forth in this Agreement before including that type of Equipment and Wireless Service in the City List.

Contractor shall assign all manufacturer’s warranties on the Equipment to the City and will deliver all related documentation to the CIO within 5 days after execution of this Agreement or 5 days after the Equipment is delivered to the CIO.

Contractor further represents and warrants that:
a. No amendment to this Agreement or additional cost or expense shall be required by Contractor in order for Contractor to be able to perform under this Agreement in accordance with the representations and warranties in this Section;

b. Contractor is capable in all respects of providing and shall provide all Equipment and Wireless Services in accordance with Contractor’s RFP Response and this Agreement;

c. Contractor owns or leases, and promises that it shall own or lease, free and clear of all liens and encumbrances, other than Contractor’s interests or security interests of its lenders, all right, title, and interest in and to the tangible property and technology and the like that it intends to use or uses to provide Equipment and Wireless Services under this Agreement, and in and to the related patent, copyright, service mark, trademark, and other proprietary rights, or has received appropriate licenses, leases, or other rights from third parties to permit such use.

BB. Third Party Equipment Warranties

With respect to the Equipment that Contractor furnishes under this Agreement, Contractor shall promptly assist the City in any warranty claims against such manufacturers related to such Equipment pursuant to such warranty terms during the Term of this Agreement.

CC. Equipment Warranty Claims

Upon notice from the CIO and when within the manufacturer’s warranty period, Contractor shall repair or replace any defective Equipment that fails to function for any reason during the Term of this Agreement.
The CIO shall activate Equipment for the City and shall follow the following procedure to file warranty claims for Equipment with Contractor’s warranty department to enable Contractor to assist the City with such warranty claims against the manufacturers: (1) obtain the respective manufacturer’s warranty claim authorization form from Contractor, and (2) ship the defective Equipment at Contractor’s cost for repair or replacement, along with the warranty claim authorization form duly completed to Contractor.

Contractor shall ship the equivalent replacement Equipment back to CIO within 24 hours of receipt of a warranty claim.

Within two hours of notification that any Equipment required by law enforcement, City officials entrusted with public safety matters, or executive level City officials is in need of repair or replacement, Contractor shall arrange for a courier to pick up such Equipment and at the same time deliver a replacement Equipment to the CIO.

DD. Spare Equipment

During the initial year of this Agreement, Contractor shall provide to City the inventory of cold stock (inactive devices) specified in and in accordance with Exhibit B, Credits and Spare Parts, or such others as mutually agreed in writing by Contractor and CIO from time to time.

EE. Liability for Fraud or Improper Use of Wireless Equipment and Wireless Services

City shall have no liability for any fraud or improper use of any of the Equipment and Wireless Services provided by Contractor under this Agreement.

FF. Liability for Loss or Corruption of Data

If as a result of Contractor’s negligence, any City data or database is lost or corrupted, Contractor shall restore the data or database to the previous day’s uncorrupted state.
A lost or corrupted database means a database that is inaccessible by the City in the ordinary course of business, and not merely one that contains inaccurate data due to any service defects or other reasons.

GG. Emergency Plans

Notwithstanding anything to the contrary in this Agreement, including the Force Majeure provisions, in the event of an emergency declared by any City, State, or Federal authorities (“Declared Emergency”), any event of Force Majeure (as defined in this Agreement) that has a substantial negatively impact on Wireless Services for a significant time period, or any unscheduled systems outage, Contractor shall use best efforts to provide the City with goals and Emergency Plans set forth in Exhibit F (Emergency Plans).

HH. Confidentiality - Protection of City’s Interest

Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, and Documents, user information, processes, and materials (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 CIO 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. The placement of a copyright notice on any Information will not be construed to mean that such information has been published and will not release Contractor from its obligation of confidentiality hereunder. The terms and conditions of this Confidentiality section survives the expiration or termination of this Agreement for any reason.

As Contractor provides Equipment and Wireless Services to the City, Contractor develops a Customer Proprietary Network Information (“CPNI”) on its customers. “Customer
Proprietary Network Information” means that Contractor provides Equipment and Wireless Services to the City and develops information about the quantity, technical configuration, type and destination of Equipment and Wireless Services the City uses, and other information found on a bill for Equipment and Wireless Services. Contractor shall comply with all applicable Laws regarding the CPNI, including Contractor’s duty to protect the confidentiality of CPNI, implements safeguards to protect the City’s CPNI, and use authentication procedures or a pre-established point of contact for the City when the City contacts Contractor. Contractor shall provide City access to City’s CPNI upon Director’s request.

