



CITY OF HOUSTON, TEXAS

NOTICE OF BEST VALUE BID July 23, 2010
SOLICITATION NO.: S11-L23691

STRATEGIC PURCHASING DIVISION
"PARTNERING TO BETTER SERVE HOUSTON"

NIGP CODE: 958-44

SOLICITATION DUE DATE/TIME: August 26, 2010, Thursday at 10:30 A.M., CST

SUBMITTAL LOCATION: City Secretary's Office
City Hall Annex, Public Level
900 Bagby Street
Houston, Texas 77002

DESCRIPTION: JAIL FOOD SERVICES for the Houston Police Department

	<i>Date</i>	<i>Time</i>	<i>Location</i>
PRE-BID CONFERENCE:	August 11, 2010, Wednesday	1:30 PM	SPD, 901 Bagby, Conference Rm. 4 (Lower Level), Houston, TX 77002

In accordance with T.L.G.C. § Chapter 252, competitive sealed Bids for the services specified will be received by the City Secretary's Office of the City of Houston at the above specified location, until the time and date cited. Offers must be in the actual possession of the City Secretary's Office on or prior to the time and date, and at the location indicated above. Late offers will not be considered.

Offers must be submitted in a sealed envelope or package with the Solicitation Number and the Offeror's name and address clearly indicated on the envelope or package. All offers must be completed in ink or typewritten. Additional instructions for preparing an offer are included in this Solicitation.

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION

Solicitation Contact Person:

Gloria Jordan-King

Name

gloria.king@houstontx.gov

E-Mail Address


City Purchasing Agent

7-15-10

Date

1.0 SUBMITTAL PROCEDURE:

1.1 Sealed bids, two (2) hard copies of the Bid package, including two (2) printed original must be signed in ink on the Official Signature Page by an authorized officer of the Offering Company. Additionally, the Bid package must include the hard copy of the Electronic Bid Form and five (5) additional electronic CD copies of the Bid Forms as referenced in Section 2.3 below are required to be submitted in a sealed envelope/box bearing the assigned Solicitation Number, located on the first page of the document to:

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

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

1.3 Respondents may elect to either mail or personally deliver their Bids to the City Secretary's Office.

1.4 The City of Houston shall bear no responsibility for submitting responses on behalf of any Offeror. Offeror(s) may submit their Bid to the City Secretary's Office any time prior to the stated deadline.

2.0 BEST VALUE BID FORMAT:

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

2.2 The Bid must be signed by an individual(s) legally authorized to bind the Offeror(s), and the City may accept this bid offer by issuance of a Contract to the said Offeror(s) at any time on or before the 180th day following the day this Official Bid Form is opened by the City. This offer shall be irrevocable for 180 days, but shall expire on the 181st day unless the parties mutually agree to an extension of time in writing.

2.3 The complete Bid packet shall consist of the following items:

TABLE 1 – REQUIRED BID FORMS
Signed Official Signature Page
Hard Copy of Electronic Bid Form (Pricing Sheet)
*Affidavit of Ownership.doc
*Fair Campaign Ordinance.doc
*Statement of Residency.doc
*Conflict of Interest Questionnaire.doc
*Pay or Play Program Acknowledgement Form
Contractor's Questionnaire
List of Subcontractor(s)
M/WBE Attachment A & B Forms
Expertise/Experience/Reliability Statement
Organizational Chart
Certifications/Licenses (If applicable) & Resumes of Key Personnel
Financial Statements
Five (5) Electronic CD Copies of the bid

* Documents/forms can be downloaded from the City's Website: http://purchasing.houstontx.gov/solicitation_forms.htm

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

TABLE 2 - DOCUMENTS & FORMS
Drug Forms.doc
EEOC.doc
Formal Instructions for Bid Terms.doc
Sample Insurance Over \$50,000.pdf
Pay or Play Affirmative Action & Contract Compliance Q & A
Pay or Play Affirmative Action & Contract Compliance Requirements
Pay or Play Contractor/Subcontractor Payment Reporting Form
Pay or Play Contractor/Subcontractor Waiver Request
Pay or Play List of Participating Subcontractors

3.0 PRE-BID CONFERENCE:

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

4.0 ADDITIONAL INFORMATION AND SPECIFICATION CHANGES:

4.1 Requests for additional information and questions should be addressed to the Administration and Regulatory Affairs Department, Strategic Purchasing Division Buyer, Gloria Jordan-King, telephone: (832) 393-8750, fax: (832) 393-8759, or e-mail (preferred method to): Gloria.king@houstontx.gov, no later than August 20, 2010 at 5:00 P.M. CST. The City of Houston shall provide written response to all questions received in writing before the submittal deadline. Questions received from all Offeror(s) shall be answered and sent to all Offeror(s) who are listed as having obtained the BVB. Offeror(s) shall be notified in writing of any changes in the specifications contained in this BVB.

5.0 LETTER(S) OF CLARIFICATION:

5.1 All Letters of Clarification and interpretations to this Solicitation shall be in writing. Any Letter of Clarification(s) or interpretation that is not in writing shall not legally bind the City of Houston. Only information supplied by the City of Houston in writing or outlined in this should be used in preparing bid responses.

5.2 The City does not assume responsibility for the receipt of any Letters of Clarification sent to Offeror(s).

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6.0 EXAMINATION OF DOCUMENTS AND REQUIREMENTS:

6.1 Each Offeror shall carefully examine all documents and thoroughly familiarize themselves with all requirements prior to submitting a Bid to ensure that the Bid meets the intent of this.

6.2 Each Offeror shall be responsible for making all investigations and examinations that are necessary to ascertain conditions and requirements affecting the requirements of this. Failure to make such investigations and examinations shall not relieve the Offeror from obligation to comply, in every detail, with all provisions and requirements of the.

7.0 EXCEPTIONS TO TERMS AND CONDITIONS:

7.1 Best Value Bids: An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, may be rejected.

8.0 ACCEPTANCE AND REJECTION OF BIDS:

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

9.0 PROTEST:

9.1 A protest shall comply with and be resolved, according to the City of Houston Municipal Code, Chapter 15, Article 1 and rules adopted thereunder. Protests shall be submitted in writing and filed with both, the City Purchasing Agent and the Solicitation contact person as identified on the first page of the BVB. A pre-award protest of the shall be received by the City Purchasing Agent prior to the Contract award date. A post-award protest of an awarded Contract shall be filed within ten (10) days after the protester knows, or should have known, the basis or outcome of the Contract award.

9.2 A protest shall include the following:

- 9.2.1 The name, address, e-mail, and telephone number of the protester;
- 9.2.2 The signature of the protester or its representative who has the delegated authority to legally bind its company;
- 9.2.3 Identification of the description and the or Contract number;
- 9.2.4 A detailed written statement of the legal and factual grounds of the protest, including copies of relevant documents, etc.; and
- 9.2.5 The desired form of relief or outcome, which the protester is seeking.

UNIFORM INSTRUCTIONS TO OFFEROR(S)
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- 1.0 This does not commit the City of Houston to award a Contract, issue a Purchase Order, or to pay any costs incurred in the preparation of a Bid in response to this request.
- 2.0 The Bid will become part of the City's official files without any obligation on the City's part. All Responses shall be held confidential from all parties other than the City until after the Bids are opened and publicly read. Afterward, the Bids shall be available to the public.
- 3.0 The City of Houston shall not be held accountable if material from responses is obtained without the written consent of the Offeror by parties other than the City, at any time during the Bid evaluation process.
- 4.0 In the event an Offeror submits trade secret information to the City, the information must be clearly labeled as a "**Trade Secret.**" The City will maintain the confidentiality of such trade secrets to the extent provided by law.
- 5.0 Offeror(s) shall not offer any gratuities, favors, or anything of monetary value to any official or employee of the City of Houston (including any and all members of the Bid evaluation committees).
- 6.0 Offeror(s) shall not collude in any manner, or engage in any practices, with any other Offeror(s), which may restrict or eliminate competition, or otherwise restrain trade. This is not intended to preclude subcontracts and joint ventures for the purposes of: a) responding to this; or b) establishing a project team with the required experience and/or capability to provide the goods or services specified herein.
- 7.0 Offeror(s), their authorized representatives and their agents are responsible for obtaining, and will be deemed to have, full knowledge of the Conditions, requirements, and Specifications of the at the time a Bid is submitted to the City.
- 8.0 The Agreement(s) shall become effective on or about **October 14, 2010** for a term of three (3) years. The City of Houston reserves the option of extending the Agreement(s) on an annual basis for two (2) additional one-year terms, or portions thereof.
- 9.0 If necessary for the completion of tasks required under the project, the City will provide reasonable working space to the Prime Contractor.
- 10.0 Clerical support and reproduction of documentation costs shall be the responsibility of the Prime Contractor. If required, such support and costs shall be factored into the Bid amount.
- 11.0 Prime Contractor personnel essential to the continuity, and the successful and timely completion of the project should be available for the duration of the project unless substitutions are approved in writing by the City Project Director.
- 12.0 The Prime Contractor will be expected to adhere to all standard contractual requirements of the City which shall include, but are not limited to, provisions for: Time Extensions; Appropriation of Available Funds; Approvals; Term and Termination; Independent Contractor; Business Structure and Assignments; Subcontractors; Parties in Interest; Non-Waiver; Applicable Laws; Notices; Use of Work Products; Equal Employment Opportunity; Force Majeure; and Inspections and Audits.
- 13.0 The City may terminate its performance under a Contract in the event of a default by the Prime Contractor and a failure to cure such default after receiving notice of default from the City. Default may result from the Prime Contractor's failure to perform under the Terms of the Contract or from the Prime Contractor becoming insolvent, having a substantial portion of its assets assessed for the benefit of creditors, or having a receiver or trustee appointed.
- 14.0 Prime Contractor must promptly report to the City Project Director any conditions, transactions, situation, or circumstances encountered by the Prime Contractor which would impede or impair the proper and timely performance of the Contract.

