

B. Table of Contents

This Agreement consists of the following sections:

TABLE OF CONTENTS

	<u>Page No.</u>
A. PARTIES	1
A. Address	1
B. Table of Contents	2
C. Parts Incorporated	4
D. Controlling Parts	4
E. Signatures	5
II. DEFINITIONS	6
III. DUTIES OF CONTRACTOR	7
A. Scope of Services	7
B. Coordinate Performance	7
C. Payment of Subcontractors	8
D. RELEASE	8
E. INDEMNIFICATION	8
F. INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK & TRADE SECRET .	10
G. INDEMNIFICATION - SUBCONTRACTOR'S INDEMNITY	11
H. INDEMNIFICATION PROCEDURES	11
I. Insurance	12
J. Warranties	14
K. Contractor's One Year Free Warranty	14
L. Four Year Extended Warranty	15
M. Post Warranty Repairs	16
N. Warranty Exclusions	16

O.	Limitation of Remedies	17
P.	Third Party Warranties	17
Q.	Confidentiality - Protection of City's Interest	18
R.	Licenses and Permits	18
S.	Compliance with Laws	18
T.	Compliance with Equal Opportunity Ordinance	18
U.	Drug Abuse Detection and Deterrence	18
IV.	DUTIES OF THE CITY	20
A.	Payment Terms	20
B.	Taxes	21
C.	Method of Payment - Disputed Payments	21
D.	Limit of Appropriation	22
V.	TERM AND TERMINATION	23
A.	Contract Term	23
B.	Termination for Convenience by City	23
C.	Termination for Cause	24
VI.	<u>MISCELLANEOUS PROVISIONS</u>	25
A.	Independent Contractor	25
B.	Force Majeure	25
C.	Severability	27
D.	Entire Agreement	27
E.	Written Amendment	27
F.	Applicable Laws	27
G.	Notices	27
H.	Captions	28
I.	Non-Waiver	28
J.	Inspections and Audits	28

K.	Enforcement	289
L.	Ambiguities	29
M	Survival	29
N.	Publicity	29
O	Parties In Interest	29
P.	Successors and Assigns	29
Q	Business Structure and Assignments	30
R.	Remedies Cumulative	30

EXHIBITS

- A. Taser Devices - Specifications
- B. Unit Cost of Taser Devices, Accessories and Supplies
- B-1 Payment Schedule for Taser Devices, Accessories and Supplies
- C. Equal Employment Opportunity
- D. Drug Policy Compliance Agreement
- E. Drug Policy Compliance Declaration
- F. Certification of No Safety Impact Positions

C. Parts Incorporated

The above described exhibits are incorporated into this Agreement.

D. Controlling Parts

If a conflict among the sections and exhibits arises, the sections control over the exhibits.

E. Signatures

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

This Agreement is binding only after all parties listed below have signed this Agreement.

GT DISTRIBUTORS, INC.

By: _____
Name:
Title:

ATTEST/SEAL (if a corporation)
WITNESS (if not a corporation)

By: _____
Name:
Title:

TASER INTERNATIONAL, INC.

By: _____
Name:
Title:

ATTEST/SEAL (if a corporation)
WITNESS (if not a corporation)

By: _____
Name:
Title:

COUNTERSIGNED BY:

City Controller

CITY OF HOUSTON, TEXAS

Signed by:

By: _____
Mayor

ATTEST/SEAL:

City Secretary

APPROVED:

City Purchasing Agent

APPROVED:

Chief, Houston Police Department

APPROVED AS TO FORM:

Assistant City Attorney
L.D. No. 0620400931001

DATE COUNTERSIGNED:

II. 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 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.

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

"Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.

"Director" means the Chief of the Houston Police Department, or the person he or she designates.

"Manufacturer" is defined in the Preamble of this Agreement and includes its successors and assigns.

"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.

"Product" means Taser Devices.

"Purchasing Agent" means the City Purchasing Agent or the person he or she designates.

"Taser Accessories" mean the Taser International-TekLok Belt Attachment Clip and the Taser-USB Dataport download Kit for X26 (software and adapter).

"Taser Devices" mean devices used in law enforcement that meet the specifications detailed in Exhibit "A" and any later models supplied by Contractor at the time City places orders for Taser

Devices.

“Taser Supplies” mean the Taser 21' Single Shot Air Cartridge, the Taser 15' Single Shot Air Cartridge and the Taser - Extended Digital Power Magazine XDPM.