Notwithstanding anything in this Agreement to the contrary, unless Contractor is otherwise prevented from doing so by applicable law, regulation, or order of a court of competent jurisdiction, Contractor shall, within 3 business days after request by CIO, (a) provide any Information, including any billing records or other usage records, for purposes of responding to or complying with a request under the TPIA, and (b) otherwise provide any assistance or cooperation reasonably necessary for responding to or complying with a request under the TPIA.

II. Use of Work Products -- City may use all documents

1. The City may use all City Confidential Information and any other information, materials, documents, reports, and work products that Contractor prepares, creates, or obtains under this Agreement (“Work Product”). For clarity, the City shall retain sole ownership of any Work Product the City provides to the Contractor under this Agreement.

2. Contractor warrants that it owns the copyright to the Work Product or has the license to use (and for the City to use) the Work Product for this purpose.
3. Contractor shall deliver the original Work Product to the CIO on request. Within five business days after this Agreement terminates, Contractor shall deliver to the CIO the original Work Product, and all other files and materials Contractor produces or gathers during its performance under this Agreement.

JJ. Licenses and Permits

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

KK. Compliance with Laws

Contractor shall comply with all applicable state and federal laws and regulations, including without limitation, all export laws and regulations, HIPAA, and the City Charter and Code of Ordinances.

Contractor understands that in certain situations access to information or systems may be restricted by law. Contractor represents and warrants that it has read the Criminal Justice Information Systems (CJIS) process and related documents located at http://www.houstontx.gov/police/cjis/hpdvendorcertification.htm and shall comply with the terms and requirements therein and with all applicable state and federal laws.

LL. Compliance with Equal Opportunity Ordinance

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

MM. Minority and Women Business Enterprises
It is the City’s policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide Percentage Goals for contracting with MWBEs, are incorporated into this Agreement. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 24% of the value of this Agreement to MWBEs. The City’s policy does not require Contractor to in fact meet or exceed this goal, but it does require Contractor to objectively demonstrate that it has made good faith efforts to do so. To this end, Contractor shall maintain records showing

1. subcontracts and supply agreements with Minority Business Enterprises,
2. subcontracts and supply agreements with Women’s Business Enterprises, and
3. specific efforts to identify and award subcontracts and supply agreements to MWBEs. Contractor shall submit periodic reports of its efforts under this Section to the Office of Business Opportunity ("OBO") Director in the form and at the times he or she prescribes.

Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers will permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) 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 four (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.
Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

1. ___________________________ (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 OBO Director ("the Director").

2. ___________________________ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) 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 four (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.

3. Within five business days of execution of this subcontract, Contractor (prime 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.

4. 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.

NN. Drug Abuse Detection and Deterrence

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

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

   (a) a copy of its drug-free workplace policy,

   (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit “H,” together with a written designation of all safety impact positions and,

   (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit “I.”

   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 “J” 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.

3. 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.
4. Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

OO. Pay or Play

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.

PP. Anti-Boycott of Israel

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.

QQ. 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 this Agreement’s Effective Date. Contractor shall notify the City’s Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the 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.

IV. DUTIES OF CITY
A. Payment Terms

Subject to all terms and conditions of this Agreement, the City shall pay and Contractor shall accept, as its sole compensation for performing any part of this Agreement, the fees set forth in Exhibit C (Equipment and Plan Pricing), subject to the termination and allocation of funds provisions of this Agreement. Except where this Agreement expressly provides that the City agrees to make additional payments, the City shall pay fees only in accordance with Exhibit C.

B. Method of Payment

The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the CIO. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice. SUCH PAYMENT SHALL ONLY BE MADE FROM ALLOCATED FUNDS, as provided below. The City shall comply with the Texas Prompt Payment Act.

C. Method of Payment - Disputed Payments

If the City disputes any items in an invoice Contractor submits for any reason, including but not limited to, lack of supporting documentation, the CIO shall temporarily delete the disputed item and pay the remainder of the invoice. The CIO shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

D. Limit of Appropriation

1. The City’s duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.
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 for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

3. 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 responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

$ ___________

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

E. Access to Site

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 provide the Equipment and Wireless 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.

F. Access to Data and Ownership

The City may, to the extent permitted by law, allow Contractor to access and make copies of City Data to the extent such access is reasonably necessary for Contractor to perform under this Agreement.