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- 15.0 The City of Houston has sole discretion and reserves the right to cancel this , or to reject any or all Bids received prior to Contract award.
- 16.0 The City reserves the right to waive any minor informality concerning this , or to reject any or all Bids or any part thereof.
- 17.0 The City reserves the right to request clarity of any Bid after they have been received.
- 18.0 After Contract execution, the successful Offeror shall be the Prime Contractor and responsible party for contracting and communicating the work to be performed to subcontractors, and for channeling other information between the City and subcontractors. Any subcontracting must be specified in the . Any subcontracting not specified in the will need prior written approval from the City Purchasing Agent.
- 19.0 Prime Contractor assumes total responsibility for the quality and quantity of all work performed, whether it is undertaken by the Prime Contractor or is subcontracted to another organization.
- 20.0 If subcontractor involvement is required in the use of license, patent, or proprietary process, the Prime Contractor is responsible for obtaining written authorization from the subcontractor to use the process, or provide another process comparable to that which is required and which is acceptable to the City, all at no additional cost or liability to the City.

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SECTION B
SCOPE OF WORK/SPECIFICATIONS

1.0 SCOPE OF SERVICE

- 1.1 The successful Contractor shall provide food for prisoners incarcerated in the City of Houston Police Department Jail system and Houston Police Department (HPD) employees under conditions as outlined in the scope of work/specifications of this bid. Contractor may also be requested to provide food service to Police Department personnel during emergency situations.
- 1.2 Locations where food service is to be provided is the Central Jail (61 Riesner) and the South Command Station (8300 Mykawa Road). Additional location(s) will be added during the life of the Contract. The adding or other delivery sites will be cause for an adjustment of the per meal price up to .025 per meal if the additional site is further than 1.5 miles from a site listed in the original contract. Sites within 15 miles of a facility listed in the original contract will not be a basis for a price adjustment. Any request for price adjustment under this clause will require the contractor to demonstrate justification for the requested increase to the Purchasing Agent of the City.
- 1.3 The Contractor shall furnish all labor, foodstuffs, equipment, materials and supplies necessary to provide food services for the inmates of Houston Police Department Jails. Food services will be required 365 days per year (366 - leap year) three times per day, meeting all applicable federal, state, local guidelines, laws and regulations. The Contractor shall provide additional food and/or beverage service upon written or verbal request when made by the authorized representative of the Houston Police Department at the rate bid and accepted for prisoner's meals.
- 1.4 All specifications contained herein are the minimum acceptable to the City of Houston.
- 1.5 The Contractor will provide a copy of their last two years of Health Department Inspections.

2.0 USE OF FACILITY AND EQUIPMENT

- 2.1 The Central Kitchen at 61 Riesner is the recommended facility for the contractor's use. The contractor may also use its own site if approved by the contract manager. Under no circumstances will use of an alternate site constitute justification for an increase request in the per-unit cost per meal. The equipment List specified in Exhibit "B-4" is an inventory of equipment available for use by the contractor at the Central Jail Kitchen.
 - 2.1.1 Refrigeration and Stove Equipment:
The Contractor shall be responsible for the repair and maintenance of the refrigeration and stove equipment. Repairs shall be charged back to the City of Houston Police Department at cost only. The original invoices showing Contractor's cost shall be required before any payment for repairs will be made. The contractor is responsible for the first \$500.00 of any invoice for repairs to refrigeration equipment and stoves or ovens. The City will reimburse the contractor for repairs over \$500.00 subsequent to the City receiving a copy of the invoice from the contractor for the repairs. The repairs will be billed against the food service contract. The contractor is responsible for arranging for repairs but must secure approval from the Contract Administrator for all repairs in excess of \$750.
 - 2.1.2 Ice Machine:
The Contractor shall be responsible for supplying and maintaining their own ice machines.

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2.1.3 Pest Control:

The Contractor shall be responsible for pest control in the kitchen area. The contractor will insure that "Pest control service will effectively control roaches, rodents and all other pests in order to meet City of Houston Health Department requirements."

2.1.4 A joint inventory of City owned equipment will be conducted at the earliest possible date by the successful Contractor and the HPD staff to determine quantities and serviceability of equipment on hand. Equipment will remain the property of the City. Equipment provided by the Contractor which is to provide service to the HPD jails may be purchased by the City of Houston at the amortized rate should the Contract be terminated before the expiration of the initial term or extended term. The amortization rate shall be set at sixty (60) months, repairs, maintenance and replacement of all City owned equipment, in the amount of \$500.00 less, remains the responsibility of the Contractor during the duration of the Contract. The purchases of equipment, utensils, carts, food transport containers set will be the responsibility of the contractor on any item costing less than \$500.00. On items costing more than \$500.00 the contractor will be responsible for the first \$500.00 and may bill the contract for any sum in excess of \$500.00. Prior approval from the Jail Division captain is required on items in excess of \$750.00.

2.1.5 The contractor's liability will include repairs and replacements. At the beginning of each quarter, the contractor will submit a detailed report with accompanying documentation for verification, of all expenditures for replacements and repairs not reimbursed by the City, under the above referenced sections. The contractor's total liability will be \$ \$27,500.00 (\$5,500.00 per year) for the life of the contract.

2.1.6 A joint inspection and inventory will be held on or about February 1st and August 1st each calendar year. The contractor shall be required to replace, with similar quality item, any and all unaccounted equipment within sixty (60) days unless otherwise mutually agreed upon in writing.

2.1.7 An inventory of available equipment at the Central Jail Kitchen, effective March, 2010 can be identified in Exhibit "B-4" of the specifications.

2.2 NON-COMPLIANCE OF SPECIFICATIONS:

2.2.1 The City will not be charged for any meals not meeting the specifications of this Contract. For meals already charged which are not specified, a credit will be given to the City by the Contractor.

2.3 METHOD OF COMPUTING PER MEAL COST:

2.3.1 The contractor should carefully examine the menu as specified in Exhibit "B-1" of the specifications. The contractor's per meal cost should take into account the total cost of serving the entire menu and all billing will be made using the price per meal multiplied by the number of meals served.

2.3.2 Sliding Price Scale; meals will be priced on a sliding scale to be determined by the number of meals ordered and served in one billing cycle, a billing cycle is Monday thru Sunday of each week, unless both parties agree in writing to change the billing cycle.

The contractor will bill based on the following scale:

- 2.3.2.1 Less than 8,000 meals
- 2.3.2.2 8,000 meals to 9,500 meals.
- 2.3.2.3 9,500 to 11,000 meals.
- 2.3.2.4 11,000 to 13,500 meals
- 2.3.2.5 More than 13,500 meals.

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- 2.3.3 The contract shall be based on City of Houston meals only and not for meals that may be made for facilities other than the City of Houston. The Contractor may only use the City of Houston Facilities for the City of Houston meals unless written permission is obtained from the City.
- 2.3.4 Special meals served to City employees will be billed at the same price as those served to prisoners. The basic meal will be followed for these special meals.
- 2.3.5 The Contractor can and is encouraged request to use the Jail Kitchen to prepare meals for other entities. The city may deny such request if the contractor is of the type that may pose embarrassment or conflicts with the mission of the Police Department. The Contractor will provide a credit to the City for each meal. However, this provision will only be allowed if it does not hinder the Contractor's ability to fulfill the requirements of this contract.

