

**S10-T23535**

**CITY OF HOUSTON**

**ADMINISTRATION & REGULATORY AFFAIRS DEPARTMENT**

**STRATEGIC PURCHASING DIVISION**

**PARKING OPERATIONS AND MANAGEMENT SERVICES**

**FOR THE**

**CONVENTION & ENTERTAINMENT FACILITIES DEPARTMENT**

**NIGP CODE 981-30**

**PROCUREMENT  
REQUEST FOR PROPOSAL**

**NOTICE OF  
REQUEST FOR PROPOSAL FOR  
PARKING OPERATIONS AND MANAGEMENT SERVICES**

**S10-T23535**

**CITY OF HOUSTON  
CONVENTION & ENTERTAINMENT FACILITIES DEPARTMENT**

The City of Houston Strategic Purchasing Division invites prospective Contractors ("Proposers") to submit a written proposal for Parking Operations and Management Services for the City of Houston Convention & Entertainment Facilities Department. Proposals are solicited for this service for the City of Houston in accordance with the terms, conditions and instructions as set forth in this Request for Proposal ("RFP").

This Proposal is available on the Internet from: <http://purchasing.houstontx.gov/>

In the event you do not have download capability, the RFP document may be obtained from the Strategic Purchasing Division, Basement Level, Room B121A, City Hall, 901 Bagby, Houston, Texas 77002.

There will be a **Pre-Proposal Conference on Monday, February 22, 2010 at 9:00 a.m.** in Conference Room #1, in the tunnel located between City Hall and the City Hall Annex, located at 900 Bagby. A shuttle bus tour of the Parking Facilities will follow the Pre-Proposal conference.

Questions concerning the Proposal should be submitted to, Strategic Purchasing, High Technology, Room B403, City Hall, 901 Bagby, Houston, Texas 77002, Attn: Greg Hubbard, phone: (832) 393-8748, fax: (832) 393.8759, [greg.hubbard@cityofhouston.net](mailto:greg.hubbard@cityofhouston.net) no later than **4:00 p.m. CST, Friday, February 26, 2010.**

The City of Houston, Texas will receive Proposals at the City Secretary's Office, City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002 until **Friday, March 12, 2010 at 2:00 p.m. CST.** No Proposals will be accepted after the stated deadline. When submitting Proposals via UPS/FedEx, etc., please label the box or boxes with the name: Office of the City Secretary, at the above-referenced address, and write the Request for Proposal number prominently on the box.

All Proposals will be required to comply with City Council Ordinance No. 78-1538, Passed August 9, 1978, relating to Equal Employment Opportunity Contract Compliance. The City reserves the right to reject any or all Proposals or to accept any Proposal or portion of a Proposal deemed to be in the City's best interest.

  
Calvin D. Wells  
Deputy Director / City Purchasing Agent

2-9-10  
Date

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**EXHIBITS:**

- EXHIBIT I: Goal Oriented Minority/Women Business Enterprises Contract Requirements
- EXHIBIT II: List of Previous Customers/List of Subcontractors/Submittal Form
- EXHIBIT III: Performance Bond
- EXHIBIT IV: Insurance Requirements
- EXHIBIT V: City of Houston Fair Campaign Ordinance Contract Requirements
- EXHIBIT VI: Drug Detection and Deterrence Procedures for Contractors
- EXHIBIT VII: Anti-Collusion Statement
- EXHIBIT VIII: Affidavit of Ownership or Control
- EXHIBIT IX: Bid Bond
- EXHIBIT X: Pricing Workbook Instructions to COH E-bid Website:  
<http://purchasing.houstontx.gov/>
- EXHIBIT XI: DRAFT Contract—Legal Requirements
- EXHIBIT XII: Pay or Play forms
- EXHIBIT XIII: Conflict of Interest Questionnaire

## SECTION I. GENERAL INSTRUCTIONS

### 1. RFP Goals and Objectives

The primary objective in issuing this Request for Proposal (RFP) is to gather Proposals from experienced parking operations and management services firms (hereinafter referred to as the "Proposer") to provide 24-hour supervision of parking operations and management services for City of Houston ("City") owned Convention Center and Theater District Parking Facilities. Based on the responses, the selected Proposer(s) will be evaluated in depth. Participating Proposers are expected to respond to this RFP in the format described in Section III—"Proposal Outline and Content." If a Proposer chooses to provide additional services, information about the proposed services must be provided in a separate section and priced separately from the rest of the proposal.

### 2. Hours of Operation

The selected Proposer shall provide on-site staffing for all parking operations and management service requirements twenty-four (24) hours per day, seven (7) days per week, 365 days per year, including holidays. The Theater District Garage and the Convention District Garage operate 24 hours per day.

