



# CITY OF HOUSTON INVITATION TO BID

Issued: June 14, 2013

## **BID OPENING:**

Sealed bids, in duplicate, will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002, until 10:30 a.m. **Thursday, July 11, 2013** and all bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby at 11:00 a.m. on that date for the purchase of:

**VEHICLE LEASING SERVICES FOR THE HOUSTON POLICE DEPARTMENT  
BID INVITATION NO.: S50-L24630  
NIGP CODE: 975-88**

## **BUYER:**

Questions regarding this solicitation document should be addressed to **Art Lopez, Buyer, at (832) 393-8731, or e-mail to [arturo.lopez@houstontx.gov](mailto:arturo.lopez@houstontx.gov).**

## **ELECTRONIC BIDDING:**

In order to submit a bid for the items associated with this procurement, you must fill in the pricing information on the "PLACE BID" page.

## **PRE-BID CONFERENCE:**

A Pre-Bid Conference will be held for all Prospective Bidders at the City Hall, Strategic Purchasing Division, 901 Bagby, Conference Rm. 1 (Basement), Houston, Texas 77002 at **2:00 PM on Tuesday, June 25, 2013.**

**All Prospective Bidders are encouraged to be present. It is the bidder's responsibility to ensure that they have secured and thoroughly reviewed the solicitation documents prior to the Pre-Bid Conference. Any revisions to be incorporated into this solicitation document arising from discussions before, during and subsequent to the Pre-Bid Conference will be confirmed in writing by Letter(s) of Clarification prior to the bid due date. Verbal responses will not otherwise alter the specifications, terms and conditions as stated herein.**

Bidding forms, specifications, and all necessary information should be downloaded from the Internet at [www.houstontx.gov/purchasing](http://www.houstontx.gov/purchasing). By registering and downloading this solicitation document, all updates to this solicitation document will be automatically forwarded via e-mail to all registered bidders. This information may also be obtained from the Supplier Assistance Desk, Strategic Purchasing Division, 901 Bagby, Concourse Level, Houston, Texas 77002.

The place of the bid opening may be transferred in accordance with Paragraph (b), (5) of Section 15-3 of The Code of Ordinances, Houston, Texas. The bid opening meeting may be rescheduled in accordance with Paragraph (b), (6) of said Section 15-3.

**The City reserves the right to reject any or all bids or to accept any bid or combination of bids deemed advantageous to it.**

City Employees are prohibited from bidding on this solicitation in accordance with the Code of Ordinances, Section 15 - 1.

## **\*CONTENTS:**

SECTION A: OFFER  
SECTION B: SCOPE OF WORK/SPECIFICATIONS  
SECTION C: GENERAL TERMS & CONDITIONS

**\*NOTE 1: Actual page numbers for each Section may change when the solicitation document is downloaded from the Internet or because of Letters of Clarification. Therefore, Bidders must read the bid document in its entirety and comply with all the requirements set forth therein.**

**\*NOTE 2: To be considered for award, please submit the electronic bid form and the forms listed in Section A, including the Official Signature Page, which must be signed by a company official authorized to bind the company.**

**SECTION A  
OFFICIAL BID FORM**



**VEHICLE LEASING SERVICES  
FOR THE HOUSTON POLICE DEPARTMENT  
BID INVITATION NO.: S50-L24630  
NIGP CODE: 975-88**

To The Honorable Mayor  
and Members of the City Council  
of the City of Houston, Texas (the "City"):

The undersigned Bidder hereby offers to contract with the City upon the terms and conditions stated in that certain "**Contract for Vehicle Leasing Services for the Houston Police Department for a three-year period with two (2) one-year option periods to extend**", which was distributed by the City together with the "Notice to Bidders" and is hereby incorporated herein by this reference (the "Contract"). This offer is made at the prices stated on the electronic Bid Form. When issued by the City of Houston, Letters of Clarification shall automatically become part of this bid document and shall supersede any previous specifications or provisions in conflict with the Letters of Clarification. It is the responsibility of the bidder to ensure that it has obtained all such letters. By submitting a bid on this project, bidder shall be deemed to have received all Letters of Clarification and to have incorporated them into its bid.

The City may accept this bid offer by issuance of a Contract covering award of said bid to this Bidder 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.

The City of Houston reserves the option, after bids are opened, to increase or decrease the quantities listed, subject to the availability of funds, and/or make award by line item.