2.4 MENU TO BE OBSERVED

- 2.4.1 The contractor will serve the precise menu as specified in Exhibit "B-1" of this document. All listed weights and measures are to be considered the minimum acceptable portion level. A registered dietitian in accordance with Section 2.4.3 shall approve the menu. Furthermore, a menu shall be submitted to the Jail Captain for his approval, prior to implementation. Milk shall be served with Breakfast, and the beverage served with Clinic meals only, shall consist of 8 ounces of calcium fortified orange juice. The remaining meals will consist of a non carbonated drink, 8 ounces as the beverage served.
- 2.4.2 The H.P.D. Jail will monitor weights, measures, temperatures, and quality of meals served and any pattern of shortages, when compared to the specifications found in Section 2.4.3 will constitute non-compliance with the terms of the Contract. All food stuffs used by the contractor must be obtained from established suppliers.
- 2.4.3 The contractor must employ a registered dietitian within their firm who will regularly review the H.P.D. Food Service Program to assure that it meets or exceeds the applicable dietary standards for adult inmates and detainees for nutritional and caloric content as established by:
 - 2.4.3.1 The Food and Nutritional Board of the National Academy of Science as prescribed for inmates;
 - 2.4.3.2 The American Correctional Association Dietary Standards
 - 2.4.3.3 The total calorie content for breakfast, lunch and dinner, on any given day must meet or exceed 2800 calories per day.
- 2.4.4 The Contractor shall supply a copy of the dietitian's certificate within five (5) working days after said certificate is requested by the City.
- 2.4.5 Temperature of Meals:
Upon delivery of the Meals at the location, temperature of Meals must comply with the standards referenced in Section 2.4.3.

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2.4.6 Provisions for Menu Substitutions:

The menu specified as Exhibit "B-1" is a sample menu. Substitutions either temporary or permanent may be made only by written agreement between the contractor's representative and the Jail Captain, as long as the price does not increase per meal. The substitutions will take effect after both parties have agreed.

2.4.7 Meals for Jail Clinic Prisoners with Medical Conditions:

Special meals for prisoners being treated in the Jail Clinic will be prepared and delivered twice a day to the Central and Southeast Jails. These meals will be sack lunch type meals and will follow the menu titled "Jail Clinic Meals & Offsite Trusty Workers" specified in Exhibit "B-2". Meals will be made available for Prisoners with medical conditions that require special diets. No more than 80 clinic and medical condition meals per day may be ordered. The following three diets will be made available to prisoners with medical conditions under special request: Low Calorie (Diabetic), Low Sodium (Hypertension), and Liquid Diet. When these Special Request Meals are order they will include a label with the name of the prisoner on it when delivered.

2.4.8 Offsite Meals:

Special meals for prisoners that are assigned to offsite locations, will be prepared and stored at the Central Jail, as determined by the Jail Captain. These meals will be sack lunch type meals and will follow the menu titled "Jail Clinic Meals & Offsite Trusty Workers" specified in Exhibit "B-2". Trusty meals per day will be ordered at the same time that the other meals are ordered. Offsite status will be determined by the Jail Captain or designee.

2.5 **METHOD AND SCHEDULE OF FOOD DELIVERY:**

2.5.1 Food delivery is the total responsibility of the contractor and will be accomplished by using the contractor's vehicle(s) and personnel. The contractor will deliver according to Food Delivery Schedule & Method specified in Exhibit "B-3" of the specifications.

2.5.2 The vehicle used to deliver food from the Central Kitchen at 61 Riesner to the South Police Station, 8300 Mykawa, or other locations must comply with all applicable Health Department regulations for vehicles used in the business of food service delivery. Suitable replacement vehicles must be available for those instances when the primary vehicle is unavailable.

2.5.3 The containers used to deliver and serve food will meet the standards set out in Section

2.5.4 The food must be placed in the individual containers and sealed under the highest sanitary conditions prior to leaving the Kitchen. The containers will have individual compartments and will be made of material safe to use in the Jail.

2.5.5 The contractor will provide any special carts, trucks or containers utilized in the delivery of food.

2.5.6 The contractor will be responsible for delivering food and beverage directly to the housing floors at the Central Jail. The contractor will also be responsible to remove the unused food and beverage in a timely fashion. The contractor's employees will comply with all lawful requests from the Housing Floors Supervisor in regards to the method(s) of distributing food and the observation of security regulations. No contact between contractor's employees and prisoners except that required accomplish the task of delivering food and beverage will be accepted.

2.5.7 Food and beverage delivered to the South Police Station, 8300 Mykawa will be made to the individual(s) and location(s) as specified by the Commander of the Jail Division.

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2.5.8 The **Food Delivery Schedule and Method** is not flexible. Any pattern of deviance in the serving/delivery schedule will be treated as non-compliance with the terms of the Contract.

2.5.9 **Jail Staff Meals:**

Meals may be ordered in limited number for staff members as a quality control method. The precise menu, quantities and billing price shall apply for staff meals as for prisoner meals. The Jail Division Commander will designate those individuals who are authorized to order staff meals.

2.5.10 **Emergency Call Out Food Service:**

When the Chief of Police or designee requests meals to be prepared for H.P.D. personnel involved in emergency situations, the contractor will respond by preparing such meals within four (4) hours of notification. The same menu, quantity and billing price will be observed as for prisoners' meals. The contractor will be responsible for delivery to the site of the emergency if requested to do so.

2.5.10.1 **Hurricane/Flood Preparation Plan of Action:**

On or before May 15th of each year, the contractor will submit a detailed feeding plan to the Jail Division Commander outlining the contractor plans and abilities to feed prisoners during a Hurricane or similar disaster including the immediate recovery period. The plan should include the following:

2.5.10.1.1 The Hour designated by the contractor that he will ensure food preparation staff will be on site before and return after the Hurricane Hits land or a disaster size flood hits. Regardless of staff availability food products should be on site for jail staff to be able to prepare meals if necessary until contractor staff is available.

2.5.10.1.2 A modified feeding plan for the first 72 hours beginning 12 hours before landfall.

2.5.10.1.3 The second 72 hours, if electricity and gas is available and if gas or electricity is not available.

2.5.10.1.4 The next 96 hours if electricity and gas are not available or the kitchen is not usable for a period of time.

2.5.10.1.5 An itemized list of non perishable food to be brought to the Jails before the hurricane hits in case delivery is impossible for a periods of time.

2.5.10.1.6 An optional food plan and cost for jail employee (high quality meals) during the disaster that can be billed to the contract.

2.5.10.1.7 The Jail Division Commander or his designee has 15 days to review and ask for modifications in the plan. Upon approval the plan will stay in effect for one year.

3.0 SURPLUS COMMODITIES:

3.1 The H.P.D. as Federal and State rules and regulations permit hereby consents to Contractor's use of available U.S. Department of Agriculture Commodities in providing food service to the inmates and staff of the H.P.D. Jails. However, contractor shall assume all costs, complying with the rules and regulations of the U.S. Department of Agriculture and the Texas Department of Human Resources. Specifically, Contractor agrees as follows:

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- 3.1.1 Contractor shall not include surplus commodity in determining the prices offered to the City of Houston Police Department in conjunction with the bid.
- 3.1.2 Any U.S. Department of Agriculture Commodities received by the Contractor on behalf of the City pursuant to this agreement shall inure only to the benefit of the City and shall be utilized by the Contractor only in performance of the contract.

4.0 CONTRACTOR QUALIFICATION:

- 4.1 Contractor shall maintain a safety program, transitional plan and organizational chart during the length of the contract.
- 4.2 The Contractor shall provide on-site employees who are well trained, honest, reliable, and in uniform of a style and color to distinguish them from inmate workers. The Contractor shall provide full-time managers in attendance whenever the facilities are in operation. The Contractor shall demonstrate that they are an equal opportunity employer, having a declared policy of non-discrimination stating that they will take affirmative action to maintain and promote non-discrimination as to race, color, religion, national origin, sex or age in all phases of employment, including the use of facilities, in accordance with the Law pursuant to the Civil Rights Act of 1964 and executive order there under. The Contractor will submit the name, date of birth and Social Security number of all employees who will be entering any H.P.D. facility in the service of the Contract, The H.P.D. reserves the right to refuse entry to any employee whose criminal history poses a potential breach of security
 - 4.2.1 The contractor's employees shall be subject to background checks. The staff of the H.P.D will accomplish checks. The Police Department shall retain the right to deny entry to any staff of the Contractor based on a criminal history or for other reasonable cause as determined by H.P.D.
 - 4.2.2 I.D Badges will be required for all contractors employees with their picture and name printed on them. The contractors' employees will be required to wear said badge at all times.
 - 4.2.3 The Contractor will provide a food delivery "work sheet" form. Each delivery will require that the contractor's representative who delivers or serves the meal along with a representative of the Contract Administrator who accepts the food delivery sign the form in order to verify a correct tray count. The signed original work sheet will be forwarded to the Jail Division Special Project Office. The Contractor's invoice must agree with work sheet cumulative totals in order for the invoice to be vouched. An informal meeting will be held the first working days of each week between the Food Service Manager and a representative of the Contract Administrator in order to reconcile food tray counts prior to billing.