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.

The City will be and shall remain the sole owner of any City Data, in whatever form, provided or made available by the City, or at the City’s request, to Contractor under this Agreement. The City may use the City Data for any purpose. Upon request from the CIO, Contractor shall, at no cost to the City, immediately return or provide to another vendor all such City Data in the format specified by the Director.

Contractor will not use the City’s Data or City’s Information for any purpose other than providing the Wireless Services, nor will any part of the City’s Data or City’s Information be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third
parties or commercially exploited by or on behalf of Contractor, nor will any employee of Contractor other than those on a strictly need to know basis have access to the City’s Data or City’s Information. Contractor will not possess or assert any lien or other right against the City’s Data or City’s Information.

G. Early Payment

1. The City of Houston’s standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tx. Gov’t Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from vendor as follows:
   - Payment Time - 10 Days: 2% Discount
   - Payment Time - 20 Days: 1% Discount

2. 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.

V. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date (“Effective Date”) and remains in effect for 3 years unless sooner terminated under this Agreement (“Initial Term”).

B. Renewals
Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for up to 2 successive 1-year terms on the same terms and conditions (“Renewal Term”). If the CIO or the City chooses not to renew this Agreement, the CIO shall notify Contractor of non-renewal at least 30 days before the expiration of the then-current Initial or Renewal Term. In this Agreement, “Term” means the Initial Term plus any Renewal Term(s).

C. Termination for Convenience by City

The CIO, in consultation with the Chief Procurement Officer, may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City’s right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

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.

**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.

D. Termination for Cause By City

If Contractor defaults under this Agreement, the CIO may either terminate this Agreement or allow Contractor to cure the default as provided below. The City’s right to terminate this Agreement for Contractor’s default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

1. Contractor fails to perform any of its duties under this Agreement;
2. Contractor becomes insolvent;
3. all or a substantial part of Contractor’s assets are assigned for the benefit of its creditors; or
4. a receiver or trustee is appointed for Contractor.

If a default occurs, the CIO may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The CIO, at his or her sole option, may extend the termination date to a later date. If the CIO allows Contractor to cure the default and Contractor does so to the CIO’s satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the CIO may terminate this Agreement on the termination date, at no further obligation of the City.

To effect final termination, the CIO must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.
E. Responsibilities Upon Termination

In the event this Agreement terminates or is allowed to expire, Contractor and the City agree to the following, all of which shall be provided at no additional cost to the City:

1. The Parties shall cooperate fully with one another to facilitate a smooth transition of the Equipment and Wireless Services expiring or being terminated. Such cooperation shall include the provisioning of Wireless Services both before and after the cessation of the Contractor providing all or any part of the Wireless Services under this Agreement. Contractor shall cooperate and coordinate with the City and the incoming vendor to facilitate the transition and establish a timeline for the transition. Upon the CIO’s request, Contractor shall submit a close out plan detailing the timing and method of the transition and other information reasonably requested by the CIO. Contractor shall submit the requested close out plan to the CIO within 30 days of receipt of the CIO’s request, unless the CIO instructs otherwise.

2. Contractor shall perform the following steps when migrating City of Houston lines of service to another wireless carrier:

   a. Notify the City that the Mobile Device Number must remain associated with the same local geographical area where it is currently assigned.
   b. Notify the City that the account must remain active until the port out has been completed.
   c. Review the final bill process with the City (including overlapping bills from both old and new carrier and pro-rations).
d. Review impacts to Mobile-to-Mobile calls, if applicable (i.e. existing Mobile to Mobile customers are billed for calls to the customer once service is established with a new carrier).

e. Disconnect service automatically upon completion of the port.

f. Any other tasks that the City requests Contractor and that are reasonably necessary for migration of City lines of service to another wireless carrier.

3. Contractor shall not charge a fee for porting numbers to or from Contractor’s service.

4. As soon as practicable after receipt of the termination notice or the City’s decision not to renew this Agreement, Contractor shall notify the CIO in writing, of any third-party contracts Contractor uses to provide Equipment or Wireless Services under or in connection with this Agreement. At the CIO’s request and without limiting Contractor’s other obligations, Contractor shall procure at no charge to the City, any third-party authorizations necessary to grant the City the use and benefit of any third-party contracts between Contractor and its third-party contractors used to provide the Equipment or Wireless Services under or in connection with this Agreement.