III. DUTIES OF CONTRACTOR

A. Scope of Services

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to supply the following:

- (i) Taser Devices along with one year Manufacturer-provided free warranty;
- (ii) Accessories for Taser Devices:
 - (a) Taser International - TekLok Belt Attachment Clip (No. AT-26899);
 - (b) Taser - Dataport Download Kit for X26 (software and adapter) (No. AT-26500);
- (iii) Supplies for Taser Devices
 - (a) Taser 21' Single Shot Air Cartridge (No. AT - 44200);
 - (b) Taser 15' Single Shot Air Cartridge (No. AT - 34200);
 - (c) Taser - XDPM Extended Digital Power Magazine (No. AT - 26701); and
- (iii) Four-year unlimited extended Manufacturer's warranty on each Taser Device purchased from Contractor effective the day following the expiration of one year of free warranty provided by Manufacturer with each Taser Device.

B. Coordinate Performance

_____ Contractor shall coordinate its performance with the Director and other persons that the Director designates. Contractor shall promptly inform the Director and other person(s) of all

significant events relating to the performance of this Agreement.

C. Payment of Subcontractors

Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS. Contractor shall submit disputes relating to payment of MWBE subcontractors to arbitration in the same manner as any other disputes under the MWBE subcontract.

D. RELEASE

CONTRACTOR AND MANUFACTURER AGREE TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY TO CONTRACTOR AND MANUFACTURER, INCLUDING BUT NOT LIMITED TO ANY COUNTERCLAIMS OR CROSSCLAIMS BY CONTRACTOR AND MANUFACTURER 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.

E. INDEMNIFICATION

CONTRACTOR AND MANUFACTURER AGREE TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND

LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FROM ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PRODUCT DEFECTS OR MALFUNCTIONS INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (1) CONTRACTOR'S AND MANUFACTURER AND/OR THEIR AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE, INTENTIONAL ACTS OR OMISSIONS AND STRICT PRODUCTS AND STATUTORY LIABILITY.**

CONTRACTOR AND MANUFACTURER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OR ANY INTENTIONAL ACTS OR OMISSIONS BY THE CITY OR ITS EMPLOYEES OR AGENTS.

F. INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT

CONTRACTOR AND MANUFACTURER AGREE TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

CONTRACTOR AND MANUFACTURER SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

WITHIN 90 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR AND MANUFACTURER SHALL, AT THEIR OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE PRODUCTS AND CONTRACTOR SHALL REFUND THE

PURCHASE PRICE AS DEPRECIATED ON A STRAIGHT LINE BASIS OVER A FIVE YEAR PERIOD.

G. INDEMNIFICATION - SUBCONTRACTOR'S INDEMNITY

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

H. INDEMNIFICATION - PROCEDURES

(1) Notice of Claims. If the City, Contractor or Manufacturer receive 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:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

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

(2) Defense of Claims

(a) Assumption of Defense. Contractor and Manufacturer may assume the defense of the claim at their own expense with counsel chosen by it that is reasonably satisfactory to the City.

Contractor and Manufacturer shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor and Manufacturer must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel at its sole expense which expense does not constitute an indemnification loss to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor and Manufacturer 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 Contractor and Manufacturer do 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.

I. Insurance

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:

- (1) Commercial General Liability insurance including Contractual Liability insurance:
 - \$500,000 per occurrence; \$1,000,000 aggregate
- (2) Workers' Compensation including Broad Form All States endorsement:
 - Statutory amount
- (3) Professional Liability
 - \$1,000,000 per occurrence; \$1,000,000 aggregate
- (4) Automobile Liability insurance
 - \$1,000,000 combined single limit

Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period
unless otherwise indicated.

All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, and that it shall give 30 days written notice to the City before they may be canceled, materially changed, or nonrenewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or nonrenewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the City Purchasing Agent, at his or her sole discretion, may

- (1) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
- (2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

J. Warranties

Contractor and Manufacturer warrant that they 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 and Manufacturer shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

With respect to any parts and goods it furnishes, Contractor and Manufacturer warrant:

- (1) that all items are free of defects in title, design, material, and workmanship,
- (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,
- (3) that each replacement item is new or if repaired is in like new condition, 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
- (4) that no item or its use infringes any patent, copyright, or proprietary right.

K. One Year Free Warranty

_____ (i) Contractor and Manufacturer warrant that each Taser Device supplied to the City shall be free from defects in workmanship and materials for a period of one year from the date of the Director's acceptance letter accepting the Taser Devices supplied to City under this Agreement. Contractor and Manufacturer agree to repair or replace defective Taser Devices which fail to function for any reason from the date of the Director's acceptance letter to the date of expiration of Contractor's and

Manufacturer's one year free warranty.