### 3. General Information

The Department uses Federal APD parking equipment that is powered by Scan Net Access Control Software. In addition, the system uses the central credit card module that interfaces on-line Net EPay high speed credit card processor. The City has an Agreement with a bank for credit card processing services.

The system and garages operate 24 hours a day, 365 days a year. The Scan Net runs on an HP server, with five remote consoles, that is housed in the Theater District Parking Garage parking office. The Convention District Garage has one remote console and is connected to the main server at the Theater District Parking Garage. In the evenings, phones are transferred from the Convention District Garage to the Theater District Garage for continued operation. Both garages have the following types of Federal APD parking equipment:

- (20) LCD Barrier Parking Gates (3 at Convention District Garage)**
- (2) Automatic Pay Stations (Convention District Garage)**
- (11) SST Ticket Spitters (2 at Convention District Garage)**
- (3) Pay in Lane pay stations (2 at Convention District Garage)**
- (17) HID Card readers (4 at Convention District Garage)**
- (8) Power Pad registers (Theater District Garage)**
- (1) Scan Server (Theater District Garage)**
- (1) Federal APD Scan Net access control system version 6.12**

The Convention District Parking Garage officially opened in January 2008, and has 663 parking spaces with 14 disabled parking spaces. The garage is a split-level two floor garage with three stairwells and two hydraulic elevators. The garage is located at 1002 Avenida de las Americas, under Discovery Green Park, across from the George R. Brown Convention Center. The garage serves as a parking venue for patrons attending events at the George R Brown Convention Center, Discovery Green Park, Minute Maid Park, Toyota Center and the Hilton

Americas Convention Center Hotel. During the fiscal year ended June 30, 2009, 90,676 vehicles entered the parking garage to attend events at the named surrounding venues.

The Theater District Parking Garage is located 511 Rusk. It comprises 18 city blocks underground, with 17 stairwells, 3,400 parking spaces including 66 disabled spaces. The garage has seven tunnels that connect to it, and this garage serves as the premier parking garage for nine entertainment venues. In addition to the entertainment venues, the garage serves as a major supplier of daytime parking for major office buildings like Bank of America, Pennzoil Places, One and Two Shell Plaza and the Federal Courthouse serving the Southern District of the great State of Texas. The major parking tenants include Shell Services, Bracewell and Giuliani, City of Houston, Houston Grand Opera, Gensler Architect and Cheniere Energy. During the fiscal year ending June 30, 2009, contract parkers entered the garage 653,579 times. There were 278,225 tickets processed for daily/transient parkers visiting the surrounding businesses named above and 310,361 vehicles that entered for event parking.

#### **4. Submittal Procedure**

Proposers should provide:

- a) **One (1) original (signed in blue ink) and eight (8) hard copies** of the Proposal (a total of nine copies), and
- b) One copy of **Exhibit X**—"Pricing Workbook" on computer disk (cd) in Excel 2003 format. **Note: More recent versions of Excel are not compatible. See the Excel Workbook attached to this RFP on the City of Houston E-bid Website.** Enclose the computer disk in the signed original Proposal.

Please send all **nine** hard copies of your Proposal to the address below. Proposals are to be submitted in a sealed box bearing the assigned Control Number located on the first page of the RFP.

City Secretary's Office  
City Hall Annex  
900 Bagby  
Houston, Texas 77002  
Phone: 832-393-1100

Mailing:

Office of the City Secretary  
P.O. Box 1562  
Houston, Texas 77251

The deadline for the submittal of the Proposal is no later than **Friday, March 12, 2010, at 2:00 p.m. CST.**

Proposers may elect to either mail, or personally deliver, their Proposals to the City Secretary's Office.

The City of Houston shall bear no responsibility for submitting responses on behalf of any Proposer. Proposers may submit their Proposal to the City Secretary's Office any time prior to the above stated deadline.

#### **5. Proposal Format**

The Proposal should be typewritten and the original signed in ink. They should not be submitted in elaborate or expensive binders but should be printed on 8-1/2 x 11 paper and

placed in binders with a table of contents and tabs delineating each section. Legibility, clarity and completeness are important and essential.

The Proposal must be signed by individual(s) legally authorized to bind the Proposer(s) and must contain a statement that the Proposal and the prices contained therein should remain firm for a period of one hundred-eighty (180) days after receipt of the Best and Final offer.

