

**FORT WORTH**



**CITY OF FORT WORTH  
CHAPTER 252 EXEMPTION FORM**

This form must be provided when requesting to make a purchase over \$50,000 without following public bidding requirements.

Instructions: Fill out the entire form with detailed information. Once you have completed this form, provide it to the Purchasing attorney for review. The attorney will review the information you have provided and determine whether using an exemption to Chapter 252's bidding requirements would be defensible. If you are printing this form to provide to Legal, please do not provide the Primer portion. Failure to provide sufficient information may result in follow up questions and cause a delay in the attorney's determination.

Section 1: General Information

Requesting Department: Property Management

Name of Contract Manager: Alan Shuror

Department's Attorney: Richard McCracken

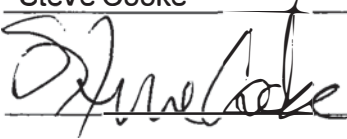
Item or Service sought: Caterpillar heavy equipment parts and repair

Vendor: Holt Cat

Current Agreement for item/service:  Yes  No

CSC#: COOP PSK2314

Recommended by [print name]: Steve Cooke  
Department Director

Signature: 

Telephone Number: 6787

Date: \_\_\_\_\_

How will this item or service be used:

There are approximately 127 Caterpillar heavy equipment in the City's Fleet.

Property Management will use this agreement to purchase original equipment manufacturer (OEM) Caterpillar heavy equipment replacement parts, maintenance and service repairs from the authorized service facility Holt Texas LTD d/b/a Holt Cat.

Section 2: Exemption Justification

Please indicate which exemption you believe applies to the purchase and provide information to support its applicability. Please refer to the Exemption Primer for detailed information about common exemptions.

- a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality’s residents or to preserve the property of the municipality;
- a procurement necessary to preserve or protect the public health or safety of the municipality’s residents;
- a procurement necessary because of unforeseen damage to public machinery, equipment, or other property;
- a procurement for personal, professional, or planning services;
- a procurement for work that is performed and paid for by the day as the work progresses;
- a purchase of land or a right-of-way;
- a procurement of items that are available from only one source, including:
  - a purchase of rare books, papers, and other library materials for a public library;
- paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements;
- a public improvement project, already in progress, authorized by the voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters;
- a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212;
- Personal property sold:
  - A. at an auction by a state licensed auctioneer;
  - B. at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code;
  - C. by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or
  - D. under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391;
- services performed by blind or severely disabled persons;
- goods purchased by a municipality for subsequent retail sale by the municipality;
- electricity; or
- advertising, other than legal notices

Please provide details and facts to explain why you believe the exemption applies to the purchase.

You may also attach documentation to this form.

Holt Cat is the OEM of Caterpillar heavy equipment. They are the only vendor authorized to work on the Caterpillar equipment by the manufacturer. Allowing another vendor to service the equipment would void the warranty.

EWExpire	EHKey	Department	EHMake	EHModel
20200325	6260184	WATER	CATERPILLAR	430F

The following is a list of the current Caterpillar equipment under warranty:

20200325	6260185	WATER	CATERPILLAR	430F
20200325	6260186	WATER	CATERPILLAR	430F
20200816	7200001	TRANSPORTATION & PUBLIC WORKS	CATERPILLAR	CB44B
20200816	6090064	TRANSPORTATION & PUBLIC WORKS	CATERPILLAR	262D
20200816	6090065	TRANSPORTATION & PUBLIC WORKS	CATERPILLAR	262D
20200921	6090067	WASTEWATER	CATERPILLAR	259D CAT
20201204	6090066	TRANSPORTATION & PUBLIC WORKS	CATERPILLAR	262D
20210116	7700053	TRANSPORTATION & PUBLIC WORKS	CATERPILLAR	12M3 AWD
20220325	6260186	WATER	CATERPILLAR	430F
20220325	6260185	WATER	CATERPILLAR	430F
20220325	6260184	WATER	CATERPILLAR	430F
20220401	6230005	POLICE	CATERPILLAR	297D



