

**COOPERATIVE PURCHASING PROGRAM AGREEMENT
BY AND BETWEEN THE CITY OF DALLAS AND
THE CITY OF HOUSTON, TEXAS**

072020
08-0704

THIS COOPERATIVE PURCHASING PROGRAM AGREEMENT (the "Agreement") is made and entered into by and between the **CITY OF DALLAS**, a home-rule city and municipal corporation of the State of Texas, located in Dallas County, Texas (hereinafter referred to as "Dallas"), and the **CITY OF HOUSTON, TEXAS**, a home-rule city and municipal corporation of the State of Texas, located in Harris County, Texas (hereinafter referred to as "Houston").

WHEREAS, Section 271.102 of the Texas Local Government Code enables local governments to participate in cooperative purchasing programs with other local governments to purchase goods or services under contracts currently existing between another local government and a vendor, and such process satisfies the state law competitive bid requirements; and

WHEREAS, Dallas currently has contracts with various vendors for goods and services, and Houston has a need for same goods and services; and

WHEREAS, Houston desires to utilize contracts made between Dallas and its vendors to purchase goods and services under the same terms and conditions therein; and

WHEREAS, for the reason stated above, Houston now desires to enter into a Cooperative Purchasing Agreement with Dallas pursuant to Section 271.101, et seq. of the Texas Local Government Code; and

WHEREAS, Houston agrees to prepare, execute, and administer its own Purchase Order with vendor, if Houston desires to have a formal contract with vendor, and the City of Dallas shall not be a party to the Houston agreement with the vendor.

NOW, THEREFORE, Dallas and Houston, for the mutual consideration hereinafter stated, agree as follows:

I.
TERM

This Agreement shall be effective upon the date of full execution by both Houston and Dallas. This Agreement shall continue in effect year-to-year thereafter and shall be co-terminous with the respective contract between Dallas and the selected vendor, unless one of the parties to this Agreement indicates in writing to the other party its intent to terminate this Agreement pursuant to Section III herein before the end of the contract year in question.

II.
DUTIES OF HOUSTON AND DALLAS

Houston agrees to participate in the Dallas cooperative purchasing program, and agrees that it will buy goods and services from vendors who have entered into a contract with Dallas, under the same terms and conditions therein. Houston agrees to prepare, execute, and administer a Purchase Order to vendor in order to purchase items under this program, and the City of Dallas shall not be a party to the Houston agreement with the vendor. Houston will be responsible for the vendor's compliance with provisions relating to the quality of items and terms of delivery, warranty enforcement, and any other terms or conditions of the respective agreement between Dallas and the vendor. Houston agrees to designate a person to act under the direction of, and on behalf of Houston in all matters relating to this Agreement. Dallas shall have no obligations for payment to vendors for any services or goods purchased pursuant to this Agreement and incurred by any party other than Dallas. Any payments owed the vendor for services or goods purchased pursuant to this Agreement shall be paid directly by Houston to the vendor.

III.
HOUSTON'S LIMIT OF APPROPRIATION.

Houston has allocated no money for this Agreement. Funds will only be allocated when Houston issues a Purchase Order. In order to comply with Article II, Sections 19 and 19a of Houston's Charter and Article XI, Section 5 of the Texas Constitution, funds related to Houston's payment for the purchase of goods or services in excess of \$50,000.00 under this Agreement must be appropriated and approved by Houston City Council. Purchase orders must be combined if they contain goods or services of the same type, make and model.

IV.
TERMINATION

This Agreement may be terminated at any time, with or without cause, by either party giving thirty (30) days advance written notice to the other party.

V.
NOTICE

Notice as required by this Agreement shall be in writing delivered to the parties by 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 at the addresses listed below. The notice must be addressed to the party to whom the notice is given at its address set out below 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. Each party shall notify the other in writing within ten (10) days of any change in the information listed in this paragraph.

DALLAS

Ade Williams, Purchasing Agent
Assistant Director
Business Development and Procurement Services
City of Dallas
1500 Marilla - Room 3/f/South
Dallas, Texas 75201
Telephone: (214) 670-3326
Facsimile: (214) 670-4793

HOUSTON

Calvin D. Wells
City Purchasing Agent
CITY OF HOUSTON
P.O. Box 1562
Houston, Texas 77251-1562
Telephone: (713) 247-1684
Facsimile: (713) 247-1811

VI.
HOLD HARMLESS; MUTUAL RESPONSIBILITY

Each party does hereby agree, to the extent permitted by the laws and the Constitution of the State of Texas, to waive all claims against, release, and hold harmless the other party and its respective officials, officers, agents, employees, in both their public and private capacities, from

any and all liability, claims, suits, demands, losses, damages, attorneys fees, including all expenses of litigation or settlement, or causes of action which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement.