If the City accepts the foregoing offer, this Bidder promises to deliver to the City Purchasing Agent of the City, five (5) original counterparts of said Contract duly executed by this Bidder (as "Contractor") in accordance with this paragraph, proof of insurance as outlined in Article II of the Contract, all on or before the tenth (10th) day following the day this Bidder receives from the City the unsigned counterparts shall be executed so as to make it binding upon the Bidder, and all of the applicable requirements stated in the document entitled "Instructions for Execution of Contract Documents," (which was distributed by the City) shall be complied with.

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 in the best interest of the City.

If the City accepts the foregoing offer, this bidder shall furnish all labor, supervision, materials, supplies, equipment and tools necessary to provide **Vehicle Leasing Services for the Houston Police Department** in accordance with attached Specifications.

**Documents/forms must be downloaded from the City's Website:**

<http://www.houstontx.gov/purchasing/index.html>.

Additional Required Forms to be Included with this Bid:

In addition to the Electronic Bid Form and the Official Signature Page, the Forms listed in Table 1 must be completed and submitted to the Office of the City Secretary on or before the date and time the bid is due:

<b>TABLE 1 - REQUIRED FORMS</b>
Affidavit of Ownership.doc
Fair Campaign Ordinance.doc
Statement of Residency.doc
Conflict of Interest Questionnaire.doc
Contractors Questionnaire Document (pg 5)
Pay or Play Form 1a Acknowledgement

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:

<b>TABLE 2 - DOCUMENTS &amp; FORMS</b>
Drug Forms.doc
EEOC.doc
Formal Instructions for Bid Terms.doc
M/WBE.doc
Sample Insurance Over \$50,000.pdf
Pay or Play Form 2 Certification
Pay or Play Form 3, List of Participating Subcontractors

Questions concerning the Bid should be submitted in writing to: City of Houston, Strategic Purchasing Division, 901 Bagby, Room B506, Houston, TX 77002, Attn: Arturo Lopez or via fax: 832-393-8759 or via email (preferred method) to [arturo.lopez@cityofhouston.net](mailto:arturo.lopez@cityofhouston.net) no later than **4:00 PM, Friday, June 28, 2013.**

**SITE INSPECTION**

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.

**QUALITY AND WORKMANSHIP**

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.

**LOBBYING AND OTHER FORMS OF INFLUENCE PROHIBITED**

Neither Bidder(s) nor any person acting on Bidder(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or anything of value to any appointed or elected official or employee of the City of Houston, their families or staff members. All inquiries regarding the solicitation are to be directed to the designated City Buyer identified on the first page of the solicitation. Upon issuance of the solicitation through the pre-award phase and up to the award, aside from Bidder's formal response to the solicitation, communications publicly made during the official pre-bid conference, written requests for clarification during the period officially designated for such purpose by the City Buyer, neither

Bidder(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City of Houston, their families or staff through written or oral means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information

**PROTEST:**

A protest shall comply with and be resolved, according to the City of Houston Procurement Manual [http://purchasing.houstontx.gov/docs/Procurement\\_Manual.pdf](http://purchasing.houstontx.gov/docs/Procurement_Manual.pdf) and rules adopted thereunder. Protests shall be submitted in writing and filed with both, the City Attorney and the Solicitation contact person. A pre-award protest of the ITB shall be received five (5) days prior to the solicitation due date and a post-award protest shall be filed within five (5) days after City Council approval of the contract award.

A protest shall include the following:

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

**INTERLOCAL AGREEMENTS:**

Under the same terms and conditions hereunder, the Contract may be expanded to other government entities through inter-local agreements between the City of Houston and the respective government entity that encompass all or part of the products/services provided under this contract. Separate contracts will be drawn to reflect the needs of each participating entity.

**NO CONTACT PERIOD:**

Neither bidder(s) nor any person acting on bidder(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise gratuities, favors, or anything of value to any appointed or elected official or employee of the City of Houston, their families or staff members. All inquiries regarding the solicitation are to be directed to the designated City Representative identified on the first page of the solicitation. Upon issuance of the solicitation through the pre-award phase and up to the award, aside from bidder's formal response to the solicitation, communications publicly made during the official prebid conference, written requests for clarification during the period officially designated for such purpose by the City Representative, neither bidder(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City of Houston, their families or staff through written or oral means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information intended to or which could reasonably result in an advantage to any bidder. However, nothing in this paragraph shall prevent a bidder from making public statements to the City Council convened for a regularly scheduled session after the official selection has been made and placed on the City Council agenda for action.