Caterpillar Inc.  
501 S.W. Jefferson Ave.  
Peoria, Illinois 61630

30 October 2019

**Contract Services Administrator  
Property Management Department  
900 Monroe Street, 4th floor, Suite 402  
Fort Worth, Texas 76102**

City of Fort Worth is located in the territory of Holt Texas, LTD. Holt Texas LTD is the only authorized distributor of licensed Caterpillar software in this territory including Caterpillar ET (electronic technician) and SISWEB (Service Information System on the Web). Two versions of the software exist, (1) the customer or retail version and (2) the dealer version. Holt Texas, LTD., as the authorized distributor for this area, is the only vendor with access to the dealer version of the software.

The Customer or retail Caterpillar Electronic Technician (**Customer Cat ET**) is diagnostic software required to communicate, diagnose and service electronically controlled Caterpillar engines and machines. When connected to an Electronic Control Module (ECM), a technician has the ability to diagnose existing and potential problems, configure the product, and obtain data for analysis.

- Displays parameter status
- Displays active diagnostics
- Clear and view logged diagnostics
- Performs diagnostic tests
- Print reports and diagnostic results
- Perform calibrations
- Displays current totals information, i.e. fuel consumption, operating hours, etc.
- Integration to help files
- Creates engine warranty reports

The Dealer Caterpillar Electronic Technician (**Dealer Cat ET**) is diagnostic software required to communicate, diagnose and service electronically controlled Caterpillar engines and machines. When connected to an Electronic Control Module (ECM), a technician has the ability to diagnose existing and potential problems, configure the product, and obtain data for analysis. In addition to the functionality of the Customer Cat ET, the Dealer Cat ET can do the following:

- Allows for reset of emissions codes and advanced troubleshooting
- Ability to service the Tier 4 systems per EPA standards
- Connectivity for loading of TRIM and FLASH file to components
- Access to adjusting factory set parameters
- Flash or reprogram an ECM
- Clear codes related to safety items

ACKNOWLEDGED BY:  


Michael Puryear, General Counsel for  
Holt Texas, LTD.

Section 3: Attorney Determination

With the facts provided by the department, is the use of the claimed exemption defensible if the City were to be challenged on this purchase? Yes No

Was there anything not included on this form or attached hereto that was relied on in making this determination? Yes No

If yes, please explain:

Sole source letter provided by Catepillar. Based on the department's representation that no other vendor, except a vendor with the Dealer software, could perform maintenance on the City's existing Catepillar equipment, this should be defensible.

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Approved By:

*Jo Ann Pate*  
\_\_\_\_\_  
Matt Murray Jo Ann Pate  
Assistant City Attorney

Date:

\_\_\_\_\_

## VENDOR SERVICES AGREEMENT

This **VENDOR SERVICES AGREEMENT** (“Agreement”) is made and entered into by and between the **CITY OF FORT WORTH** (“City”), a home-rule municipal corporation of the State of Texas, acting by and through its duly authorized Assistant City Manager, and **HOLT TEXAS, LTD.** (“Vendor”) acting by and through its duly authorized representative, each individually referred to as a “**party**” and collectively referred to as the “**parties.**”

### **AGREEMENT DOCUMENTS:**

The Agreement documents shall include the following:

1. This Vendor Services Agreement;
2. Exhibit A – Scope of Services;
3. Exhibit B – Price Schedule; and
4. Exhibit C – Verification of Signature Authority Form.

Exhibits A, B, and C, which are attached hereto and incorporated herein, are made a part of this Agreement for all purposes. In the event of any conflict between the terms and conditions of Exhibits A, B, or C and the terms and conditions set forth in the body of this Agreement, the terms and conditions in the body of this Agreement shall control.

### **1. SCOPE OF SERVICES.**

Vendor shall supply the City with labor and parts to service, repair, maintain, and upgrade Caterpillar equipment in the City’s fleet (“Services”). Exhibit “A,” - Scope of Services more specifically describes the Services to be provided hereunder.