- (ii) The City shall follow the procedure set out below to file a warranty claim:

The Director shall first obtain by mail or by calling Contractor's toll free phone number, 1-800-978-2737, a Return Material Authorization ("RMA") number for each Taser Device purchased by the City. Contractor shall provide the Director with 30 days' written notice about the change in the above phone number.

Contractor shall advise the Director about the parts that should be shipped to Contractor for repairs. The Director shall ship the defective parts with return shipping prepaid along with a written description of the defect to Contractor at the following address:

TASER International, Inc.

7860 East McClain Drive, Suite 2,

Scottsdale, Arizona 85260

Attn: Warranty Department.

The Director shall provide the name of the City Department, address, and phone number along with the written description of the defect to enable Contractor to ship the package back to the City. Contractor shall promptly repair the Taser Device parts and ship the repaired parts to Director at the address provided with the written description sent by the Director.

L. Four Year Extended Warranty

Contractor and Manufacturer shall provide a "No Questions Asked" Extended Warranty on each Taser Device purchased by the City. Contractor and Manufacturer warrant that they will repair

or replace any Taser Device which fails to function for any reason during the term of the four year extended warranty which shall begin the day following the expiration of the one year free warranty. Contractor and Manufacturer shall provide each Taser Device purchased by the City with the Warranty XDPM module programmed to reflect the five year warranty on each Taser Device (one year free warranty plus the four-year extended warranty purchased by the City). The Director shall follow the procedure set forth in Section K (ii) above to file warranty claims during the four-year extended warranty period.

M. Post Warranty Repairs

After the warranty period, including the four-year extended warranty purchased by the City, Contractor will repair or replace any defective Taser Devices on a time and material basis subject to allocation of funds therefor by the City. This warranty runs only to the initial purchaser who has the responsibility to return the defective product to manufacturer via prepaid postage and provide written information as to the nature of the defect together with proof of purchase within the warranty period. Contractor's sole responsibility under this warranty shall be either repair or replace at Contractor's sole option, any such defective product and return it via prepaid postage.

N. **WARRANTY EXCLUSIONS**

THE WARRANTY STATED ABOVE IS THE EXCLUSIVE WARRANTY WITH RESPECT TO THE PRODUCT EXCEPT THAT THIS EXCLUSION DOES NOT APPLY TO THE INDEMNITIES SET OUT IN SECTIONS III. D, E AND J OF THIS AGREEMENT. CONTRACTOR AND MANUFACTURER DISCLAIM ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY,

DESIGN OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE, PRACTICE, OR ANY WARRANTY AGAINST PATENT INFRINGEMENT. IF THE EXCLUSION OF IMPLIED WARRANTIES IS PROHIBITED BY STATE LAW, THEN ANY APPLICABLE IMPLIED WARRANTIES SHALL BE LIMITED TO THE DURATION OF THE EXPRESS WARRANTY DESCRIBED ABOVE AND OTHER PROVISIONS CONTAINED HEREIN.

O. Limitation of Remedies

Except for the remedies set out in Sections III. D, E and F of this Agreement, the remedies provided for in the above limited warranty are expressly in lieu of any other liability Contractor and Manufacturer may have, or remedy purchaser or other party may have, including incidental and consequential damages.

P. Third Party Warranties

With respect to Taser Accessories and Taser Supplies that Contractor furnishes under this Agreement, Contractor agrees to (a) assign to City the respective manufacturer's product warranties as received by Contractor with respect to such Taser Accessories and Taser Supplies effective the date of the Director's acceptance letter accepting such accessories and supplies and (b) assist City in any warranty claims against the manufacturers related to such accessories and supplies pursuant to such warranty terms during the term of this Agreement. The Director shall follow the procedure set out in Section K (ii) of this Agreement to file warranty claims for Taser Accessories and Taser Supplies with Contractor's Warranty Department to enable Contractor to assist the Director with such warranty claims against the manufacturers.

Q. Confidentiality - Protection of City's Interest

Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, "the Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section.

R. Licenses and Permits

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

S. Compliance with Laws

Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

T. Compliance with Equal Opportunity Ordinance

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

U. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements

and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

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

- (a) a copy of its drug-free workplace policy,
- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "D," together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F."

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 "E." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

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

(4) Contractor shall require that its subcontractors comply with the Executive Order, and

Contractor shall secure and maintain the required documents for City inspection.