**HIRE HOUSTON FIRST:**

**Designation as a City Business or Local Business**

To be designated as a City or Local Business for the purposes of the Hire Houston First Program, as set out in Article XI of Chapter 15 of the Houston City Code, a bidder or proposer must submit the **Hire Houston First**

**Application and Affidavit (“HHF Affidavit”)** to the Director of the Mayor’s Office of Business Opportunities and receive notice that the submission has been approved prior to award of a contract. Bidders are encouraged to secure a designation prior to submission of a bid or proposal if at all possible.

**Download the HHF Affidavit** from the Office of Business Opportunities Webpage at the City of Houston e-Government Website at the following location:

<http://www.houstontx.gov/hbsc/hirehoustonfirstaffidavit.pdf>

**Award of a Procurement of \$100,000 or More for Purchase of Goods:**

THE CITY WILL AWARD THIS PROCUREMENT TO A “CITY BUSINESS,” AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES (“THE CODE”)

- IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER.

**Award of Procurement under \$100,000 for Purchase of Goods:**

THE CITY WILL AWARD THIS PROCUREMENT TO A ” CITY BUSINESS,” AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES (“THE CODE”)

- IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

**Award of Procurement that may be More or Less than \$100,000 for Purchase of Goods:**

THE CITY WILL AWARD THIS PROCUREMENT TO A ” CITY BUSINESS,” AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES (“THE CODE”)

- IF THE BID OF THE CITY BUSINESS IS LESS THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, OR
- IF THE BID OF THE CITY BUSINESS IS MORE THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER.

**Award of Procurement of \$100,000 or More for Purchase of Non-Professional Services, Including Construction Services:**

THE CITY WILL AWARD THIS PROCUREMENT TO A "CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- IF THE BID OF THE LOCAL BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A LOCAL BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

**Award of Procurement under \$100,000 Purchase of Non-Professional Services Including Construction Services:**

THE CITY WILL AWARD THIS PROCUREMENT TO A "LOCAL BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES

- IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED N SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A LOCAL BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

**Award of Procurement that may be More or Less than \$100,000 for Purchase of Non-Professional Services, Including Construction Services:**

THE CITY WILL AWARD THIS PROCUREMENT TO A "LOCAL BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- IF THE BID OF THE LOCAL BUSINESS IS LESS THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, OR
- IF THE BID OF THE LOCAL BUSINESS IS MORE THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND
- UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.

IF THERE IS NO BID OF A LOCAL BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

**CONTRACTOR'S QUESTIONNAIRE**

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, for **Vehicle Leasing Services** that is similar in size and scope to this contract. **Bidder must have references documenting that it has performed vehicle leasing services.** The reference(s) should be included in the space provided below. Please attach another piece of paper if necessary. If references are not included with the bid, the bidder shall be required to provide such references to the City of Houston within five working days from receipt of a written request from the City of Houston to do so. **Bidder's capability and experience shall be a factor in determining the Contractor's responsibility.**

1. Name: \_\_\_\_\_

Address: \_\_\_\_\_

City & State: \_\_\_\_\_

Name & Phone Number of Contact: \_\_\_\_\_ Years of Services: \_\_\_\_\_

2. Name: \_\_\_\_\_

Address: \_\_\_\_\_

City & State: \_\_\_\_\_

Name & Phone Number of Contact: \_\_\_\_\_ Years of Services: \_\_\_\_\_

3. Name: \_\_\_\_\_

Address: \_\_\_\_\_

City & State: \_\_\_\_\_

Name & Phone Number of Contact: \_\_\_\_\_ Years of Services: \_\_\_\_\_

4. Name: \_\_\_\_\_

Address: \_\_\_\_\_

City & State: \_\_\_\_\_

Name & Phone Number of Contact: \_\_\_\_\_ Years of Services: \_\_\_\_\_

5. Name: \_\_\_\_\_

Address: \_\_\_\_\_

City & State: \_\_\_\_\_

Name & Phone Number of Contact: \_\_\_\_\_ Years of Services: \_\_\_\_\_

## SECTION B

### Part I

#### SCOPE OF WORK

##### **1.0 Scope of Service:**

1.1 The Contractor shall be required to furnish all supervision, labor, parts, tools, materials, equipment, supplies and facilities, etc. necessary to provide lease vehicles for the Houston Police Department (HPD) as described herein. The estimated number of vehicles to be leased is approximately two hundred (200), with 60% leased on an annual basis. It is emphasized that the quantities may vary considerably due to changes in budget, personnel, and events requiring vehicles. The vehicle descriptions are delineated in “**SECTION B, Part III**” herein. The Contractor agrees to furnish lease autos and trucks by the day, week, month or year. If there are any conflicts between the Contract and any Contractor’s lease agreement, the Contract will govern.