### **2. TERM.**

This Agreement shall begin on December 3, 2019 (“Effective Date”) and shall expire on December 2, 2020 (“Expiration Date”), unless terminated earlier in accordance with this Agreement (“Initial Term”). City shall have the option, in its sole discretion, to renew this Agreement under the same terms and conditions, for up to four (4) one-year renewal options.

### **3. COMPENSATION.**

City shall pay Vendor in accordance with the provisions of this Agreement and Exhibit “B,” – Price Schedule. Total payment made under this Agreement for the first year by City shall be in **an amount not to exceed Five Hundred Thousand Dollars (\$500,000.00)**. Vendor shall not perform any additional services or bill for expenses incurred for City not specified by this Agreement unless City requests and approves in writing the additional costs for such services. City shall not be liable for any additional expenses of Vendor not specified by this Agreement unless City first approves such expenses in writing.

### **4. TERMINATION.**

4.1. Written Notice. City or Vendor may terminate this Agreement at any time and for any reason by providing the other party with 30 days’ written notice of termination.

4.2 Non-appropriation of Funds. In the event no funds or insufficient funds are appropriated by City in any fiscal period for any payments due hereunder, City will notify Vendor of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds have been appropriated.

4.3 Duties and Obligations of the Parties. In the event that this Agreement is terminated prior to the Expiration Date, City shall pay Vendor for services actually rendered up to the effective date of termination and Vendor shall continue to provide City with services requested by City and in accordance with this Agreement up to the effective date of termination. Upon termination of this Agreement for any reason, Vendor shall provide City with copies of all completed or partially completed documents prepared under this Agreement. In the event Vendor has received access to City Information or data as a requirement to perform services hereunder, Vendor shall return all City provided data to City in a machine readable format or other format deemed acceptable to City.

## **5. DISCLOSURE OF CONFLICTS AND CONFIDENTIAL INFORMATION.**

5.1 Disclosure of Conflicts. Vendor hereby warrants to City that Vendor has made full disclosure in writing of any existing or potential conflicts of interest related to Vendor's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Vendor hereby agrees immediately to make full disclosure to City in writing.

5.2 Confidential Information. Vendor, for itself and its officers, agents and employees, agrees that it shall treat all information provided to it by City ("City Information") as confidential and shall not disclose any such information to a third party without the prior written approval of City.

5.3 Unauthorized Access. Vendor shall store and maintain City Information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. Vendor shall notify City immediately if the security or integrity of any City Information has been compromised or is believed to have been compromised, in which event, Vendor shall, in good faith, use all commercially reasonable efforts to cooperate with City in identifying what information has been accessed by unauthorized means and shall fully cooperate with City to protect such City Information from further unauthorized disclosure.

## **6. RIGHT TO AUDIT.**

Vendor agrees that City shall, until the expiration of three (3) years after final payment under this contract, or the final conclusion of any audit commenced during the said three years, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records, including, but not limited to, all electronic records, of Vendor involving transactions relating to this Agreement at no additional cost to City. Vendor agrees that City shall have access during normal working hours to all necessary Vendor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. City shall give Vendor reasonable advance notice of intended audits.

## **7. INDEPENDENT CONTRACTOR.**

It is expressly understood and agreed that Vendor shall operate as an independent contractor as to all rights and privileges and work performed under this Agreement, and not as agent, representative or

employee of City. Subject to and in accordance with the conditions and provisions of this Agreement, Vendor shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, consultants and subcontractors. Vendor acknowledges that the doctrine of *respondeat superior* shall not apply as between City, its officers, agents, servants and employees, and Vendor, its officers, agents, employees, servants, and subcontractors. Vendor further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between City and Vendor. It is further understood that City shall in no way be considered a Co-employer or a Joint employer of Vendor or any officers, agents, servants, employees or subcontractors of Vendor. Neither Vendor, nor any officers, agents, servants, employees or subcontractors of Vendor shall be entitled to any employment benefits from City. Vendor shall be responsible and liable for any and all payment and reporting of taxes on behalf of itself, and any of its officers, agents, servants, employees or subcontractors.