5.0 CONTRACTOR OBLIGATIONS:

- 5.1 The Contractor must be duly licensed under all federal, state, and local applicable laws to perform all work required under the Contract. The Contractor shall be responsible for securing all required permits and shall comply with all federal, state, and local requirements regarding the work to be performed under this Contract.

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- 5.2 Any publicity released by Contractor giving reference to this Contract, whether in the form of press release, brochures, photographic coverage, or verbal announcement, shall be only with the approval of the Chief of Police or designee
- 5.3 The entire food service and delivery areas (including loading dock and garbage disposal containers) will be operated and maintained in a clean and sanitary condition and in complete compliance with all Federal, State and local standards, including but not limited to the regulations promulgated by the City of Houston and enforced by the City of Houston Health and Human Services Department, and the Rules on Food Service Sanitation adopted by the Texas Board of Health on November 30, 1977 and any revisions thereafter. The Contractor shall furnish all labor, supplies, materials, and supervision necessary to keep the areas assigned in a clean, sanitary, and orderly condition at all times and in compliance with the above listed standards.
- 5.3.1 Sanitation will include all silverware, utensils, and equipment as needed to prepare and serve meals.
- 5.3.2 The Contractor shall collect and dispose of all rubbish; garbage, litter or other waste at the designated areas in accordance with established policies of the City of Houston Health Department and the Houston Police Department. The collection container, removal from site and proper disposal of all waste generated from the food preparation process will be the sole responsibility of the contractor.
- 5.4 The Contractor shall maintain an on-site Food Service Manager who is trained, experienced and knowledgeable of food services in a detention facility. The Manager assigned by the contractor will be subject to review by the Chief of Police or staff. Interviews with the proposed Manager may be required. The Contractor's Food Service Manager shall possess a valid Food Service Manager's Certification as required by City of Houston Code of Ordinances, Section 20.53. The Contractor's Food Service Manager must pass a complete background check by the Houston Police Department.
- 5.5 In the event above stated Food Service Manager is absent due to sickness, vacation, or any other reason, Contractor shall furnish an acceptable alternate as a replacement. A resume of the employee or employees who will function in this capacity must be part of the final contingency plan accepted by H.P.D. prior to start up of operations. A 24 hour emergency contact phone number must be supplied by the Contractor.

6.0 UNCOOPERATIVE & DISRUPTIVE EMPLOYEES:

- 6.1 Contractor employees are expected to comply with HPD Security provisions while on HPD property. Employees who display uncooperative or disruptive behavior in their interactions with HPD employees will not be allowed on HPD property. The Contractor will be notified verbally and in writing, if needed, that the employee will not be allowed on HPD property in their capacity as a food service employee and the reasons the action is being taken.

7.0 INVOICING AND PAYMENT

- 7.1 For and in consideration of performance of the services specified under this Contract, the City agrees to pay and the Contractor agrees to accept the fees, specified in Exhibit "H".

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- 7.2 The Contractor shall prepare and forward weekly certified invoices to the City of Houston, Police Department, Budget & Finance, Accounts Payable, 1200 Travis, Houston, Texas 77002. The statements will reflect the preceding week's food services detailing the exact number of meals served on a daily basis as follows:
- 7.2.1. Actual number of meals served;
 - 7.2.2. Cost per meal;
 - 7.2.3 Total cost of meals served.
- 7.3 The Contractor will provide a food delivery "work sheet" form. Each delivery will require that the contractor's representative who delivers or serves the meal along with a representative of the Contract Administrator who accepts the food delivery sign the form in order to verify a correct tray count. The signed original work sheet will be forwarded to the Jail Division Special Project Office. The Contractor's invoice must agree with work sheet cumulative totals in order for the invoice to be vouched. An informal meeting will be held the first working days of each week between the Food Service Manager and a representative of the Contract Administrator in order to reconcile food tray counts prior to billing.
- 7.4 Contractor shall provide all delivery tickets, invoices and order forms.
- 7.5 Payment is due thirty (30) days after the receipt of goods and correct summary invoice for services performed satisfactorily.

8.0 ADDITIONS & DELETIONS:

- 8.1 The City, by written notice from the City Purchasing Agent to the Contractor, at anytime during the term of this contract, may add or delete like services to be performed. Any such written notice shall take effect on the date stated in the notice from the City. Equipment, locations and/or services added will be subject to the contract services and charges or rates as an item already specified in the fee schedule. In the event the additional service is not identical to any item already under contract, the charges therefore will then be the Contractor's normal and customary charges or rates for the equipment, locations and/or services classified in the fee schedule.

9.0 ESTIMATED QUANTITIES NOT GUARANTEED:

- 9.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of services outlined in the scope of work during the term of this contract. The quantities may vary depending upon the actual needs of the user Department. The quantities specified herein are good faith estimates of usage during the term of this contract. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into based on the City purchasing requiring all the quantities specified herein.

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10.0 WARRANTY OF SERVICES:

- 10.1 *Definitions:* "Acceptance" as used in this clause, means the act of an authorized representative of the City by which the City assumes for itself, approval of specific services, as partial or complete performance of the contract.
- 10.2 "Correction" as used in this clause, means the elimination of a defect.
- 10.3 Notwithstanding inspection and acceptance by the City or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The City shall give written notice of any defect or nonconformance to the Contractor within a one-year period from the date of acceptance by the City. This notice shall state either (1) that the Contractor shall correct or re-perform any defective or non-conforming services at no additional cost to the City, or (2) that the City does not require correction or re-performance.
- 10.4 If the Contractor is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise correct or replace with similar services and charge to the Contractor the cost occasioned to the City thereby, or make an equitable adjustment in the contract price.
- 10.5 If the City does not require correction or re-performance, the City shall make an equitable adjustment in the contract price.

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EXHIBIT "B-1"
SAMPLE MENU

BREAKFAST:

Sunday

Fresh Fruit
Grits w/Dairy Blend

Scrambled Eggs, 4 oz.
W/cheese & peppers
Salsa, 2 oz.
Biscuit, 1/54 2 each
Margarine, 2 tsp.
Jelly ½ oz.
Milk 1 cup

Monday

Fresh Fruit
Grits w/Dairy Blend,

Sausage Patties, 1.0 oz.

Scrambled Eggs, 3 oz.
Biscuit, 1/54 2 each
Margarine, 2 tsp.
Jelly ½ oz.
Milk 1 cup

Tuesday

Fresh Fruit
Oatmeal w/Cinnamon,
Sugar & Dairy Blend
Scrambled Eggs, 3 oz.

Coffeecake 1/54 1 each
Biscuit, 1/54 2 each
Margarine, 2 tsp.
Jelly ½ oz.
Milk 1 cup

Wednesday

Fresh Fruit
Grits w/Dairy Blend

Scrambled Eggs, 3 oz.

Turkey Ham, 1 oz.
Biscuit, 1/54 2 each
Margarine, 2 tsp.
Jelly ½ oz.
Milk 1 cup

Thursday

Fresh Fruit
Oatmeal w/Cinnamon,
Sugar & Dairy Blend
Cream breakfast gravy, 4 oz.
(1 oz meat)
Hash Browns, ½ cup
Biscuit, 1/54 2 each
Margarine, 2 tsp.
Jelly ½ oz.
Milk 1 cup

Friday

Fresh Fruit
Coffeecake 1/54 1 each

Boiled Eggs, 2 each

Sausage, 1.0 oz.
Biscuit, 1/54 2 each
Margarine, 2 tsp.
Jelly ½ oz.
Milk 1 cup

Saturday

Fresh Fruit
Grits w/Dairy Blend
Scrambled Eggs, 3 oz.
Sausage, 1.0 oz.
Biscuit, 1/54 2 each
Margarine, 2 tsp.
Jelly ½ oz.
Milk 1 cup

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LUNCH:

Sunday

Chicken Pattie, 1 cup

Cream Gravy, 2 oz.
Rice O'Brien, 1 cup
Glazed Carrots, ½ cup
Coleslaw Vinaigrette ½ cup
White Bread, 2 sl
Margarine 2 tsp.
Iced cake 1/54 1 each
Punch w/ Vit. C 1 cup

Wednesday

Chicken Fried Steak, 3 oz.

Gravy, 2 oz.
Mashed Potatoes, 1 cup
Coleslaw, 1/2 cup
Corn, 1/2 cup
Bread, 2 sl
Iced cake 1/54 1 each
Punch w/ Vit. C 1 cup

Saturday

Spaghetti, 10 oz.
Meat Sauce, 2 oz.
Green Beans, 1/2 cup
Tossed Salad, 1/2 cup
Dressing, ½ oz
Margarine, 2 tsp.
Bread, 2 sl
Brownie, 1/54 1 each
Punch w/ Vit. C 1 cup

Monday

Chili con Carne, 10 oz
(2 oz meat)
Steamed Rice, 1 cup
Green Beans, 1/2 cup
Tossed Salad, 1/2 cup
Dressing, ½ oz
Cornbread, 1/54 1 each
Margarine 2 tsp.
Iced cake 1/54 1 each
Punch w/ Vit. C 1 cup

Thursday

Salisbury Steak, 3 oz.