IV. DUTIES OF THE CITY

A. Payment Terms

_____The City shall pay and Contractor shall accept fees at the unit prices provided in Exhibit "B". The fees must only be paid from Allocated Funds, as provided in Section IV. D, below.

30 days from the receipt of a Purchase Order from the City Purchasing Agent, Contractor shall ship 3,700 Taser Devices with XDPM modules that have a five year warranty (one year Contractor's free warranty plus the four-year extended warranty purchased by City) on them. The warranty shall be effective the date the Director completes the physical inspection of the Taser Devices and sends Contractor a letter stating that the City has accepted the Taser Devices supplied by Contractor. Contractor shall also ship 3,700 Taser International-TekLok Belt Attachment Clips, 19 Taser-Dataport Download Kit for X26, 7,700 Taser 21' Air Cartridges, 7,400 Taser-15' Air Single Shot Cartridges, and 50 Taser- Extended Digital Power Magazines XDPM as set out in Exhibit "B-1". City shall pay Contractor's invoice for the goods listed in Exhibit "B-1" ten days from the date the Director sends Contractor a letter accepting the goods after physically verifying the XDPM modules on the Taser Devices and inspecting the supplies. Contractor shall disallow the two percent discount equal to \$73,252.27 factored into the total invoice amount of \$3,679,855.55 for items listed in Exhibit "B-1" if City fails to pay the invoice ten days from the date of the Director's acceptance letter.

Contractor and City shall negotiate the unit price increase which shall not exceed 15% of the previous years' price for additional Taser Devices, Taser Accessories and Taser Supplies for any purchases made after July 1, 2005. Contractor and City shall negotiate and establish the unit price for additional Taser Devices, Taser Accessories and Taser Supplies before July 1 of each year during

the term of this Agreement. If City Council allocates sufficient funds, the City shall pay and Contractor shall accept fees at the unit prices negotiated by City and Contractor for additional Taser Devices, Taser Accessories and Taser Supplies before July 1 of each year of the Agreement and such unit prices shall be the established unit prices for the period beginning July 1 of that calendar year through June 30th of the following year.

As of the date of the Purchase Order issued to Contractor for the purchase of additional Taser Devices, Taser Accessories and Taser Supplies, the products added shall be subject to this Agreement and the applicable warranty for such products shall commence on the date of the Director's acceptance letter.

B. Taxes

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 City Purchasing Agent will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

C. Method of Payment - Disputed Payments

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall advise the City Purchasing Agent to temporarily delete the disputed item and pay the remainder of the invoice. The City Purchasing Agent shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

D. Limit of Appropriation

_____(1) The City's duty to pay money to Contractor for any purpose under this Agreement is limited in its entirety by the provisions of this Section.

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$3,679,855.55 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.

(3) The City makes a supplemental allocation by sending a notice signed by the Director and the City Controller to Contractor and, where in excess of the amount specified in Paragraph (4) below, approved by motion or ordinance of City Council in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of notice]

SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Agreement").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$_____, upon the request of the below-signed Director, 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.

The aggregate of all sums allocated for the purpose of such Contract, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is

\$ _____.

SIGNED:

(Signature of the City Controller)
City Controller of the City

REQUESTED:

(Signature of the Director)
Director

(4) City Council delegates to the Director the authority to approve up to \$1,000,000.00 in supplemental allocations for this Agreement without returning to Council.

(5) 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.

V. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and remains in effect for five years unless sooner terminated under this Agreement.

B. Termination for Convenience by City

The City Purchasing Agent may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

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

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

C. Termination for Cause

If Contractor defaults under this Agreement, the 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:

- (1) Contractor fails to perform any of its duties under this Agreement;
- (2) Contractor becomes insolvent;
- (3) all or a substantial part of Contractor's assets are assigned for the benefit of its

creditors; or

- (4) a receiver or trustee is appointed for Contractor.

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

To effect final termination, the 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.

VI. MISCELLANEOUS

A. Independent Contractor

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

B. Force Majeure

1. Timely performance by both parties is essential to this Agreement. However, neither

party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, strikes, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra Reimbursable Expenses or payment.

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

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

4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.

5. If the Force Majeure continues for more than 10 days from the date performance is affected, the City Purchasing Agent may terminate this Agreement by giving 7 days' written notice

to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

C. Severability

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

D. Entire Agreement

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

E. Written Amendment

_____ Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The City Purchasing Agent and Director are only authorized to perform the functions specifically delegated to them in this Agreement.