## **8. LIABILITY AND INDEMNIFICATION.**

8.1 **LIABILITY - VENDOR SHALL BE LIABLE AND RESPONSIBLE FOR ANY AND ALL PROPERTY LOSS, PROPERTY DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, TO THE EXTENT CAUSED BY THE NEGLIGENT ACT(S) OR OMISSION(S), MALFEASANCE OR INTENTIONAL MISCONDUCT OF VENDOR, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES.**

8.2 **GENERAL INDEMNIFICATION - VENDOR HEREBY COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR LAWSUITS OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, FOR EITHER PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO VENDOR'S BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OR MALFEASANCE OF VENDOR, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES.**

8.3 **INTELLECTUAL PROPERTY INDEMNIFICATION** – Vendor agrees to defend, settle, or pay, at its own cost and expense, any claim or action against City for infringement of any patent, copyright, trade mark, trade secret, or similar property right arising from City's use of the software and/or documentation in accordance with this Agreement, it being understood that this agreement to defend, settle or pay shall not apply if City modifies or misuses the software and/or documentation. So long as Vendor bears the cost and expense of payment for claims or actions against City pursuant to this section, Vendor shall have the right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise and to settle or compromise any such claim; however, City shall have the right to fully participate in any and all such settlement, negotiations, or lawsuit as necessary to protect City's interest, and City agrees to cooperate with Vendor in doing so. In the event City, for whatever reason, assumes the responsibility for payment of costs and expenses for any claim or action brought against City for infringement arising under this Agreement, City shall have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise and to settle or compromise any such claim; however, Vendor shall fully participate and cooperate with City in defense of such claim or action. City agrees to give Vendor timely written notice of any such claim or action, with copies of all papers City may receive relating thereto. Notwithstanding the foregoing, City's assumption of payment of costs or



expenses shall not eliminate Vendor's duty to indemnify City under this Agreement. If the software and/or documentation or any part thereof is held to infringe and the use thereof is enjoined or restrained or, if as a result of a settlement or compromise, such use is materially adversely restricted, Vendor shall, at its own expense and as City's sole remedy, either: (a) procure for City the right to continue to use the software and/or documentation; or (b) modify the software and/or documentation to make it non-infringing, provided that such modification does not materially adversely affect City's authorized use of the software and/or documentation; or (c) replace the software and/or documentation with equally suitable, compatible, and functionally equivalent non-infringing software and/or documentation at no additional charge to City; or (d) if none of the foregoing alternatives is reasonably available to Vendor terminate this Agreement, and refund all amounts paid to Vendor by City, subsequent to which termination City may seek any and all remedies available to City under law.

## **9. ASSIGNMENT AND SUBCONTRACTING.**

9.1 Assignment. Vendor shall not assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of City. If City grants consent to an assignment, the assignee shall execute a written agreement with City and Vendor under which the assignee agrees to be bound by the duties and obligations of Vendor under this Agreement. Vendor and Assignee shall be jointly liable for all obligations of Vendor under this Agreement prior to the effective date of the assignment.

9.2 Subcontract. If City grants consent to a subcontract, the subcontractor shall execute a written agreement with Vendor referencing this Agreement under which the subcontractor shall agree to be bound by the duties and obligations of Vendor under this Agreement as such duties and obligations may apply. Vendor shall provide City with a fully executed copy of any such subcontract.

## **10. INSURANCE.**

Vendor shall provide City with certificate(s) of insurance documenting policies of the following types and minimum coverage limits that are to be in effect prior to commencement of any work pursuant to this Agreement:

### **10.1 Coverage and Limits**

(a) Commercial General Liability:

\$1,000,000 - Each Occurrence  
\$2,000,000 - Aggregate

(b) Automobile Liability:

\$1,000,000 - Each occurrence on a combined single limit basis  
Coverage shall be on any vehicle used by Vendor, its employees, agents, representatives in the course of providing services under this Agreement. "Any vehicle" shall be any vehicle owned, hired and non-owned.