Gravy, ¼ cup.
Lyonnaise Potatoes, 1 cup
Mixed Vegetables, 1/2 cup
Carrot Salad, 1/2 cup
Wheat Bread, 2 slices
Margarine 2 tsp.
Iced cake 1/54 1 each
Punch w/ Vit. C 1 cup

Tuesday

Turkey Ham, 3 oz.

Pineapple Sauce, 1 oz.
Au Gratin Potatoes, 1 cup
Navy Beans, 1/2 cup
Carrots, ½ cup
Wheat Bread, 2 sl
Margarine 2 tsp.
Iced cake 1/54 1 each
Punch w/ Vit. C 1 cup

Friday

Enchilada Casserole, 10 oz,
w/2 oz. Meat/1 oz of cheese
Spanish Rice, 1 cup
Mustard Greens, 1/2 cup
Tossed Salad, 1/2 cup
Dressing, ½ oz
Cornbread, 1/54 1 each
Margarine 2 tsp.
Iced cake 1/54 1 each
Punch w/ Vit. C 1 cup

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DINNER:

Sunday

Sandwich, 1 each
Cheese, 1 oz.
Turkey Ham, 2 oz.
White Bread, 2 slices
Sandwich Spread, 2 tsp.
Mustard, 1/2 tsp.
Fresh Orange, 1 each
Fruit Punch, 8 oz.
Cake, 1/54 cut w/icing or glaze

Monday

Sandwich, 1 each
Cheese, 1 oz.
Turkey Bologna, 2 oz.
Wheat Bread, 2 slices
Sandwich Spread, 2 tsp.
Mustard, 1/2 tsp.
Cake, 1/54 cut w/icing or glaze
Fruit Punch, 8 oz.

Tuesday

Sandwich, 1 each
Cheese, 1 oz.
Turkey Salami, 2 oz.
White Bread, 2 slices
Sandwich Spread, 2 tsp.
Mustard, 1/2 tsp.
Cookies, 1 each
Fruit Punch, 8 oz.

Wednesday

Sandwich, 1 each
Cheese, 1 oz.
Turkey Bologna, 2 oz.
Wheat Bread, 2 slices
Sandwich Spread, 2 tsp.
Mustard, 2 tsp.
Fresh Orange, 1 each
Fruit Punch, 8 oz.

Thursday

Sandwich, 1 each
Cheese, 1 oz.
Sliced Turkey, 2 oz.
White Bread, 2 slices
Sandwich Spread, 2 tsp.
Mustard, 1/2 tsp.
Cake, 1/54 cut w/icing or glaze
Fruit Punch, 8 oz.

Friday

Sandwich, 1 each
Cheese, 1 oz.
Turkey Bologna, 2 oz.
Wheat Bread, 2 slices
Sandwich Spread, 2 tsp.
Mustard, 1/2 tsp.
Cake, 1/54 cut w/icing or glaze
Fruit Punch, 8 oz.

Saturday

Sandwich, 1 each
Cheese, 1 oz.
Turkey Salami, 2 oz.
White Bread, 2 slices
Sandwich Spread, 2 tsp.
Mustard, 1/2 tsp.
Cookies, 1 each
Fruit Punch, 8 oz.

NOTE: Fruits shall be substituted upon request from the contract administrator of Jail Division for alternate product that meets America Correctional Association dietary standard.

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Beef	Roasts and Steaks	Choice
	Stew Meat and Ground	Good
	Portion Control Item	Best Quality
Pork	Roast Cured Ham	Grade A
	Fresh Pork Loins	Grade A
	Fresh Pork Chops	Grade A
Lamb	Roast (Leg)	Choice
	Chops - Rack and Loin	Choice
	Stew Meat	Best Quality
Veal	Roast (Leg)	Choice
	Cutlets	Choice
	Grills	Choice
	Stew Meat	Best Quality
Poultry		Grade A
Smoked Meats		Best Quality
Seafood		Best Quality
Dairy Products		Grade A
Cheese		Grade A - Natural Processed
Fruit Punch		National Brands
Other Beverages		National Brands
Frozen Fruits and Vegetables		Grade A
Canned Fruits and Vegetables		Choice
		Top Grade
		Standard
Fresh Fruits and Vegetables		US #1/Grade A

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EXHIBIT "B-2"

JAIL CLINIC MEALS AND OFFSITE TRUSTY WORKERS:

Special meals for prisoners being treated in the Jail Clinic will be prepared and delivered twice a day to the Central and Southeast Jails. These meals will be sack lunch type meals. Approximately 40 and no more than 80 clinic and medical condition meals per day will be ordered.

Offsite Trusty Worker meals will be delivered and stored in a location determined by the Jail Captain. Approximately 25 meals per day will be ordered.

Clinic meals consist of:

Sliced Turkey or Turkey Ham	2 oz.
Cheese	1 oz.
Bread (white or wheat)	4 slices
Mustard PKT	2 each
Fresh vegetables	1 SVG
Fresh Fruit	1 each
Milk (Preferable 2% or Skim)	1 C
Or Fruit Punch	8 oz.

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EXHIBIT "B-3"

FOOD DELIVERY SCHEDULE AND METHOD

Prisoner meals prepared at the Central kitchen (61 Riesner) shall be delivered in closed food containers to the South Jail, and Central Jail as per the following schedule.

BREAKFAST

5th Floor	5:30 a.m. to 5:45 a.m.
6th Floor	5:45 a.m. to 6:00 a.m.
South	5:15 a.m. to 5:30 a.m.

LUNCH

5th Floor	11:30 a.m. to 11:45 a.m.
6th Floor	11:45 a.m. to 12 noon
South	11:30 a.m. to 12 noon

DINNER

5th Floor	4:30 p.m. to 4:45 p.m.
6th Floor	4:45 p.m. to 5:00 p.m.
South	3:45 p.m. to 4:00 p.m.

Contractor staff will deliver food directly to the housing floors at Central.

Contractor will provide all containers, carts, and vehicles required to transport food and beverages from the food preparation area to final delivery. The containers, carts and vehicles must be designed to hold food beverage temperatures at required levels for at least one hour. All transport equipment must meet all Houston Health Department guidelines and requirements.

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EXHIBIT "B-4"

EQUIPMENT LIST

- | | | |
|-----|-------------------------|--|
| (4) | DOUBLE DECK OVENS | Gas Convector Oven-Force Air
#1 Model #901-22 HPD 002046
#2 Model #901-22 Serial#1014760
#3 DCS HPD#284288
#4 DCS HPD#284287 |
| (4) | GARLAND | Gas Range-6 burner with Oven
HPD #002067 |
| (1) | HOBART | Meat Slicer Model #24145
Serial #56832-0001 COH#G034700
HPD#284290 |
| (1) | UNIVEX | Meat Slicer model#8512
Serial#S021C10 HPD#284291 |
| (1) | VENT HOOD | Stainless Steel – 12 filters
12 Ft. x 5 Ft
HPD#024076 |
| (1) | PANTRIES | Upright-Stainless Steel 4 shelves
3 Ft. x 5 Ft. x 1 Ft. HPD#002052 |
| (1) | WORK BENCH | Stainless Steel, 7 Ft. x 2.5 Ft. with
Over-head pan and pot rack, 1 drawer |
| (1) | TABLE | Wooden Top, 6 Ft. x 2.5 Ft. |
| (1) | CAN OPENER | Edlund, heavy duty, #10 cans, table
Model |
| (2) | DEEP SINKS | Stainless Steel, COH# G034696 |
| (6) | STORAGE BINS
PLASTIC | 100 lb. Containers, 4 wheel with lid |
| (2) | CONTAINERS | 8 Ft. wide, 6 Ft. Long, 8 Ft. High |
| (1) | FREEZER | 8 Ft. Wide, 7 Ft. Long, 8 Ft. High |
| (1) | WALK-IN COOLER | 6 Ft. Wide, 6 Ft. Long, 8 Ft. High |
| (1) | WALK-IN COOLER | 10 Ft. 6 inches Wide, 7 Ft. Long, 6 Ft.
7 inches High |

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EXHIBIT "B-4"