##### **2.0 Contractor’s Duties:**

2.1 The Contractor shall provide a large selection of vehicles of various models, colors, sizes, etc. with no external or internal leasing or company markings of any kind. For each vehicle group (listed in Section B, Part III) with an estimated quantity requirement of 5 or more, the Contractor shall provide a minimum of 5 different models. All models shall be no older than two (2) years old with a maximum of 20,000 actual miles on the odometer at the time of lease. All vehicles proposed will be covered by a basic manufacturer warranty with a minimum of 36 months, 36,000 miles bumper-to-bumper. The powertrain and corrosion warranty coverage will extend for the duration of the lease period.

2.2 All vehicle maintenance services will be performed by the Contractor on the Contractor’s premises or at a designated subcontractor facility. Maintenance services will be comprehensive and must include all manufacturer-required maintenance, as well as recalls, warranty and non-warranty repairs.

2.3 The Contractor agrees that all leased vehicles will have unlimited mileage and may temporarily go out of state.

2.4 The Contractor agrees to exchange vehicles on an “as-needed” basis due to the special requirements of the officers assigned to these vehicles. Past usage indicates that approximately twenty-five percent (25%) of the time, vehicles will need to be exchanged immediately or within 24 hours. This is the current data on hand and does not predict future quantities or requirements.

2.5 The Contractor shall provide insurance coverage as noted in Section C, General Terms & Conditions, Article II, Section 5.0 entitled “Insurance”. These vehicles also require individual liability coverage for the City up to \$40,000 for each vehicle.

2.6 The Contractor shall provide twenty-hour (24) hour roadside assistance and towing on all leased vehicles, seven (7) days a week.

2.7 Vehicle lease prices bid, which will be subsequently included in the contract in Exhibit “H” - “Fees and Costs” shall be firm for the duration of the contract and must be all-inclusive billed to HPD. See Section C, General Terms & Conditions, Article III, Section 2.0 entitled “Taxes”.

- 2.8 The Contractor shall provide quarterly and final status reports on all maintenance, claims, and fleet inventory. This report should be delivered electronically in MS Excel or a compatible format. If there are any inconsistencies in comparison to HPD records, the Contractor will work in good faith with HPD in a timely fashion to resolve any issues.
- 2.9 HPD requires strictest confidentiality on all documents and any breach is cause for immediate termination of the contract, as are specified in Section C, General Terms & Conditions, Article IV, Section 6.0 entitled "Termination for Cause by City".

### **3.0 Maintenance, Warranty and Repair Services**

- 3.1 The Contractor must fully maintain each vehicle in normal operating condition including oil changes, tune-ups, and tires and ensure all service, maintenance, and repairs are performed to maintain the warranty including manufacturer-required intervals, recalls, warranty work and repairs. No security deposit shall be required. The HPD will provide gasoline and normal and reasonable general exterior and interior care with regard to vehicles while in the possession of HPD. Should vehicle(s) become unserviceable, a substitute usable vehicle(s) shall be provided at no additional charge in excess of the charges for the unserviceable vehicle during the time when unserviceable vehicle(s) is in repair.
- 3.2 The Contractor will schedule and coordinate maintenance appointments directly with the assigned police officer. HPD will be responsible for transporting vehicles to and from service providers. Provisions for a loaner vehicle will be made when a vehicle is out of service for repair for more than 24 consecutive hours. Maintenance intervals will not exceed 5,000 miles or one (1) year, whichever comes first. The Contractor will provide electronic copies of all maintenance invoices and service reports, so that the City may document maintenance work and verify that maintenance is being performed in accordance with Contract requirements.

### **4.0 Vehicle Delivery/Turn-in**

- 4.1 **Vehicle Delivery:** Vehicles ordered under this contract will be ready for pick-up within thirty (30) calendar days after the placement of an order. All pre-delivery vehicle servicing will be performed in accordance with recognized industry standards. HPD's designated vehicle coordinators will be notified at least 24 hours in advance of each delivery.
- 4.2 **Vehicle Turn-In:** The Contractor will notify HPD's vehicle coordinators when vehicles are ready to be turned in. The Contractor will provide advance notice of seven (7) calendar days. The City shall return the vehicles to the Contractor upon expiration of the contract in the same condition as when received, normal wear and tear expected. Damages other than normal wear and tear such as glass breakage, bent metal or body parts may be submitted to HPD for reimbursement.