(c) Worker's Compensation:

Statutory limits according to the Texas Workers' Compensation Act or any other state workers' compensation laws where the work is being performed

Employers' liability

\$100,000 -	Bodily Injury by accident; each accident/occurrence
\$100,000 -	Bodily Injury by disease; each employee
\$500,000 -	Bodily Injury by disease; policy limit

10.2 General Requirements

- (a) The commercial general liability and automobile liability policies shall name City as an additional insured thereon, as its interests may appear. The term City shall include its employees, officers, officials, agents, and volunteers in respect to the contracted services.
- (b) The workers' compensation policy shall include a Waiver of Subrogation (Right of Recovery) in favor of City.
- (c) A minimum of Thirty (30) days' notice of cancellation or reduction in limits of coverage shall be provided to City. Ten (10) days' notice shall be acceptable in the event of non-payment of premium. Notice shall be sent to the Risk Manager, City of Fort Worth, 200 Texas Street, Fort Worth, Texas 76102, with copies to the Fort Worth City Attorney at the same address.
- (d) The insurers for all policies must be licensed and/or approved to do business in the State of Texas. All insurers must have a minimum rating of A- VII in the current A.M. Best Key Rating Guide, or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management. If the rating is below that required, written approval of Risk Management is required.
- (e) Any failure on the part of City to request required insurance documentation shall not constitute a waiver of the insurance requirement.
- (f) Certificates of Insurance evidencing that Vendor has obtained all required insurance shall be delivered to the City prior to Vendor proceeding with any work pursuant to this Agreement.

**11. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.**

Vendor agrees that in the performance of its obligations hereunder, it shall comply with all applicable federal, state and local laws, ordinances, rules and regulations and that any work it produces in connection with this Agreement will also comply with all applicable federal, state and local laws, ordinances, rules and regulations. If City notifies Vendor of any violation of such laws, ordinances, rules or regulations, Vendor shall immediately desist from and correct the violation.

**12. NON-DISCRIMINATION COVENANT.**

Vendor, for itself, its personal representatives, assigns, subcontractors and successors in interest, as part of the consideration herein, agrees that in the performance of Vendor's duties and obligations hereunder, it shall not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. **IF ANY CLAIM ARISES FROM AN ALLEGED VIOLATION OF**

**THIS NON-DISCRIMINATION COVENANT BY VENDOR, ITS PERSONAL REPRESENTATIVES, ASSIGNS, SUBCONTRACTORS, OR SUCCESSORS IN INTEREST, VENDOR AGREES TO ASSUME SUCH LIABILITY AND TO INDEMNIFY AND DEFEND CITY AND HOLD CITY HARMLESS FROM SUCH CLAIM.**

**13. NOTICES.**

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

<p>To CITY:</p> <p>City of Fort Worth Attn: City Manager's Office 200 Texas Street Fort Worth, TX 76102-6314 Facsimile: (817) 392-8654</p> <p>With copy to Fort Worth City Attorney's Office at same address</p>	<p>To VENDOR:</p> <p>HOLT TEXAS, LTD. 501 S.W. JEFFERSON AVE. PEORIA, IL 61630</p>
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**14. SOLICITATION OF EMPLOYEES.**

Neither City nor Vendor shall, during the term of this Agreement and additionally for a period of one year after its termination, solicit for employment or employ, whether as employee or independent contractor, any person who is or has been employed by the other during the term of this Agreement, without the prior written consent of the person's employer. Notwithstanding the foregoing, this provision shall not apply to an employee of either party who responds to a general solicitation of advertisement of employment by either party.

**15. GOVERNMENTAL POWERS.**

It is understood and agreed that by execution of this Agreement, City does not waive or surrender any of its governmental powers or immunities.

**16. NO WAIVER.**

The failure of City or Vendor to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein shall not constitute a waiver of City's or Vendor's respective right to insist upon appropriate performance or to assert any such right on any future occasion.

**17. GOVERNING LAW / VENUE.**

This Agreement shall be construed in accordance with the laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought pursuant to this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas, Fort Worth Division.

**18. SEVERABILITY.**

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**19. FORCE MAJEURE.**

City and Vendor shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

**20. HEADINGS NOT CONTROLLING.**

Headings and titles used in this Agreement are for reference purposes only, shall not be deemed a part of this Agreement, and are not intended to define or limit the scope of any provision of this Agreement.