EQUIPMENT LIST

- | | | |
|-----|-------------------------|--|
| (4) | DOUBLE DECK OVENS | Gas Convector Oven-Force Air
#1 Model #901-22 HPD 002046
#2 Model #901-22 Serial#1014760
#3 DCS HPD#284288
#4 DCS HPD#284287 |
| (4) | GARLAND | Gas Range-6 burner with Oven
HPD #002067 |
| (1) | HOBART | Meat Slicer Model #24145
Serial #56832-0001 COH#G034700
HPD#284290 |
| (1) | UNIVEX | Meat Slicer model#8512
Serial#S021C10 HPD#284291 |
| (1) | VENT HOOD | Stainless Steel – 12 filters
12 Ft. x 5 Ft
HPD#024076 |
| (1) | PANTRIES | Upright-Stainless Steel 4 shelves
3 Ft. x 5 Ft. x 1 Ft. HPD#002052 |
| (1) | WORK BENCH | Stainless Steel, 7 Ft. x 2.5 Ft. with
Over-head pan and pot rack, 1 drawer |
| (1) | TABLE | Wooden Top, 6 Ft. x 2.5 Ft. |
| (1) | CAN OPENER | Edlund, heavy duty, #10 cans, table
Model |
| (2) | DEEP SINKS | Stainless Steel, COH# G034696 |
| (6) | STORAGE BINS
PLASTIC | 100 lb. Containers, 4 wheel with lid |
| (2) | CONTAINERS | 8 Ft. wide, 6 Ft. Long, 8 Ft. High |
| (1) | FREEZER | 8 Ft. Wide, 7 Ft. Long, 8 Ft. High |
| (1) | WALK-IN COOLER | 6 Ft. Wide, 6 Ft. Long, 8 Ft. High |
| (1) | WALK-IN COOLER | 10 Ft. 6 inches Wide, 7 Ft. Long, 6 Ft.
7 inches High |

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
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THE STATE OF TEXAS

BID # L23691

COUNTY OF HARRIS

ORDINANCE # _____

CONTRACT # _____

I. PARTIES

1.0 ADDRESS:

THIS AGREEMENT FOR JAIL FOODSERVICES ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a Texas Home-Rule City and **CONTRACTOR NAME** ("Contractor or Vendor"), a corporation doing business in Texas.

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

City

City Purchasing Agent for Director(s)
of Houston Police Department
City of Houston
P.O. Box 1562
Houston, Texas 77251

Contractor

Phone: _____
Fax: _____

The Parties agree as follows:

2.0 TABLE OF CONTENTS:

2.1 This Agreement consists of the following sections:

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EXHIBITS

- A. DEFINITIONS
- *B-1 SCOPE OF SERVICES
- *B-2 JAIL CLINIC MEALS AND OFFSITE TRUSTY WORKERS
- *B-3 FOOD DELIVERY SCHEDULED AND METHOD
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- *D. MWBE SUBCONTRACT TERMS
- *E. DRUG POLICY COMPLIANCE AGREEMENT
- F. CERTIFICATION OF NO SAFETY IMPACT POSITIONS
- *G. DRUG POLICY COMPLIANCE DECLARATION
- *H FEES AND COSTS
- *I CITY'S CONTRACTORS PAY OR PLAY PROGRAM
- *J PERFORMANCE BOND

*NOTE: These Exhibits shall be inserted into the Contract agreement at the time of Contract execution.

3.0 PARTS INCORPORATED:

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

4.0 CONTROLLING PARTS:

4.1 If a conflict among the sections or exhibits arises the Exhibits control over the Sections.

5.0 DEFINITIONS:

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

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6.0 SIGNATURES:

6.1 The Parties have executed this Agreement in multiple copies, each of which is an original.

ATTEST/SEAL (if a corporation):

WITNESS (if not a corporation):

By: _____

By: _____

Name:

Name:

Title:

Title:

Federal Tax ID Number: _____

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

City Purchasing Agent

City Controller

DATE COUNTERSIGNED:

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

Date

Legal Assistant

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
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II. DUTIES OF CONTRACTOR

1.0 SCOPE OF SERVICES:

1.1 In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, equipment, transportation and supervision necessary to perform the services described in Exhibits "B", "B-1", "B-2", "B-3", and "B4".

2.0 INDEMNITY AND RELEASE:

2.1 RELEASE

PRIME CONTRACTOR/SUPPLIER 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.

2.2 INDEMNIFICATION:

PRIME CONTRACTOR/SUPPLIER 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, ATTORNEY'S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

2.2.1 PRIME CONTRACTOR/SUPPLIERS AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 2.1-2.3, "PRIME CONTRACTOR/SUPPLIER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

2.2.2 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER PRIME CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT; AND

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

2.2.4 PRIME CONTRACTOR/SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. PRIME CONTRACTOR/SUPPLIER'S INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE. PRIME CONTRACTOR/SUPPLIER SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

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2.3 INDEMNIFICATION:

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

3.0 INDEMNIFICATION PROCEDURES:

3.1 Notice of Claims. If the City or Prime Contractor/Supplier 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 10 days. The notice must include the following:

3.1.1 a description of the indemnification event in reasonable detail,

3.1.2 the basis on which indemnification may be due, and

3.1.3 the anticipated amount of the indemnified loss.

3.2 This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Prime Contractor/Supplier is prejudiced, suffers loss, or incurs expense because of the delay.

3.3 Defense of Claims

3.3.1 Assumption of Defense. Prime Contractor/Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Prime Contractor/Supplier shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Prime Contractor/Supplier must advise the City as to whether or not it will defend the claim. If Prime Contractor/Supplier does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

3.3.2 Continued Participation. If Prime Contractor/Supplier 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. Prime Contractor/Supplier may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Prime Contractor/Supplier does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

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4.0 INSURANCE:

4.1 Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall 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 edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

4.1.1 Commercial General Liability insurance including Contractual Liability insurance:
\$500,000 per occurrence; \$1,000,000 aggregate

4.1.2 Workers' Compensation including Broad Form All States endorsement:
Statutory amount

4.1.3 Automobile Liability insurance
\$1,000,000 combined single limit per occurrence
Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period unless otherwise indicated.

4.1.4 Employer's Liability
Bodily injury by accident \$100,000 (each accident)
Bodily injury by disease \$100,000 (policy limit)
Bodily injury by disease \$100,000 (each employee)

4.2 All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, Contractor shall give written notice to the Director if any of its insurance policies are cancelled, materially changed or non-renewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:

4.2.1 immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or

4.2.2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

5.0 WARRANTIES:

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

5.2 With respect to any parts and goods furnished by it, Contractor warrants:
5.2.1 that all items are free of defects in title, material, and workmanship,

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5.2.2 that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,

5.2.3 that each replacement item is new in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and

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

6.0 LICENSES AND PERMITS:

6.1 Contractor shall obtain and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation.

7.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE:

7.1 Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C."

8.0 MWBE COMPLIANCE:

8.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 12% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them.

8.2 Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration in Houston, Texas if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "D." If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

9.0 DRUG ABUSE DETECTION AND DETERRENCE:

9.1 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.

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

9.2.1 a copy of its drug-free workplace policy,

9.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E," together with a written designation of all safety impact positions and,

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9.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F."

9.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G." 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.

9.4 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

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

10.0 ENVIRONMENTAL LAWS:

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

10.2 Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Regulations. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

11.0 CONTRACTOR'S PERFORMANCE:

11.1 Contractor shall make citizen satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Contractor is not interacting in a positive and polite manner with citizens, he or she shall direct Contractor to take all remedial steps to conform to these standards.

12.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS:

12.1 Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees.

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- 12.2 Failure of Contractor to pay its employees as required by law shall constitute a default under this contract for which the Contractor and its surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.
- 12.3 Contractor shall defend and indemnify the City from any claims or liability arising out of Contractor's failure to pay its subcontractors as required by law. Contractor shall submit disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

13.0 CONTRACTOR PAY OR PLAY PROGRAM:

- 13.1 The requirement and terms of the City of Houston Pay or Play Policy, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement. Exhibit "I".
- 13.2 The Pay or Play Program for various departments will be administered by the City of Houston Affirmative Action Division's designee and for a Department specific contract; the Department's designated contract administrator will administer the Pay or Play Program.

III. DUTIES OF CITY

1.0 PAYMENT TERMS:

- 1.1 The City shall pay and Contractor shall accept fees at the unit prices provided in Exhibit H for all services rendered and the Deliverables furnished by Contractor. The fees must only be paid from Allocated Funds, as provided below.
- 1.2 Any quantities of services or Deliverables shown in any part of this contract or its exhibits are estimated only and are not any guarantee that the City will not purchase more or less of those services or Deliverables. The City will pay only for the services or Deliverables actually ordered and only at the unit prices set out.

2.0 TAXES:

- 2.1 The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

3.0 METHOD OF PAYMENT:

- 3.1 The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director, showing the specific tasks completed in the preceding month and the corresponding prices. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS:

- 4.1 If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and

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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.

5.0 LIMIT OF APPROPRIATION:

- 5.1 The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.
- 5.2 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 (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:
- 5.3 The City makes a Supplemental Allocation by issuing 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.

- 5.4 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.