### **5.0 Additions & Deletions:**

- 5.1 The City by written notice from the City Purchasing Agent to the Contractor, at any time during the term of this contract, may add or delete like or similar equipment, locations and/or services to the list of equipment, locations and/or 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 equipment, locations and/or services is not identical to any item already under contract, the charges therefore will then be the Contractor's prevailing charges or rates for the equipment, locations and/or services classified in the fee schedule.

**6.0 Estimated Quantities Not Guaranteed:**

6.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of vehicle leasing services 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 all the quantities specified herein.

**7.0 Warranty of Services:**

7.1 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 completed performance of the contract.

7.2 "Correction" as used in this clause, means the elimination of a defect.

7.3 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.

7.4 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.

7.5 If the City does not require correction or re-performance, the City shall make an equitable adjustment in the contract price.

**8.0 CRIMINAL JUSTICE INFORMATION SYSTEMS (CJIS) COMPLIANCE (Applicable to Houston Police Department (HPD) Occupied Facilities:**

8.1 The Houston Police Department recognizes that by allowing physical or logical (electronic) access to HPD facilities or network resources, people may gain access to information or systems they are statutorily prohibited from accessing. To comply with state and federal regulations, the Houston Police Department is required to document and investigate access requests to be sure access is necessary and permitted. Bidders/Respondents, therefore, agree to review the Criminal Justice Information Systems (CJIS) process and related documents located at <http://www.houstontx.gov/police/cjis/hpdvendorcertification.htm> and shall comply with the terms and requirements therein.

## SECTION B

### Part II

#### TECHNICAL SPECIFICATIONS

##### 1.0 GENERAL PURPOSE AUTOMOBILES:

1.1 Unless otherwise specified, all units shall be furnished complete with standard equipment and factory-installed accessories as listed in the manufacturer's printed literature for the models specified herein. The following items are the minimum requirements for the models specified herein and shall be provided whether shown as optional or standard equipment by the manufacturer.

##### 2.0 BODY & CHASSIS:

2.1 **Air Bags: Required.**

2.2 **Air Conditioning:** Manufacturer's standard equipment.

2.3 **AM/FM Radio:** Manufacturer's standard equipment.

2.4 **Covering, Luggage Compartment:** The luggage compartment floor shall be covered with a vinyl, rubber, or fiber type mat.

2.5 **Heater and Defroster:** Integral, OEM Standard

2.6 **Jack, Handle, and Lug Wrench**

2.7 **Power Package:** Includes power windows, power locks, power mirrors, cruise control, and tilt steering wheel.

2.8 **Spare Wheel (Manufacturer's standard spare wheel & tire).**

2.9 **Windshield Wipers:** Dual electric 2-speed type with intermittent feature windshield washers.

2.10 **Upholstery:** Cloth standard

2.11 **Tires:** Radial type tubeless tires shall be OEM manufactured standard.

2.12 **Tire Pressure Monitoring System (TPMS) if available**

2.13 **Window Tint:** OEM Standard Tint. Tinting shall meet Texas DPS regulations.

2.14 **Power Steering:** Manufacturer's standard.

2.15 **Automatic Transmission**

2.16 **Power Brakes, ABS (Required):** Manufacturer's standard; front disc, 2- or 4-wheel (All Series).

2.17 **Flex Fuel,** if available

2.18 **Electronic Stability Control:** Required.

**NOTES:**

1. In addition to the above, all license plates and inspection stickers must be from Texas.
2. Only licensed drivers shall use the vehicles described in this contract and only for lawful purposes in conjunction with the City of Houston Police Department business as a normal transportation device not subject to extraordinary risk.

## SECTION B

### Part III

#### VEHICLE DESCRIPTIONS

- 1.0 Categories of vehicles listed below are examples from the State of Texas Fleet Automobiles and Trucks, Texas Specification No: 071-072-AT (effective date 10/25/10, last revision 4/20/12). This document is located on the State of Texas website:

[http://www.window.state.tx.us/procurement/pub/specifications-library/071-072-AT\\_2010\\_2011.pdf](http://www.window.state.tx.us/procurement/pub/specifications-library/071-072-AT_2010_2011.pdf)

- 2.0 The categories of vehicles listed in the various groups below are examples and are to be used as a guide only. However, the vehicles that the bidder/Contractor is offering to lease to the City must be listed on the electronic bid form in the space provided. Please note on the bid form any additional information following the group for each Series number. These additional requirements listed below any group are in lieu of or in addition to, the following general requirements for General Purpose Automobiles:

2.1 **GROUP 1: Compact Hatchback/Sedan - 4-cylinder, Front Wheel Drive. Series 350A/351A.**