**21. REVIEW OF COUNSEL.**

The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or Exhibits A, B, and C.

**22. AMENDMENTS/ MODIFICATIONS/ EXTENSIONS.**

No amendment, modification, or extension of this Agreement shall be binding upon a party hereto unless set forth in a written instrument, which is executed by an authorized representative of each party.

**23. ENTIRETY OF AGREEMENT.**

This Agreement, including Exhibits A, B and C, contains the entire understanding and agreement between City and Vendor, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

**24. COUNTERPARTS.**

This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute one and the same instrument.

**25. WARRANTY OF SERVICES.**

Vendor warrants that its services will be of a high quality and conform to generally prevailing industry standards. City must give written notice of any breach of this warranty within thirty (30) days from the date that the services are completed. In such event, at Vendor's option, Vendor shall either (a) use

commercially reasonable efforts to re-perform the services in a manner that conforms with the warranty, or (b) refund the fees paid by City to Vendor for the nonconforming services.

**26. IMMIGRATION NATIONALITY ACT.**

Vendor shall verify the identity and employment eligibility of its employees who perform work under this Agreement, including completing the Employment Eligibility Verification Form (I-9). Upon request by City, Vendor shall provide City with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. Vendor shall adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any Vendor employee who is not legally eligible to perform such services. **VENDOR SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY VENDOR, VENDOR'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** City, upon written notice to Vendor, shall have the right to immediately terminate this Agreement for violations of this provision by Vendor.

**27. OWNERSHIP OF WORK PRODUCT.**

City shall be the sole and exclusive owner of all reports, work papers, procedures, guides, and documentation, created, published, displayed, and/or produced in conjunction with the services provided under this Agreement (collectively, "Work Product"). Further, City shall be the sole and exclusive owner of all copyright, patent, trademark, trade secret and other proprietary rights in and to the Work Product. Ownership of the Work Product shall inure to the benefit of City from the date of conception, creation or fixation of the Work Product in a tangible medium of expression (whichever occurs first). Each copyrightable aspect of the Work Product shall be considered a "work-made-for-hire" within the meaning of the Copyright Act of 1976, as amended. If and to the extent such Work Product, or any part thereof, is not considered a "work-made-for-hire" within the meaning of the Copyright Act of 1976, as amended, Vendor hereby expressly assigns to City all exclusive right, title and interest in and to the Work Product, and all copies thereof, and in and to the copyright, patent, trademark, trade secret, and all other proprietary rights therein, that City may have or obtain, without further consideration, free from any claim, lien for balance due, or rights of retention thereto on the part of City.

**28. SIGNATURE AUTHORITY.**

The person signing this Agreement hereby warrants that he/she has the legal authority to execute this Agreement on behalf of the respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. This Agreement and any amendment hereto, may be executed by any authorized representative of Vendor whose name, title and signature is affixed on the Verification of Signature Authority Form, which is attached hereto as Exhibit "C". Each party is fully entitled to rely on these warranties and representations in entering into this Agreement or any amendment hereto.

**29. CHANGE IN COMPANY NAME OR OWNERSHIP**

Vendor shall notify City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of Vendor or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state

indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to provide the specified documentation so may adversely impact future invoice payments.

**30. PROHIBITION ON CONTRACTING WITH COMPANIES THAT BOYCOTT ISRAEL**

Vendor acknowledges that in accordance with Chapter 2270 of the Texas Government Code, the City is prohibited from entering into a contract for goods or services with a company with 10 or more full-time employees that has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the City unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The term "boycott Israel" has the meaning ascribed to it by Section 808.001 of the Texas Government Code. The term "company" shall have the meaning ascribed to it by Section 2270.001 of the Texas Government Code. **To the extent that Chapter 2270 of the Government Code is applicable to this Agreement, Vendor certifies that Vendor's signature provides written verification to the City that Vendor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.**

*[SIGNATURES ON FOLLOWING PAGE]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement to be effective on the dates set forth in Section 2.

