

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

J. Inspections and Audits

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least three (3) years after this Agreement terminates. This 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 this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

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.

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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.

O. 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 Chief.

P. Risk of Loss

Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for each product passes from Contractor to the City upon acceptance by the City.

Q. Parties In Interest

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

R. 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.

S. 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 City Purchasing Agent'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 §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 Chief's prior written consent.

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.

## EXHIBIT "A"

### SCOPE OF WORK

#### 1.0 Fire Rescue Monitoring/Accountability System

Contractor shall provide GEM T-Pass 3 components at the prices listed on Exhibit "B", Price Schedule. Contractor shall thoroughly test all T-PASS 3 Components to verify that they meet the warranties set forth in this Agreement before delivering them to the City.

Contractor shall provide repair and service maintenance in accordance with Exhibit "C".

#### 2.0 Price Adjustments

2.1 Price(s) for equipment and repairs submitted by Contractor and detailed in Exhibit "B" shall be valid for a period of **thirty-six (36) months from the date the City Purchasing Agent issues Contractor the Notice to Proceed.**

2.2 Contractor may request a price increase at any time during the term of this Agreement after the thirty-six (36) month period detailed above. A price increase is defined as an increase over the purchase price listed in Exhibit "B" or the last price increase authorized by the City for that item or repair cost, whichever is applicable. City Purchasing Agent shall not accept general letters of industry-wide increases to justify Contractor's request for a price increase. City shall only accept documents from Contractor supporting an increase in actual manufacturing costs to consider Contractor's request for a price increase. Contractor shall submit the following documents:

2.2.1 A letter entitled "PRICE INCREASE REQUEST" with supporting documentation attached. The price increase letter shall contain an itemized list of cost increases, including, but not limited to, increases in the cost of raw materials, overheads and labor. The letter shall, by line-item, detail Contractor's current costs, revised costs and the actual cost difference in dollars and percentages between current costs and proposed price increases. Contractor shall submit sets of invoices from suppliers supporting current costs and increased costs proposed. Not

withstanding the foregoing, price increases for any item shall not exceed five percent (5%) of current costs except in the case of a price increase request after a price decrease has occurred. In this event, Contractor may not increase its price to more than 105% of the original contract price. City Purchasing agent may request Contractor for any additional information deemed necessary to support price increase requests.

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**Note: Contractor shall notify City Purchasing Agent of any price decrease in the manner outlined above.**

- 2.3 City shall deny all requests for price increases until Contractor complies with the procedure detailed above and provides the required documents in support of such requests.
- 2.4 Contractor's requests for price increase(s) shall become effective only when Contractor receives a letter from the City Purchasing Agent authorizing such an increase. **No price increase shall be effective until Contractor receives such written authorization.** In the event Contractor submits a request for a price increase with all supporting attachments as detailed above, and City fails to approve such request, Contractor may terminate its performance under this contract with 30-day advance written notice to City. Termination of performance with 30-day advance written notice shall be Contractors' sole remedy in the event City fails to approve Contractor's written request with proper documentation in support of a price increase. Contractor's price increase requests shall become effective 30 days after receipt by City. City shall not approve requests for retroactive price increases.
- 2.5 **Price DECREASES shall become effective from the date of approval by City Purchasing Agent.**

### **3.0 Software Upgrade**

- 3.1 Contractor shall upgrade Command Base Transceivers' internal software as and when such upgrades become available. Contractor shall install such upgrades to enhance overall system performance for a period of three years at no additional cost to the City.
- 3.2 Contractor shall send its representative to the City to install and test software upgrades as and when such upgrades become available.

**4.0** Contractor shall provide the following items as part of the initial order:

- a. 150 replacement antennas
- b. 50 back plates (including "D" ring and alligator clip)
- c. 500 spare stainless steel screws

Once Contractor fulfills the initial order, Contractor shall continue to provide the City with replacement parts at costs listed in Exhibit "B".

**5.0 Training**

Contractor shall provide, at no cost to City, 40 hours of initial "Train the Trainer" training. Contractor shall also provide, at no cost to City, 40 hours of "Train the Trainer" to individuals who were unable to attend the initial training. Contractor shall coordinate with the City to set the date, time, and location of such training.

**EXHIBIT "B"**

**PRICE SCHEDULE**

**A. GEM T PASS 3 COMPONENTS:**

<u>Product</u>	<u>List Price</u>	<u>Number of Units</u>	<u>Discount</u>	<u>Discounted Unit Price</u>
T-Pass 3 Evacuate PASS Device	\$749.00	850 or less 851 or more	3% 5%	\$726.53 \$711.55
LCD Command Base Receiver	\$6,995.00	35 or less 35 or more	3% 5%	\$6785.15 \$6645.25
Micro Repeater	\$398.00	35 or less 36 or more	3% 5%	\$386.06 \$378.10
* Spare Keys	\$10.95	1-500		\$4.00 per key
Antennas				\$15.00
Back Plates (includes "D" ring and alligator clip; 4 screws)				\$14.95
Stainless Steel Screws (\$12.50 for 500)				\$0.25

\* One extra key shall be supplied by the Contractor for every ten (10) T PASS 3's ordered by the City for the duration of the contract.