*Estimated Quantities – 5 units*

1. Ford Fiesta
2. Toyota Matrix
3. Nissan Versa
4. Chevrolet Cruze
5. Nissan Sentra
6. Toyota Corolla

2.2 **GROUP 2: Intermediate Sedan - 4/6-cylinder, 4 door. Series 359A/360B.**

*Estimated Quantities – 20 units*

1. Ford Fusion
2. Chevrolet Malibu
3. Nissan Altima
4. Toyota Camry
5. Dodge Avenger

2.3 **GROUP 3: Full Size Sedan - 6/8-cylinder, 4 door. Series 372B/373B/374C.**

*Estimated Quantities – 25 units*

1. Toyota Avalon
2. Chevrolet Impala
3. Buick Lucerne
4. Ford Taurus
5. Dodge Charger

2.3 **GROUP 4: Mid-Size Utility Vehicle - 6-cylinder, Front/Rear Wheel Drive. Series 662B/663B.**

*Estimated Quantities – 40 units*

1. Dodge Journey
2. Ford Explorer
3. Toyota 4Runner
4. Chevrolet Equinox
5. GMC Terrain

2.4 **GROUP 5: Full Size Utility Vehicle - 8-cylinder, Rear Wheel Drive. Series 665C.**

*Estimated Quantities – 15 units*

1. Chevrolet Tahoe
2. Ford Expedition
3. Dodge Durango
4. Nissan Armada
5. GMC Yukon

2.5 **GROUP 6: Mini Passenger Van - Light Duty, 1/2 ton, 6-cylinder, 7-Passenger. Series 741B.**

*Estimated Quantities – 2 units*

1. Dodge Grand Caravan
2. Nissan Quest
3. Toyota Sienna

2.6 **Group 7: Full Size Extended/Extended Height Passenger Van - Light Duty, 1 ton, 8-cylinder, 15-Passenger. Series 760C/771G.**

*Estimated Quantities – 2 units*

1. Ford E450
2. GMC Savana
3. Chevrolet Express

2.7 **GROUP 8: Mid-Size Trucks - Light-Duty, 6-cylinder, Single Rear Wheel, Short Bed. Series 842A-844B.**

*Estimated Quantities – 46 units*

1. Chevrolet Colorado
2. Toyota Tacoma
3. GMC Canyon
4. Nissan Frontier

2.8 **GROUP 9: Full Size Trucks - Light-Duty, 1/2 Ton, 6/8-cylinder, Short/Long Bed. Series 855B-864C.**

*Estimated Quantities – 45 units*

1. Dodge Ram
2. Nissan Titan
3. Ford F150
4. GMC Sierra
5. Chevrolet Silverado

**END OF SECTION**

**SECTION C  
GENERAL TERMS & CONDITIONS**

**THE STATE OF TEXAS**

**BID #** \_\_\_\_\_

**ORDINANCE #** \_\_\_\_\_

**COUNTY OF HARRIS**

**CONTRACT #** \_\_\_\_\_

**I. PARTIES**

**1.0 ADDRESS:**

**THIS AGREEMENT FOR VEHICLE LEASING SERVICES FOR THE HOUSTON POLICE DEPARTMENT** ("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 the Director  
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:

## TABLE OF CONTENTS

### Page No.

I. PARTIES .....	15
1.0 ADDRESS.....	15
2.0 TABLE OF CONTENTS .....	15
3.0 PARTS INCORPORATED .....	17
4.0 CONTROLLING PARTS .....	17
5.0 DEFINITIONS .....	17
6.0 SIGNATURES.....	18
II. DUTIES OF CONTRACTOR .....	19
1.0 SCOPE OF SERVICES .....	19
2.0 RELEASE.....	19
3.0 INDEMNIFICATION .....	19
4.0 INDEMNIFICATION PROCEDURES .....	19
5.0 INSURANCE .....	20
6.0 WARRANTIES .....	22
7.0 LICENSES AND PERMITS .....	22
8.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE.....	22
9.0 MWBE COMPLIANCE .....	22
10.0 DRUG ABUSE DETECTION AND DETERRENCE .....	22
11.0 ENVIRONMENTAL LAWS .....	23
12.0 CONTRACTOR PERFORMANCE.....	23
13.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS.....	23
14.0 CONTRACTORS PAY OR PLAY PROGRAM.....	23
III. DUTIES OF CITY .....	24
1.0 PAYMENT TERMS .....	24
2.0 TAXES .....	24
3.0 METHOD OF PAYMENT .....	24
4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS .....	25
5.0 LIMIT OF APPROPRIATION .....	25
6.0 CHANGES .....	25
IV. TERM AND TERMINATION.....	26
1.0 CONTRACT TERM.....	26
2.0 NOTICE TO PROCEED.....	27
3.0 RENEWALS.....	27
4.0 TIME EXTENSIONS .....	27
5.0 TERMINATION FOR CONVENIENCE BY THE CITY .....	27
6.0 TERMINATION FOR CAUSE BY CITY.....	27
7.0 TERMINATION FOR CAUSE BY CONTRACTOR .....	28
8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS .....	28
9.0 SURETY BOND RENEWALS .....	28
V. MISCELLANEOUS .....	29
1.0 INDEPENDENT CONTRACTOR .....	29
2.0 FORCE MAJEURE .....	29
3.0 SEVERABILITY.....	29
4.0 ENTIRE AGREEMENT .....	29
5.0 WRITTEN AMENDMENT.....	29