**ACCEPTED AND AGREED:**

**CITY OF FORT WORTH:**

<p>By: _____ Name: Kevin Gunn Title: Interim Assistant City Manager</p> <p>Date: _____</p> <p><b>APPROVAL RECOMMENDED:</b></p> <p>By: _____ Name: Steve Cooke Title: Direct, Property Management Department</p> <p><b>ATTEST:</b></p> <p>By: _____ Name: Mary Kayser Title: City Secretary</p>	<p><b>CONTRACT COMPLIANCE MANAGER:</b> By signing I acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements.</p> <p>By: _____ Name: Alan Shuror Title: Sr. Financial and Administrative Services Manager</p> <p><b>APPROVED AS TO FORM AND LEGALITY:</b></p> <p>By: _____ Name: Richard A. McCracken Title: Sr. Assistant City Attorney</p> <p><b>CONTRACT AUTHORIZATION:</b> M&amp;C: _____ Form 1295: _____</p>
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**VENDOR:**

<p><b>HOLT TEXAS, LTD. 501 S.W. JEFFERSON AVE. PEORIA, IL 61630</b></p> <p>By: _____ Name: Title:</p> <p>Date: _____</p>	<p><b>ATTEST:</b></p> <p>By: _____ Name: Title:</p>
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**EXHIBIT A**  
**SCOPE OF SERVICES**

**1. SCOPE OF WORK**

- a. Vendor shall supply the City with labor and parts to service, repair, maintain, and upgrade Caterpillar equipment in the City's fleet. There are approximately 127 Caterpillar heavy equipment in the City's fleet.
- b. Vendor shall provide all warrantable repairs using OEM parts.

**2. QUALITY OF SERVICE AND WORK**

- a. Vendor shall provide the City an acceptable level of service in terms of cost, time and workmanship. Upon return and inspection of services completed, PMD/FLEET personnel will notify Vendor if any issues regarding the Services or parts are found to be unsatisfactory. Vendor will be given opportunity to correct. Failure of Vendor to correct Services or parts to a satisfactory condition will be considered grounds for terminating any agreement between Vendor and the City.
- b. Vendor will be required to perform the work using the most up to date and appropriate methods available for said work under industry standards. This includes, but is not limited to, all suitable repair equipment and parts to insure the satisfactory execution of any repair or installation.
- c. Vendor will be required to provide documentation on their personnel authorized to perform work on City vehicles and equipment. This includes all certifications, such as the National Institute for Automotive Service Excellence (ASE), that qualify them to perform said work.
- d. Vendor must give the City priority service, as many City vehicles are utilized for public safety and emergency response. Expeditious turn-around is critical to City operations. However, additional fees for priority services are prohibited.

**3. ORDERED SERVICES**

- a. The City is only obligated to pay for Services actually ordered by an authorized City employee and then received and accepted as required by the City.

**4. PARTS**

- a. All parts utilized in repairs, replacements or installations on City vehicles and equipment must be new unless otherwise requested by PMD/FLEET personnel. Any rebuilt or remanufactured parts must be approved in writing by City PMD/FLEET personnel prior to being utilized by Vendor.
- b. The Vendor warrants and/or guarantees all work and products supplied under this Agreement against any defects in design, workmanship, materials and failure to operate satisfactorily. Each product shall be constructed to the highest standards. Products manufactured of poor workmanship will not be accepted.



## 5. ESTIMATES

- a. Vendor shall provide written estimates to City PMD/FLEET personnel before the start of any work. The estimates may be emailed to the PMD/FLEET employee(s) and/or PMD/FLEET shop location who requested the Services to be completed.
- b. Estimates must be approved and authorized by City PMD/FLEET personnel in writing (email, fax or written) prior to work being performed.
- c. Original invoices submitted to the City for work performed cannot be greater than initial estimate provided unless approved by City PMD/FLEET in writing. If during the course of the originally estimated repairs, it is noted that further repairs will be needed, a revised estimate must be prepared by Vendor for the additional work.
- d. If City vehicles or equipment is serviced by Vendor for warranty work, an estimate provided by Vendor to the City shall state 'Warranty Service'.
- e. All estimates provided by Vendor will be quoted on a 'time and materials' basis, adherence to the agreed upon contract rate(s) and itemized to illustrate the cost of each of the following, if applicable to the Services performed:
  - i. Cost of part(s) to be installed.
  - ii. Cost of labor to perform repair and/or installation; itemized by labor hours except when estimated as a turnkey project/job.
  - iii. Inspection/ Diagnostic fees.
  - iv. Environmental/Hazardous disposal material fees
  - v. Extended warranties, if requested by the City.
  - vi. Transportation fees, if any, for pick-up or delivery.
- f. Shop fees, miscellaneous fees or unspecified costs may not be charged to the City unless approved and authorized by PMD/FLEET Contract Compliance.