Houston and Dallas agree and acknowledge that this Agreement does not create a joint venture, partnership, or joint enterprise, and that each party is not an agent of the other entity and that each party is responsible in accordance with the laws of the State of Texas for its own negligent or wrongful acts or omissions and for those of its officers, agents or employees in conjunction with the performance of services covered under this Agreement, without waiving any governmental immunity available to Houston or Dallas under Texas law and without waiving any defenses of Houston or Dallas under Texas law. The provisions of this section are solely for the benefit of Houston and Dallas and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

VII.

ENTIRE AGREEMENT

This Agreement (with all, if any, referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Agreement. Except as otherwise provided elsewhere in this Agreement, this Agreement cannot be modified without written supplemental agreement executed by both parties.

VIII.

VENUE; GOVERNING LAW

This Agreement is performable in Dallas County, Texas. Exclusive venue in the event litigation is required to enforce rights or responsibilities under this Agreement shall be in Dallas County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

IX.

SEVERABILITY

The provisions of this Agreement are severable. In the event that any paragraph, section, subdivision, sentence, clause, or phrase of this agreement shall be found to be contrary to the law, or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of this Agreement. However, upon the occurrence of such event, either party may terminate this Agreement by giving the other party thirty (30) days written notice of its intent to terminate.

X.

AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION

The undersigned officers and agents of the parties to this Agreement are duly authorized officials and possess the requisite authority to execute this Agreement on behalf of the parties hereto. Dallas has executed this Agreement pursuant to the duly authorized Resolution No. 06-1805 of the Dallas City Council on June 28, 2006 (Exhibit "A"), and by the governing body of City of Houston duly authorized by its City Charter and laws of the State of Texas by Ordinance No. 2008-704 passed and adopted on 13th August, 2008.

XI.

ASSIGNMENT AND SUBLETTING

The parties agree that the rights and duties contained in this Agreement will not be assigned or sublet without the prior written consent of both parties.

XII.

INTERPRETATION OF AGREEMENT

This is a negotiated Agreement. If any part of this Agreement is in dispute, the parties stipulate that the Agreement shall not be construed more favorably for either party.

XIII.

ADMINISTRATIVE FEE

Dallas contracts contain, or will contain, language that entitles Dallas to charge vendors an administrative fee to offset costs associated with administering contracts. The fee will be paid directly to Dallas by vendor, and no other participant in this Agreement shall be entitled to any portion of the fee collected by Dallas.

XIV.
REMEDIES

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver of those rights or of any breach of this Agreement.

XV.
NOTICE OF CONTRACT CLAIM

This Agreement is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against Dallas. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Contract. Houston shall comply with the requirements of this ordinance as a precondition of any claim relating to this Agreement, in addition to all other requirements in this Agreement related to claims and notice of claims.

XVI.
CAPTIONS

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

XVII.

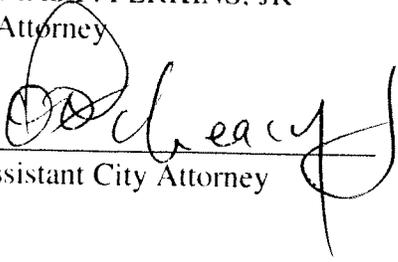
This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Agreement is executed in counterparts, then it shall become fully executed only as of the execution of the last counterpart called for by the terms of this Agreement to be executed.

EXECUTED in duplicate originals as of the 11th day of September, 2008.

Signatures

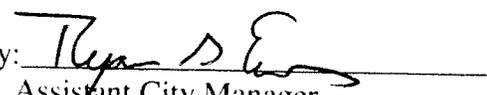
APPROVED AS TO FORM:

THOMAS P. PERKINS, JR
City Attorney

By: 
Assistant City Attorney

CITY OF DALLAS

MARY K. SUHM
City Manager

By: 
Assistant City Manager

ATTEST/SEAL:

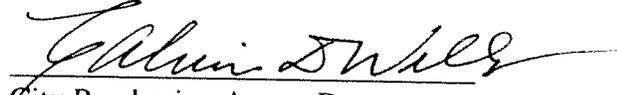

City Secretary

CITY OF HOUSTON, TEXAS

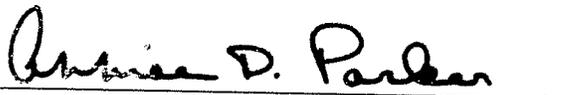
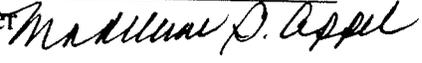
Signed by:


Mayor

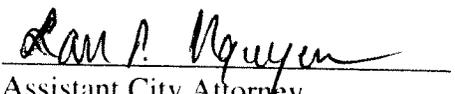
APPROVED:


City Purchasing Agent, Department of
Administration and Regulatory Affairs

COUNTERSIGNED BY:


City Controller 

APPROVED AS TO FORM:


Assistant City Attorney
L.D. File No. 0370800023001

DATE COUNTERSIGNED:

8-26-08

ACKNOWLEDGMENTS

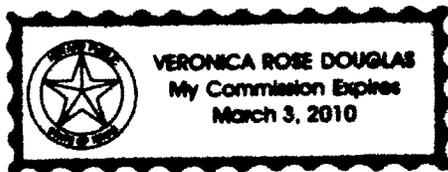
STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____ 2008 by **Assistant City Manager** of the **CITY OF DALLAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public in and for the
State of Texas

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 22 day of July 2008 by **CALVIN D. WELLS**, **City Purchasing Agent** of the **CITY OF HOUSTON, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.



Veronica Rose Douglas
Notary Public in and for the
State of Texas

EXHIBIT "A"

COUNCIL CHAMBER

061805

June 28, 2006

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS, TEXAS:

SECTION 1. That the terms and conditions of the Agreement having been reviewed by the City Council of the City of Dallas, Texas and found to be acceptable and in the best interest of the City of Dallas and its citizens, are hereby in all things approved.

SECTION 2. That the City Manager, or designee, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Dallas, substantially according to the terms and conditions set forth in the Agreement. Furthermore, any previous Interlocal Agreements between the City of Dallas and other participants will be incorporated into this agreement upon execution of this agreement.

SECTION 3. That the City Controller is authorized to deposit revenues received from commission sales in Fund 0001, Agency POM, Org 1233, Revenue Source 8428. Estimated Annual Net Revenue \$50,000.00.

SECTION 4. That this Resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

DISTRIBUTION:

- Business Development and Procurement Services, 3FS
- Office of Financial Services, 4FN
- City Attorney's Office

APPROVED BY CITY COUNCIL

JUN 28 2006

Deborah Martin
City Secretary

APPROVED *[Signature]*
HEAD OF DEPARTMENT

APPROVED *[Signature]*
CITY CONTROLLER

APPROVED *[Signature]*
CITY MANAGER

Controller's Office

To the Honorable Mayor and City Council of the City of Houston, Texas:

I hereby certify, with respect to the money required for the contract, agreement, obligation or expenditure contemplated by the ordinance set out below that:

- () Funds have been encumbered out of funds previously appropriated for such purpose.
- () Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- () Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- () No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- () The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- () A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- () Other - Grant Funds Available

Quinn D. Parker
Madeline P. Appel
City Controller of the City of Houston, Texas

Date: August 8, 2008

ms
FUND REF: N/A AMOUNT: N/A ENCUMB. NO.: NF10025-09

HFS

City of Houston, Texas Ordinance No. 2008-704

AN ORDINANCE APPROVING AND AUTHORIZING AN INTERLOCAL COOPERATIVE PURCHASING PROGRAM AGREEMENT BETWEEN THE CITY OF HOUSTON AND THE CITY OF DALLAS; CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

* * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. The City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

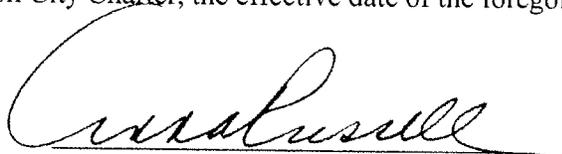
Section 4. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 13th day of August, 2008.

APPROVED this _____ day of _____, 20____.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG 19 2008.


City Secretary

(Prepared by Legal Dept. Lam P. Nguyen 
(LPN:pr 7-22-08) Assistant City Attorney
(Requested by Calvin D. Wells, City Purchasing Agent)
(L.D. File No. 037-0800023-001)

G:\CONTRACT\LPN\Ordinances\DallasPO.wpd

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: AUG 19 2008

| AYE | NO | |
|---------|---------|------------------------------------|
| ✓ | | MAYOR WHITE |
| •••• | •••• | COUNCIL MEMBERS |
| ✓ | | LAWRENCE |
| | | ABSENT-CITY BUSINESS |
| | | JOHNSON |
| ✓ | | CLUTTERBUCK |
| ✓ | | ADAMS |
| ✓ | | SULLIVAN |
| ✓ | | KHAN |
| ✓ | | HOLM |
| | | ABSENT OR PERSONAL BUSINESS |
| ✓ | | GARCIA |
| ✓ | | RODRIGUEZ |
| ✓ | | BROWN |
| ✓ | | LOVELL |
| ✓ | | NORIEGA |
| ✓ | | GREEN |
| ✓ | | JONES |
| CAPTION | ADOPTED | |