5. Contractor shall deliver to the CIO all documentation and data related to this Agreement and the Equipment and Wireless Services provided hereunder, including all the City’s Data and the City’s Confidential Information, Contractor, or in Contractor’s possession, custody, or control.

6. Contractor shall provide and allow as many personnel as practicable to help the City, or a specified third party, maintain the continuity and consistency of the Wireless Services required by this Agreement. In addition, during or following the
transition period, in the event the City requires the Wireless Services of the Contractor’s subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the City to use the Wireless Services of Contractor’s subcontractors or vendors. Contractor will notify all of Contractor’s subcontractors, in writing, of procedures to be followed during transition.

7. Contractor shall transfer all title and ownership rights to any Equipment the City has purchased under this Agreement. Contractor shall not lock, tether, and/or restrict the Equipment from being used on another telecommunication carrier’s network or system.

8. Contractor shall cooperate fully with the CIO, take such additional actions, and perform such additional tasks, as may be necessary to ensure a timely transition of the Equipment and Wireless Services in compliance with the provisions of this Section, including full performance, on or before the termination or expiration date, of Contractor’s obligations under this Section.

9. Contractor shall not interrupt the provision of Wireless Services to the City or any End-Users or any obligations related to disengagement, disable any hardware used to provide Wireless Services, or perform any other action that prevents, slows down, or reduces in any way the provision of Wireless Services or the City’s ability to conduct or transition such activities, Equipment, or Wireless Services, unless the CIO, agrees in writing, that a satisfactory disengagement has occurred.

VI. MISCELLANEOUS

A. Independent Contractor
Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Contractor’s performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City’s employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all worker’s compensation benefits coverage.

B. Force Majeure

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, except as otherwise provided under the Declared Emergency section. Subject to Contractor’s obligations under the Declared Emergency section, 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, 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; strikes; or an event that merely makes performance more difficult,
expensive or impractical. Force Majeure does not entitle Contractor to extra reimbursement or payment.

2. This relief is not applicable unless the affected party does the following:
   a. uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
   b. provides the other party with prompt written notice of the cause and its anticipated effect.

3. The CIO will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the CIO is final.

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. If the Force Majeure continues for more than 10 days from the date performance is affected, the CIO 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.
6. Contractor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Contractor shall employ only fully trained and qualified personnel during a strike.

C. Severability

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.

D. Entire Agreement

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

E. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement (including the Exhibits) 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 City Personnel specifically defined in this Agreement (e.g. CIO) are only authorized to perform the functions specifically delegated to them in this Agreement.

F. Governing Law and Venue

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.

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

H. Captions

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.

I. Non-Waiver

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.

An approval by the CIO, 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 CIO is not
authorized to vary the terms of this Agreement.

J. Inspections and Audits

1. City representatives may perform, or have performed, (1) audits or
investigations of Contractor’s books and records, and (2) inspections of all places of business
(i.e., corporate offices) where work is undertaken in connection with this Agreement. Contractor
shall keep its books and records available for this purpose for at least five (5) 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.

2. Contractor further agrees to cooperate fully with the City or its representatives in the conduct of such audits or investigations, including providing all records requested by the City. Contractor shall require all of its subcontractors (and their subcontractors) to agree to and meet all of the requirements stated in this Inspections and Audits subsection. Contractor shall provide the City or its representatives with access to any information the City or its representatives consider relevant to the investigation or audit.

3. If, as a result of any investigation or audits conducted by or on behalf of the City, the City determines that Contractor has overcharged the City, the City will notify Contractor in writing of the amount of such overcharge and the basis for the City’s credit request. Within thirty (30) days of receipt of the City’s written notice, Contractor shall issue a credit on the City’s next invoice or pay to the City the undisputed amount of the overcharges, plus interest as calculated in accordance with Chapter 2251, Texas Government Code, as directed by the CIO. The Parties will use good faith efforts to resolve any disputed amounts regarding overages as soon as practicable. In the event the City’s audit or investigation reveals an overcharge of five percent (5%) or more of the total invoiced amounts which were subject to the audit or investigation, then Contractor shall reimburse the City for the reasonable cost of this audit.

4. This Inspection and Audit provision does not affect the applicable statute of limitations.

K. Enforcement
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 performance of this Agreement.

L. **Ambiguities**

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.

M. **Survival**

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, confidentiality and data security provisions, and the liability for loss or corruption of data provisions.

N. **Publicity**

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 CIO. Contractor shall not use the name, trademarks, or other marks of the City without the advance written consent of the CIO.