## 6. INVOICES

- a. It is the responsibility of the Vendor to get the name of the responsible person, telephone numbers and address of the department at the time Service are requested. The requesting department is required to issue a purchase order number to the Vendor during this process.
- b. A properly prepared invoice shall be computer printed and shall include the Vendor's name and federal tax-identification number, invoice number, address, date, service or item description, unit price, extended cost, City issued purchase order and release number. The invoice shall also include the vehicle identification number of the vehicle serviced. Incomplete or inaccurate invoices may result in delayed payments, as they will be returned to Vendor for correction and re-submittal.
- c. All freight will be F.O.B. Fort Worth. The City of Fort Worth will not pay shipping costs, off-loading or handling charges associated with orders.
- d. Invoices shall be paid in accordance with State law. Payments will be made on a Net 30 Days basis from date invoice is received.
- e. Vendor shall submit all invoices via email to City of Fort Worth, Fleet Division at: [ESD\\_ContractComplianceInvoicing@fortworthtexas.gov](mailto:ESD_ContractComplianceInvoicing@fortworthtexas.gov) (preferred) or mailed to 4100 Columbus Trail, Fort Worth, Texas, 76115.

**EXHIBIT B**  
**PRICE SCHEDULE**

Vendor shall provide Services as needed when already on site for service of other Holt Cat equipment, additional charges will not apply.

<b>SERVICE</b>	<b>RATE</b>
FIELD SERVICE LABOR	\$160.00 per hour
SHOP LABOR	\$136.00 per hour
WELDING & MACHINING	\$160.00 per hour
PARTS DISCOUNT	
<ul style="list-style-type: none"> <li>• COFW may purchase directly from Holt Cat to receive discount</li> <li>• COFW purchases made through 3<sup>rd</sup> Party Reseller</li> </ul>	<p>10%</p> <p>0% from Cat list</p>
TRAVEL TIME	
Field Service jobs	\$80.00 round trip
MILEAGE (in addition to Travel Time)	\$3.50 per mile/round trip (Additional charge for each Field Service visit, calculated based upon the distance from the closest Holt Cat location to the machine)

**EXHIBIT C**  
**VERIFICATION OF SIGNATURE AUTHORITY**

HOLT TEXAS, LTD.  
501 S.W. JEFFERSON AVE.  
PEORIA, IL 61630

Execution of this **Signature Verification Form** ("Form") hereby certifies that the following individuals and/or positions have the authority to legally bind Vendor and to execute any agreement, amendment or change order on behalf of Vendor. Such binding authority has been granted by proper order, resolution, ordinance or other authorization of Vendor. City is fully entitled to rely on the warranty and representation set forth in this Form in entering into any agreement or amendment with Vendor. Vendor will submit an updated Form within ten (10) business days if there are any changes to the signatory authority. City is entitled to rely on any current executed Form until it receives a revised Form that has been properly executed by Vendor.

1. Name: \_\_\_\_\_  
Position: \_\_\_\_\_  
  
\_\_\_\_\_  
Signature

2. Name: \_\_\_\_\_  
Position: \_\_\_\_\_  
  
\_\_\_\_\_  
Signature

3. Name: \_\_\_\_\_  
Position: \_\_\_\_\_  
  
\_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
  
\_\_\_\_\_  
Signature of President / CEO

Other Title: \_\_\_\_\_

Date: \_\_\_\_\_