6.0 CHANGES:

- 6.1 At any time during the Agreement Term, the City Purchasing Agent or Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.
- 6.2 The City Purchasing Agent or Director will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of Notice]

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SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:
[Signature of City Purchasing Agent or Director]

- 6.3 The City Purchasing Agent or Director may issue more than one Change Order, subject to the following limitations:
- 6.3.1 Council expressly authorizes the City Purchasing Agent or Director to approve a Change Order of up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.
 - 6.3.2 If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
 - 6.3.3 The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- 6.4 Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The City Purchasing Agent's or Director's decision regarding a time extension is final.
- 6.5 A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.
- 6.6 Change Orders are subject to the Allocated Funds provisions of this Agreement.

IV. TERM AND TERMINATION

1.0 CONTRACT TERM:

- 1.1 This Agreement is effective on the Countersignature Date and expires three (3) years after the date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement.

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2.0 NOTICE TO PROCEED:

2.1 Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the City Purchasing Agent.

3.0 RENEWALS:

3.1 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive one-year terms on the same terms and conditions. If the Director of the City Department elects not to renew this Agreement, the City Purchasing shall notify Contractor in writing of non-renewal at least 30 days before the expiration of the then-current term.

4.0 TIME EXTENSIONS:

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

5.0 TERMINATION FOR CONVENIENCE BY THE CITY:

5.1 The City Purchasing Agent or Director 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.

5.2 On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section III unless the fees exceed the allocated funds remaining under this Agreement.

5.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

6.0 TERMINATION FOR CAUSE BY CITY:

6.1 If Contractor defaults under this Agreement, the City Purchasing Agent or Director 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:

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- 6.1.1 Contractor fails to perform any of its duties under this Agreement;
 - 6.1.2 Contractor becomes insolvent;
 - 6.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors;
or
 - 6.1.4 a receiver or trustee is appointed for Contractor.
- 6.2 If a default occurs, the City Purchasing Agent or Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent or Director at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's or Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the City Purchasing Agent or Director may terminate this Agreement on the termination date, at no further obligation of the City.
- 6.3 To effect final termination, the City Purchasing Agent or Director 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.

7.0 TERMINATION FOR CAUSE BY CONTRACTOR:

- 7.1 Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date.
- 7.2 The date must be at least 30 days after the Director receives notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS:

- 8.1 Upon expiration, or termination of this Agreement, Contractor is permitted ten (10) days within which to remove contractor-owned material and equipment from the City's premises. The City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

V. MISCELLANEOUS

1.0 INDEPENDENT CONTRACTOR:

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

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2.0 FORCE MAJEURE:

- 2.1 Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
- 2.2 This relief is not applicable unless the affected party does the following:
 - 2.2.1 uses due diligence to remove the Force Majeure as quickly as possible; and
 - 2.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.
- 2.3 The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.
- 2.4 If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director may terminate this Agreement by giving 30 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 AT THE TIME OF THE TERMINATION.**

3.0 SEVERABILITY:

- 3.1 If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

4.0 ENTIRE AGREEMENT:

- 4.1 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.

5.0 WRITTEN AMENDMENT:

- 5.1 Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

6.0 APPLICABLE LAWS:

- 6.1 This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.
- 6.2 Venue for any litigation relating to this Agreement is Harris County, Texas.

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7.0 NOTICES:

7.1 All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, 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.

8.0 NON-WAIVER:

8.1 If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

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

9.0 INSPECTIONS AND AUDITS:

9.1 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 3 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

10.0 ENFORCEMENT:

10.1 The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

11.0 AMBIGUITIES:

11.1 If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

12.0 SURVIVAL:

12.1 Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

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13.0 PARTIES IN INTEREST:

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

14.0 SUCCESSORS AND ASSIGNS:

14.1 This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

15.0 BUSINESS STRUCTURE AND ASSIGNMENTS:

15.1 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 or Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest under Section 9.406 (c) 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.

15.2 Contractor shall not delegate any portion of its performance under this Agreement without the City Purchasing Agent's or Director's prior written consent.

16.0 REMEDIES CUMULATIVE:

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

17.0 CONTRACTOR DEBT:

17.1 If Contractor, at any time during the term of this agreement, incurs a debt, as the word is defined in Section 15-122 of the Houston City Code of Ordinances, it shall immediately notify the City Controller in writing. If the City Controller becomes aware that Contractor has incurred a debt, 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.

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18.0 PERFORMANCE BOND:

- 18.1 The Contractor shall furnish and maintain a performance bond in the amount of **100% of the total contract cost, renewable annually**, which will be for a period not to exceed one year. If the City exercises its option to extend the agreement beyond the initial term of one year and the Contractor mutually agrees, the Contractor shall furnish a performance bond for each renewal year. However, the surety providing the performance bond for the initial term of the agreement shall be under no obligation to provide the performance bond for any renewal year. The bond shall be conditioned upon the Contractor's full and timely performance of this agreement and must be issued by a corporate surety authorized to write surety bonds in the State of Texas and in the form set out in Exhibit "J".
- 18.2 If the City exercises any option years, Contractor shall maintain a Performance Bond in the amount equal to 100% of the contract amount for the option year, as determined by the City Purchasing Agent or Director. The bond must be in substantially the form attached as Exhibit "J" and issued by a corporate surety authorized and admitted to write surety bonds in Texas. If the amount of the bond exceeds \$100,000, the surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of \$100,000 by a reinsurer listed on the U.S. Treasury list.
- 18.3 The Contractor must deliver the Performance Bond or Clean Irrevocable Letter of Credit to the City Purchasing Agent of the City on or before the tenth (10th) day following the day this Bidder receives notification from the City of a possible award.

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EXHIBIT "A"
DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Agreement" means this contract between the Parties, including all exhibits, change orders, and any written amendments authorized by City Council and Contractor.

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

"City Purchasing Agent" is defined as the person or duly authorized successor, authorized in writing to act for the City. The term includes, except as otherwise provided in this Contract, the authorized representative of the City Purchasing Agent acting within the limits of delegated authority.

"Commission" means the price paid per meal to the City by the Contractor in consideration for Contractor's use of the City's Jail system Kitchen.

"Contractor Administrator" means the representative of the Department who is responsible for the administration for the Contract.

"Contract Award Notice" means the official notification substantiated by the Notice to Proceed issued by the City Purchasing Agent to the Contractor.

"Contract Charges" means charges that accrue during a given month as defined in Article III.

"Contract Term" is defined in Article IV.

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

"Countersignature Date" means the date this agreement is countersigned by the City Controller.

"Director" mean the Directors/Chiefs of each of the Departments or the City Purchasing Agent for the City, or the person he or she designates.

"Effective Date" is defined as date contract is countersigned by the City Controller.

"Governing Body" means the Mayor and City Council of the City of Houston.

"Hazardous Materials" is defined in Article II (Environmental Laws).

"Notice to Proceed" means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance.

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

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S11-L23691

EXHIBIT "B"
SCOPE OF WORK

(Will Be Inserted In Original Contract)

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S11-L23691

EXHIBIT "C"
EQUAL EMPLOYMENT OPPORTUNITY

(Will Be Inserted In Original Contract)

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S11-L23691

EXHIBIT "D"
MWBE REQUIREMENTS

(Will Be Inserted In Original Contract)

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S11-L23691

EXHIBIT "E"
DRUG POLICY COMPLIANCE AGREEMENT

(Will Be Inserted In Original Contract)

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S11-L23691

EXHIBIT "F"
CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT

(Will Be Inserted In Original Contract)

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S11-L23691

EXHIBIT "G"
DRUG POLICY COMPLIANCE DECLARATION

(Will Be Inserted In Original Contract)

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S11-L23691

EXHIBIT "H"
FEES AND COSTS

(Will Be Inserted In Original Contract)

GENERAL TERMS & CONDITIONS/SPECIMEN CONTRACT
SOLICITATION NO.: S11-L23691

EXHIBIT "I"
PAY OR PLAY PROGRAM

(Will Be Inserted In Original Contract)

RESPONSIVENESS & RESPONSIBLNESS EVALUATION ASSESSMENT
SOLICITATION NO.: S11-L23691

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

1.0 EXPERTISE/EXPERIENCE/QUALIFICATION STATEMENT:

- 1.1 Provide a brief statement describing the Offeror's background information, history, resources and/or track record. Please limit to three (3) pages.
- 1.2 Provide an organizational chart of proposed team or staff for this project.
- 1.3 Provide resumes of key personnel whom will be responsible for the delivery of the services/project.
- 1.4 Provide copies of key personnel certifications and/or licenses.

2.0 FINANCIAL STATEMENTS:

- 2.1 Submit your company's audited annual financial statements, in accordance with and as defined in the Financial Accounting Standards Board (FASB) regulation(s) for the past two years. In addition, include your and Dunn & Bradstreet Report or Federal Tax Forms Filed to the Internal Revenue Service (IRS) for the past two years.