6.0	APPLICABLE LAWS .....	29
7.0	NOTICES .....	30
8.0	NON-WAIVER .....	30
9.0	INSPECTIONS AND AUDITS .....	30
10.0	ENFORCEMENT .....	30
11.0	AMBIGUITIES .....	30
12.0	SURVIVAL .....	30
13.0	PARTIES IN INTEREST .....	31
14.0	SUCCESSORS AND ASSIGNS .....	31
15.0	BUSINESS STRUCTURE AND ASSIGNMENTS .....	31
16.0	REMEDIES CUMULATIVE .....	31
17.0	CONTRACTOR DEBT .....	31
18.0	INTERLOCAL AGREEMENTS.....	31

EXHIBITS

- A. DEFINITIONS
- \*B. SCOPE OF SERVICES, TECHNICAL SPECIFICATIONS, AND VEHICLE DESCRIPTIONS
- C. EQUAL EMPLOYMENT OPPORTUNITY
- \*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. CONTRACTOR'S PAY OR PLAY

\* 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".

**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: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

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

## 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, and supervision necessary to perform the services described in Exhibit "B" titled **Scope of Services, Technical Specifications and Vehicle Descriptions.**

### 2.0 RELEASE:

- 2.1 **CONTRACTOR 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.**

### 3.0 INDEMNIFICATION:

- 3.1 **CONTRACTOR 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:**

3.1.1 **CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 3.1.1-3.1.3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**

3.1.2 **THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND**

3.1.3 **THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.**

- 3.2 **CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS CONTRACT AND FOR FOUR YEARS AFTER THE CONTRACT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.**

### 4.0 INDEMNIFICATION PROCEDURES:

- 4.1 Notice of Claims. If the City or Contractor 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:

- 4.1.1 a description of the indemnification event in reasonable detail,
  - 4.1.2 the basis on which indemnification may be due and the anticipated amount of the indemnified loss.
- 4.2 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 Contractor is prejudiced, suffers loss, or incurs expense because of the delay.
- 4.3 Defense of Claims
- 4.3.1 Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor 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.
  - 4.3.2 Continued Participation. If Contractor 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. Contractor 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 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.
  - 4.3.3 The City of Houston is self-insured for vehicle liability and property damage claims in accordance with Vernon's Civil Statute Article 6701h Safety Responsibility Law, Article VI, Section 33. Any liability arising from operation of the self-insured vehicle will be governed by and subject to the limits of the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Title 5, Chapter 101.
  - 4.3.4 Claims are subject to allocation of funds, to the extent allowable by law.

## 5.0 INSURANCE:

- 5.1 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 coverage in the following amounts:
- 5.1.1 Commercial General Liability insurance including Contractual Liability insurance:  
\$500,000 per occurrence; \$1,000,000 aggregate
  - 5.1.2 Workers' Compensation including Broad Form All States endorsement:

Statutory amount

- 5.1.3 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.
- 5.1.4 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)
- 5.1.5 Bidder, as owner, and City as operator, must comply with Motor Vehicle Safety Responsibility Act, Chapter 61 of the Transportation Code (the "Act"). Bidder must provide evidence that the Bidder is covered for the negligence of its employees while operating vehicles provided under this part of the contract by automobile liability insurance for all motor vehicles provided under this contract with the following limits and deductibles.
  - \$20,000 Bodily injury/Death--One person/one accident, \$250 deductible
  - \$40,000 Bodily injury/Death--Two or more persons/one accident, \$500 deductible
  - \$15,000 Damage/destruction to property of others/one accident, \$250 deductible

If there is any conflict between the above limits and deductibles and those specified under the Act, those specified in the Act control. The limits cannot be less than what is provided above. The deductibles are to be as provided above. Insurance coverage provided pursuant to this paragraph must meet or exceed the provisions of the Act and Bidder shall provide evidence of such compliance to the satisfaction of the City Attorney.