O. **Parties In Interest**

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

P. **Successors and Assigns**

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.

Q. Business Structure and Assignments

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 as described in Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee. Contractor shall not delegate any portion of its performance under this Agreement without the Director’s prior written consent.

R. No Quantity Guarantees and Non-Exclusivity

1. This Agreement does not create an exclusive right in Contractor to perform all Wireless Services or provide all Equipment concerning the subject matter of this Agreement. The City may procure and execute contracts with other firms or vendors for the same, similar, additional, or related Equipment and Wireless Services as those set forth in this Agreement.

2. The City makes no express or implied representations, warranties, or guarantees whatsoever, that any particular quantity, type, task area, or dollar amount of Wireless Services or Equipment will be procured or purchased from Contractor through this Agreement; nor does the City make any express or implied representations, warranties, or guarantees, whatsoever for the amount or value of revenue that Contractor may ultimately derive from or through this Agreement.
3. Estimated Total Number of Devices

To the extent the City has estimated or estimates the amount of Equipment the City may activate during the first Agreement year, the City is not required to activate that estimated amount of Equipment. Additionally, the Contractor shall not be entitled to any damages or other additional compensation if the City fails to activate the estimated amount of Equipment.

S. Dispute Resolution

For purposes of this Section “Project Administrator” means the person the Director designates to monitor the progress of all Parties’ performance under this Agreement. Except as may otherwise be provided by law, a dispute that (1) does not involve a question of law; (2) arises during the performance of this Agreement; and (3) is not resolved between the Project Administrator and Contractor must be handled as described below: (a) The Project Administrator shall put its decision in writing and mail or otherwise furnish Contractor with a copy. Contractor may abide by the decision or may appeal the decision to the Director. (b) If Contractor desires to appeal a decision of the Project Administrator, Contractor must submit a written appeal to the Director. Contractor must file its written appeal within 7 working days following receipt of the Project Administrator's original decision. The Director shall provide Contractor with a written response to the appeal within 14 working days following its receipt. The decision of the Director is final.

T. Remedies Cumulative

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

U. Contractor Debt

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/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.

V. Risk of Loss

Unless otherwise specified elsewhere in this Agreement, and subject to all Warranties, risk of loss or damage for each product passes from Contractor to the City upon Acceptance by the City
EXHIBIT “A”

SCOPE OF SERVICES

[TO BE NEGOTIATED]
EXHIBIT “B”
CREDITS AND SPARE PARTS
[TO BE NEGOTIATED]
EXHIBIT “C”

EQUIPMENT AND PLAN PRICING

[TO BE NEGOTIATED]
EXHIBIT “D”
SERVICE AREA MAPS
[TO BE NEGOTIATED]
EXHIBIT “E”

SERVICE LEVEL AGREEMENT

[TO BE NEGOTIATED]
EXHIBIT “F”

EMERGENCY PLANS

[TO BE NEGOTIATED]
EXHIBIT “G”

DEMO EQUIPMENT & SERVICE AGREEMENT

[TO BE NEGOTIATED]
EXHIBIT H

DRUG POLICY COMPLIANCE AGREEMENT

I, _________________________________________________________________ as an officer or officer of
______________________________________________________________________________ (Contractor)

(Name) (Print/Type) (Title)

(Name of Company)

Have authority to bind Engineer 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 Engineer 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 Engineers (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.


I affirm on behalf of the Engineer 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 I
CERTIFICATION OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT

(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)

Engineer 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 J
DRUG POLICY COMPLIANCE DECLARATION

I, (Name) as an owner or 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 __________, 20_.

A written Drug Free Workplace Policy has been implemented and employees notified.
The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).
Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31.
Employees have been notified of such procedures.
Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.
Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is ________________.

From _____________ to _____________ the following test has occurred
(Start date) (End date)

<table>
<thead>
<tr>
<th>Test Type</th>
<th>Random</th>
<th>Reasonable Suspicion</th>
<th>Post Accident</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number Employees Tested</td>
<td>______</td>
<td>______</td>
<td>______</td>
<td>______</td>
</tr>
<tr>
<td>Number Employees Positive</td>
<td>______</td>
<td>______</td>
<td>______</td>
<td>______</td>
</tr>
<tr>
<td>Percent Employees Positive</td>
<td>______</td>
<td>______</td>
<td>______</td>
<td>______</td>
</tr>
</tbody>
</table>

Any employee who tested positive was immediately removed from the City worksite 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 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)