3.0 SITE INSPECTION:

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

4.0 QUALITY AND WORKMANSHIP:

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

EVALUATION AND SELECTION PROCESS
SOLICITATION NO.: S11-L23691

1.0 EVALUATION SUMMARY:

1.1 An evaluation committee will develop a short list of Offeror(s) based upon the initial review of each Bid received. The short listed Offeror(s) may be scheduled for a structured oral presentation, demonstration, site visit and/or interview. Such presentations will be at no cost to the City of Houston. At the end of the oral presentation, demonstration and/or interview, the evaluation of the short listed Offeror(s) will be completed. However, the evaluation committee reserves the right to issue letter(s) of clarity when deemed necessary to any or all Offeror(s). The oral presentations, demonstrations, site visits and/or interview may be recorded and/or videotaped.

2.0 SELECTION PROCESS:

2.1 The award of this Contract(s) will be made to the respondent(s) offering the response which best meets the needs of the City. The City may make investigations, as it deems necessary, to determine the capabilities of the Offeror(s) to create, modify and implement the required application modules. The Offeror(s) shall furnish to the City such data as the City may request for this purpose. The City reserves the right to reject any offer if the evidence submitted by or the investigation of the Offeror(s) fails to satisfy the City or the Offeror(s) is deemed unqualified to provide the services contemplated. Each Offeror will be evaluated on the basis of the following evaluation criteria that are listed in order of importance below:

2.1.1	Cost	40%
2.1.2	Expertise / Experience / Qualifications	30%
2.1.3	Financial Strength of Offeror	15%
2.1.5	M/WBE Participation	10%
2.1.4	Conformance to Requirements	5%

EXHIBIT I – CONTRACTOR’S QUESTIONNAIRE
SOLICITATION NO.: S11-L23691

In order to receive bid award consideration, the bidder must be able to demonstrate that they are currently providing or have had at least one contract, as a prime contractor, for the required Services that is similar in size and scope to this requirements. Bidder must have references documenting that it has performed the required services. The reference(s) should be included in the space provided below. Please attach another piece of paper if necessary. **Bidder’s capability and experience shall be evaluated and a factor in determining the Contractor’s responsibility.**

LIST OF PREVIOUS CUSTOMERS

1. Name: _____ Phone No.: _____
Address: _____
Contract Award Date: _____ Contract Completion Date: _____
Contract Name/Title: _____
Project Description: _____

2. Name: _____ Phone No.: _____
Address: _____
Contract Award Date: _____ Contract Completion Date: _____
Contract Name/Title: _____
Project Description: _____

3. Name: _____ Phone No.: _____
Address: _____
Contract Award Date: _____ Contract Completion Date: _____
Contract Name/Title: _____
Project Description: _____

EXHIBIT II – ATTACHMENT “A”: SCHEDULE OF M/WBE PARTICIPATION
SOLICITATION NO.: S11-L23691

DATE OF REPORT: _____

BID NO.: _____

FORMAL BID TITLE: _____

NAME OF MINORITY/WOMEN SUBCONTRACTOR	AFFIRMATIVE ACTION DIVISION CERTIFICATION NO.	STREET ADDRESS AND CITY, STATE, ZIP CODE	TELEPHONE NO.	SCOPE OF WORK	AGREE PRICE
TOTAL.....					\$ _____
M/WBE PARTICIPATION AMOUNT.....					\$ _____ %
TOTAL BID AMOUNT.....					\$ _____

EXHIBIT II – ATTACHMENT “A” (CONTINUED): SCHEDULE OF M/WBE PARTICIPATION
SOLICITATION NO.: S11-L23691

IF YOU HAVE USED YOUR BEST EFFORTS TO CARRY OUT THE CITY'S M/WBE POLICY BY SEEKING SUBCONTRACTS AND SUPPLY AGREEMENTS WITH MINORITY AND WOMEN BUSINESS ENTERPRISES, YET FAILED TO MEET THE STATED PERCENTAGE GOAL OF THIS BID DOCUMENT, LIST BELOW YOUR GOOD FAITH EFFORTS FOR COMPLIANCE (DEFINITION OF REQUIREMENTS CAN BE OBTAINED THROUGH AFFIRMATIVE ACTION AT (713) 837-9000).

THE UNDERSIGNED WILL ENTER INTO A FORMAL AGREEMENT WITH THE MINORITY AND/OR WOMEN SUBCONTRACTORS AND SUPPLIERS LISTED IN THIS SCHEDULE CONDITIONED UPON AWARD OF A CONTRACT FROM THE CITY.

NOTE:
ALL FIRMS LISTED ABOVE MUST BE CERTIFIED (OR ELIGIBLE FOR CERTIFICATION) BY THE AFFIRMATIVE ACTION DIVISION. THIS SCHEDULE OF M/WBE PARTICIPATION SHOULD BE RETURNED, IN DUPLICATE, WITH THE BID FORM.

BIDDER COMPANY NAME

SIGNATURE OF AUTHORIZED OFFICER OR AGENT OF BIDDER

NAME (TYPE OR PRINT)

TITLE

**EXHIBIT II – ATTACHMENT “B”: M/WBE LETTER OF INTENT
SOLICITATION NO.: S11-L23691**

THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT.

TO: **City of Houston**
City Purchasing Agent

MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) AND SUPPLIER

LETTER OF INTENT

Contract Bid Number: _____

Bid Title: _____

Bid Amount: _____

M/WBE Participation Amount: \$_____ **M/WBE GOAL** _____%

1. _____ agrees to perform work/supply goods and/or
(Name of Minority/Women Business Enterprise)
Services in connection with the above-named contract and _____ as:
Name of Prime Contractor

- (a) _____ An Individual
- (b) _____ A Partnership
- (c) _____ A Corporation
- (d) _____ A Joint Venture

2. _____ status is confirmed by M/WBE Directory made
(Name of Minority/Women Business Enterprise)
available through the City of Houston Affirmative Action Division. Certificate No.: _____.

3. _____ and _____
(Name of Prime Contractor) **(Minority/Women Business Enterprise)**
intend to work on the above-named contract in accordance with the M/WBE Participation Section of the City of Houston Contract Bid Provision.

The Terms & Conditions of Attachment “C” attached hereto are incorporated into this Letter of Intent for all purposes.

(Signed -- Prime Contractor)

(Signed -- Minority/Women Business Enterprise)

(Title)

(Title)

(Date)

(Date)

PERFORMANCE BOND

THE STATE OF TEXAS §

§ **KNOW ALL MEN BY THESE PRESENTS:**

THE COUNTY OF HARRIS §

THAT WE, _____, as Principal, hereinafter called "Contractor" and the other subscriber hereto _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston, a municipal corporation, in the sum of _____ Dollars (\$ _____) for the payment of which sum, well and truly to be made to the City of Houston and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of Houston for _____

_____ all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall faithfully and strictly perform Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract Documents referred to therein and shall comply strictly with each and every provision of Contract and with this bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect.

It is further understood and agreed that the Surety does hereby relieve the City of Houston or its representatives from the exercise of any diligence whatever in securing compliance on the part of the Contractor with the terms of the Contract, and the Surety hereby waives any notice to it of any default, or delay by the Contractor in the performance of his Contract and agrees that it, the Surety, shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Contractor in all matters pertaining to the Contract. The Surety understands and agrees that the provision in the Contract that the City of Houston shall retain certain amounts due the Contractor until the expiration of thirty days from the acceptance of the Work is intended for the City's benefit, and the City of Houston shall have the right to pay or withhold such retained amounts or any other amount owing under the Contract without changing or affecting the liability of the Surety hereon in any degree.

It is further expressly agreed by Surety that the City of Houston or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Contract Documents and in the Work to be done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this bond and undertaking or release the Surety therefrom.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and save harmless the City of Houston from any liability, loss, cost, expense, or damage arising out of or in connection with the work done by the Contractor under the Contract.

If the Contract Price is greater than \$1.2 million and in the event that the City of Houston shall bring any suit or other proceeding at law on the Contract or this bond or both, the Contractor and Surety agree to pay to the City the sum of 10 percent of whatever amount may be recovered by the City in suit or legal proceeding, which sum of 10 percent is agreed by all parties to be indemnity to the City for the expense of or time consumed by its City Attorney, his assistants, and office force, and other cost and damage occasioned to the City. This amount of 10 percent is fixed and liquidated by the parties, it being agreed by them that the exact damage to the City would be difficult to ascertain.

This bond and all obligations created hereunder shall be performable in Harris County, Texas. This bond is given in compliance with the provisions of Article 5160, Revised Civil Statutes of Texas, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statute.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation)

WITNESS: (if not a corporation)

(Name of Contractor)

By: _____
Name:
Title:

By: _____
Name:
Title:
Date:

ATTEST/WITNESS: (SEAL)

(Full Name of Surety)

By: _____
Name:
Title:
Date:

(Address of Surety for Notice)

By: _____
Name:
Title:
Date:

This Ordinance and/or Contract have been reviewed as to form by the undersigned legal assistant and has been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

Date

Paralegal