- 5.2 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. 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:
  - 5.2.1 immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
  - 5.2.2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.
  - 5.2.3 All certificates of insurance submitted by Contractor shall be accompanied by endorsements for additional insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability policies. For a list of pre-approved endorsement forms, see <http://purchasing.houstontx.gov/forms.shtml>. The Director will consider all other forms on a case-by-case basis.

## **6.0 WARRANTIES:**

- 6.1 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.
- 6.2 With respect to any parts and goods furnished by it, Contractor warrants:
  - 6.2.1 that all items are free of defects in title, material, and workmanship,
  - 6.2.2 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,
  - 6.2.3 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
  - 6.2.4 that no item or its use infringes any patent, copyright, or proprietary right.

## **7.0 LICENSES AND PERMITS:**

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

## **8.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE:**

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

## **9.0 MWBE COMPLIANCE:**

- 9.1 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 **5%** 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 Office of Business Opportunity and will comply with them.
- 9.2 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 Office of Business Opportunity Director. MWBE subcontracts must contain the terms set out in Exhibit "D."

## **10.0 DRUG ABUSE DETECTION AND DETERRENCE:**

- 10.1 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.
- 10.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer

for Drug Testing ("CCODT"):

- 10.2.1 a copy of its drug-free workplace policy,
  - 10.2.2 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,
  - 10.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F."
- 10.3 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.
- 10.4 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.
- 10.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

#### **11.0 ENVIRONMENTAL LAWS:**

- 11.1 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.
- 11.2 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.

#### **12.0 CONTRACTOR'S PERFORMANCE:**

- 12.1 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.

**13.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS:**

- 13.1 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.
- 13.2 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.
- 13.3 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.

**14.0 CONTRACTOR PAY OR PLAY PROGRAM:**

- 14.1 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".
- 14.2 The Pay or Play Program for various departments will be administered by the City of Houston's Office of Business Opportunity 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 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 sending a notice signed by the Director and the City Controller to Contractor and where appropriated, approved by motion, or ordinance of City Council in substantially the following form:

**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]  
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.

## **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/Chief of the City Department elects not to renew this Agreement, the City Purchasing Agent 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:

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.

## **9.0 SURETY BOND RENEWALS:**

9.1 It is understood that a surety bond will be provided at least 30 days before end of contract term for the proper amount for the new contract term. Each bond will denote the contract term being guaranteed. Renewal of the contract by the method noted above does not obligate the existing surety company to provide a bond for the new contract term. Failure of the existing surety company to provide a bond for the new term does not constitute a default under the old contract or bond, but failure of the Contractor to obtain a substitute surety bond shall constitute a default against the Contractor; however, the City will not take action against the previous surety company.

## 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.

### 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.

**7.0 NOTICES:**

7.1 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.

**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.

**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 therefore.

**18.0 INTERLOCAL AGREEMENTS:**

18.1 Under the same terms and conditions hereunder, the Contract may be expanded to other government entities through inter-local agreements between the City of Houston and the respective government entity that encompass all or part of the products/services provided under this contract. Separate contracts will be drawn to reflect the needs of each participating entity.

## **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.

“Contractor Administrator” means the representative of the Houston Police 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” means the Chief of Police of the Houston Police Department 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.

“HPD” means the Houston Police Department.

“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 is bound by this Agreement.

**EXHIBIT "B"**  
**SCOPE OF SERVICES/TECHNICAL SPECIFICATIONS/VEHICLE DESCRIPTIONS**  
(CITY WILL INSERT)

**EXHIBIT "C"**  
**EQUAL EMPLOYMENT OPPORTUNITY**  
(CITY WILL INSERT)

**EXHIBIT "D"**  
**MWBE SUBCONTRACT TERMS**  
(CITY WILL INSERT)

**EXHIBIT "E"**  
**DRUG POLICY COMPLIANCE AGREEMENT**  
(CITY WILL INSERT)

**EXHIBIT "F"**  
**CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS**  
**IN PERFORMANCE OF A CITY CONTRACT**  
(CITY WILL INSERT)

**EXHIBIT "G"**  
**DRUG POLICY COMPLIANCE DECLARATION**  
(CITY WILL INSERT)

**EXHIBIT "H"**  
**FEEES AND COSTS**  
(CITY WILL INSERT)

**EXHIBIT "I"**  
**PAY OR PLAY PROGRAM**  
(CITY WILL INSERT)