## EXHIBIT "C"

### REPAIR AND SERVICE MAINTENANCE AGREEMENT

#### A. Terms and Provisions

- A.1 Contractor shall make field serviceable repairs through local support personnel whenever possible within two full working days of Contractor's receipt of City's request for such repair or replacement.
- A.2 All non-field serviceable repairs shall be performed by the Contractor within two full working days of Contractor's receipt of the unit needing repair or replacement.
- A.3 If Contractor is unable to repair or replace a part within two full working days of receipt of City's request for such repair or replacement or receipt of the unit needing repair or replacement, Contractor shall provide a loaner at no additional cost to City.
- A.4 Upon completion of repairs, and follow-up quality assurance performance testing, Contractor shall ship repaired or replaced components no later than the end of the second full working day after Contractor receives the required part or component from manufacturer.

#### B. Repair Schedule/Costs

Below is the repair schedule for the T PASS 3 Evacuate System components. Repair costs include labor and materials. Unless otherwise specified, City and Contractor shall assume that components are repairable during Manufacturer's 12-month Warranty period, and for two years from the date of purchase.

##### B.1 T Pass 3 – Alarms

City shall pay Contractor the following rates for repairs made after the 12-month manufacturer's warranty period and during the 2 year-period following the date of purchase, unless otherwise stipulated:

##### B.1.1 Back Replacement

- No time limit on this repair item
- Due to cracks or damage
- Repair Cost - \$19.95

##### B.1.2 Accelerometer or Case Replacement

- ONLY to be done if unit is less than 5 years old
- Will cover accelerometer or case replacement only (not both)
- Repair Cost - \$146.00

#### B.1.3 Accelerometer and Case Replacement

- ONLY to be done if unit is less than 5 years old
- Covers replacement of accelerometer and case. Back replacement noted below.
- Accelerometer with no back replacement – Repair Cost - \$177.00
- Accelerometer with a back replacement – Repair Cost - \$197.00

#### B.1.4 PASS Board Replacement

- Covers PASS board replacement
- Also covers accelerometer and case replacement, but not transceiver. Back replacement noted below.
- PASS Board with no Back replacement - Repair Cost - \$325.00
- PASS Board with Back replacement – Repair Cost - \$345.00

#### B.1.5 Transceiver Board Replacement

- Covers transceiver board replacement
- Also covers accelerometer and case replacement, but not PASS board. Back replacement noted below.
- Transceiver Board with no back replacement - Repair Cost - \$425.00
- Transceiver Board with back replacement – Repair Cost - \$445.00

#### B.1.6 Transceiver and PASS Board Replacement

- Covers transceiver PASS board replacement
- Also covers accelerometer and case replacement. Back replacement noted below.
- Transceiver PASS board with no back replacement – Repair Cost - \$495.00
- Transceiver PASS board with back replacement – Repair Cost - \$515.00

### B.2 **Evacuate Bases, Repeaters, Remotes**

City shall pay Contractor the following repair costs for repairs made after manufacturer's 12-month warranty and during the 2-year period following the date of purchase, unless otherwise stipulated:

#### B.2.1 Base Repair

- Bases will be repaired at the rate noted below for an undetermined period
- Cost - \$75.00 per hour, plus parts at 1.5 times cost

#### B.2.2 Micro Repeater Repair, Case Replacement

- Case with no back replacement – Repair Cost - \$146.00
- Case with back replacement – Repair Cost - \$166.00

Transceiver board assembly replacement (both boards):

- Also covers replacement. Back replacement noted below.
- Board with no back replacement – Repair Cost - \$334.00
- Board with back replacement – Repair Cost - \$354.00

#### B.2.3 Remote receiver repair

Repair schedule and costs for the post-warranty period and for 3 years from the date of purchase

- Cost for remote receiver board replacement is \$244.00

#### B.2.4 Lid Panel Replacement

After the manufacturer's warranty period of 12 months

- Cost for all Multi & LCD lid panel replacement is \$69.95

#### B.2.5 NiCad Battery Pack Replacement

- Cost for all bases and repeaters is \$139.95

#### B.2.6 LCD Screen Replacement

- Cost - \$229.95

**SUPPORT CONTACT:** Contractor shall provide local telephone support during the hours 7:00 a.m. to 12:00 p.m. at (254) 644 – 0911. Contractor shall provide such support to the City or a Fire Department representative calling in for repairs or replacement. Contractor shall make field serviceable repairs locally through its local technical support personnel. Contractor shall provide factory repairs for parts shipped to its facility at:

Grace Industries, Inc.  
Repair Department  
305 Bend Hill Road  
Fredonia, PA 16124.

## EXHIBIT "D"

### EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the

City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "E"

DRUG POLICY COMPLIANCE AGREEMENT

I, \_\_\_\_\_ as an owner or officer of \_\_\_\_\_ (Contractor)
(Name) (Print/Type) (Title)
(Name of Company)

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

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

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

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

\_\_\_\_\_ Date Contractor Name
Signature
Title

**EXHIBIT "F"**

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

I, \_\_\_\_\_  
(Name) (Title)

as an owner or officer of \_\_\_\_\_ (Contractor)  
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in §5.17 of Executive Order No. 1-31, that will be involved

in performing \_\_\_\_\_  
(Project)

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

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

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "G"

DRUG POLICY COMPLIANCE DECLARATION

I, \_\_\_\_\_ as an owner or officer of \_\_\_\_\_ (Contractor)
(Name) (Print/Type) (Title)
(Name of Company)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_, 19\_\_.

Initials \_\_\_\_\_ 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).

Initials \_\_\_\_\_ 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.

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

Initials \_\_\_\_\_ 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 \_\_\_\_\_.

Initials \_\_\_\_\_ From \_\_\_\_\_ to \_\_\_\_\_ the following test has occurred
(Start date) (End date)

Random Reasonable Suspicion Post Accident Total

Number Employees Tested

Number Employees Positive

Percent Employees Positive

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

Initials \_\_\_\_\_ 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)