F. Applicable Laws

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.

Venue for any litigation relating to this Agreement is Harris County, Texas.

G. Notices

All notices required or permitted by this Agreement must be in writing and are deemed

delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

H. Captions

Captions contained in this Agreement are for reference only, and therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

I. Non-Waiver

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

An approval by the City Purchasing Agent, 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 City Purchasing Agent and Director are not authorized to vary the terms of this Agreement.

J. Inspections and Audits

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

K. Enforcement

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

L. Ambiguities

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

M. Survival

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

N Publicity

Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.

O. Parties In Interest

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

P. Successors and Assigns

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

of any officer or agent of the City.

Q. Business Structure and Assignments

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

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

R. Remedies Cumulative

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

EXHIBIT A
TASER DEVICES - SPECIFICATIONS

EXHIBIT "B"

UNIT COST OF TASER DEVICES, ACCESSORIES & SUPPLIES

GOOD THROUGH JULY 1, 2005

Description	Item Number	Price
Taser X26E Black X26 with XDPM and eXoskelton Holster	AT-26000-X	\$744.80/each
Taser International - TekLok Belt Attachment Clip	AT-26899	\$ 8.32/each
Taser - Dataport Download Kit for X26 (software & adapter)	AT-26500	\$139.45/each
Taser X26 4 year Extended Warranty	AT-26724	\$167.35/each
Taser 21' Single Shot Air Cartridge	AT-44200	\$ 17.64/each
Taser 15' Single Shot Air Cartridge	AT-34200	\$ 15.78/each
Taser - XDPM Extended Digital Power Magazine	AT-26701	\$ 32.50/each

Prices for additional Taser Devices and associated supplies will be negotiated before July 1, 2005 and before July 1 of each year during the term of the Agreement.

EXHIBIT "B-1"

PAYMENT SCHEDULE FOR TASER DEVICES, ACCESSORIES & SUPPLIES

Quantity	Item No.	Description	Unit price without discount	2% Discount on each unit	Unit Price to City	Ext. Price
3,700	AT-26000-X	Taser X26E Black with XDPM and eXskeleton holster	\$804.95	\$15.20	\$744.80	\$2,755,760.00
3,700	AT-26899	Taser International-TekLok Belt Attachment Clip	\$8.95	\$0.18	\$8.32	\$30,784.00
19	AT-26500	Taser - USB Dataport download Kit for X26 (software & adapter)	\$149.95	\$3.00	\$139.45	\$2,649.55
3,700	AT-26724	Taser - X26 XDPM 4 Year Extended Warranty	\$179.95	\$3.60	\$167.35	\$619,195.00
7,700	AT-44200	Taser 21' Single Shot Air Cartridge	\$18.97	\$0.38	\$17.64	\$135,828.00
7,400	AT-34200	Taser 15' Single Shot Air Cartridge	\$16.97	\$0.34	\$15.78	\$116,772.00
50	AT-26701	Taser - Extended Digital Power Magazine XDPM	\$34.95	\$0.70	\$32.50	\$1,625.00

Shipping costs to City: \$17,242.00

Total Cost to City: \$3,679,855.55

Contractor shall disallow 2% discount if City payment is not received by Contractor

10 days from the date Director accepts the goods listed above \$73,252.27

EXHIBIT "C"
EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "D"
DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Contractor)

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

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

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

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

Date

Contractor Name

Signature

Title

EXHIBIT "E"
DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or officer of

 (Name) (Print/Type) (Title)
 _____ (Contractor)

 (Name of Company)

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

This reporting period covers the preceding 6 months from _____ to _____, 20____.

_____ A written Drug Free Workplace Policy has been implemented and employees notified.
 Initials The policy meets the criteria established by the Mayor's Amended Policy on Drug
 Detection and Deterrence (Mayor's Policy).

_____ Written drug testing procedures have been implemented in conformity with the
 Initials Mayor's
 Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-
 31. Employees have been notified of such procedures.

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

_____ Appropriate safety impact positions have been designated for employee positions
 Initials performing on the City of Houston contract. The number of employees in safety
 impact positions during this reporting period is _____.

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

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

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

Initials I affirm that falsification or failure to submit this declaration timely in accordance with
established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in
this declaration are within my personal knowledge and are true and correct.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "F"

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

_____, _____
(Name) (Title)

as an owner or officer of _____ (Contractor)
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved in performing _____.
(Project)

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

(Date)

(Typed or Printed Name)

(Signature)

(Title)