#### **6. Pre-Proposal Conference**

A Pre-Proposal Conference will be held **Monday, February 22, 2010 at 9:00 a.m. CST.** in Conference Room #1, located in the tunnel between City Hall and the City Hall Annex, at 900 Bagby, Houston, Texas. Interested Proposers should plan to attend. It will be assumed that potential Proposers attending this meeting have reviewed the RFP in detail and are prepared to bring up any substantive questions that have not already been addressed by the City. Shuttle Bus tours of the Parking Facilities will follow the Pre-Proposal Conference. Companies are not limited to the number of representatives they may bring to the Pre-Proposal Conference, but it is suggested that no more than two individuals participate in the Shuttle Bus tours since seating may be limited.

Attendance at the Pre-Proposal Conference and all tours are strongly encouraged for all prospective Proposers.

#### **7. Disqualification**

Under no circumstances are Proposers to contact any City employee or official, other than the designated City representative, Greg Hubbard, with regard to this RFP or any of the information contained herein (except in response to City initiated discussions). Violation of this provision, except as specified herein, will subject the Proposer to **immediate disqualification**.

#### **8. Additional Information and Specifications Changes**

Requests for additional information and questions should be addressed to the Administration and Regulatory Affairs Department, Strategic Purchasing Division, High Technology Section, Greg Hubbard, (832) 393-8748 fax: (832) 393.8759, greg.hubbard@cityofhouston.net no later than **Friday, February 26, 2010, at 4:00 p.m. CST.** The City of Houston shall provide written responses to all questions received in writing on or before the written question submittal deadline. Questions received from all Proposers will be answered and sent to all Proposers who are listed as having obtained Request for Proposals. Proposers will be notified in writing of any changes in the specifications contained in this Request for Proposal. Proposers are **NOT** to contact any other City employees or officials directly.

Results of informal meetings or discussions between a potential Proposer and any City official or employee may not be used as a basis for deviations from the requirements contained within this RFP and may subject the Proposer to immediate disqualification.

#### **9. Addenda & Modifications**

All addenda, amendments, and interpretations of this solicitation shall be in writing. Any amendment or interpretation that is not in writing shall not legally bind the City of Houston. Only information supplied by the City of Houston in writing or in this RFP should be used in preparing Proposal responses. All contacts that a Proposer may have had before or after receipt of this

RFP with any individuals, employees, or representatives of the City and any information that may have been read in any news media or seen or heard in any other communication regarding this RFP should be disregarded in preparing responses.

The City does not assume responsibility for the receipt of any addendum sent to Proposers.

#### **10. Examination of Documents and Requirements**

Each Proposer shall carefully examine all RFP documents and thoroughly familiarize themselves with all requirements prior to submitting a proposal to ensure that the Proposal meets the intent of this RFP.

Before submitting a Proposal, each Proposer shall be responsible for making all investigations and examinations that are necessary to ascertain conditions and requirements affecting the requirements of this RFP. Failure to make such investigations and examinations shall not relieve the Proposer from obligation to comply, in every detail, with all provisions and requirements of the Request for Proposal.

#### **11. Post-Proposal Discussions with Proposers**

It is the City's intent to commence final negotiation with the Proposers deemed most advantageous to the City. The City reserves the right, however, to conduct post-bid discussion with any Proposers who have a realistic possibility of contract award including requests for additional information and requests for "Best and Final" offers.

#### **12. Terms, Conditions, Limitations and Exceptions**

- 12.1 This RFP does not commit the City of Houston to award a contract, issue a Purchase Order, or to pay any costs incurred in the preparation of a Proposal in response to this request.
- 12.2 The Proposals will become part of the City's official files without any obligation on the City's part. All responses shall be held confidential from all parties other than the City until after the contract is awarded. Afterward, the Proposals shall be available to the public.
- 12.3 The City of Houston shall not be held accountable if material from responses is obtained without the written consent of the Proposer by parties other than the City, at any time during the Proposal evaluation process.
- 12.4 In the event a Proposer submits trade secret information to the City, the information must be clearly labeled as a "Trade Secret." The City will maintain the confidentiality of such trade secret to the extent provided by law.
- 12.5 The Proposer shall not offer any gratuities, favors, or anything of monetary value to any official or employee of the City of Houston (including any and all members of Proposal evaluation committees) for the purpose of influencing consideration of a Proposal.
- 12.6 Proposer(s) shall not collude in any manner, or engage in any practices, with any other Proposer(s), which may restrict or eliminate competition or otherwise restrain trade. This is not intended to preclude subcontracts and joint ventures for the purposes of: a)

responding to this RFP, or b) establishing a project team with the required experience and/or capability to provide the goods or services specified herein. Conversely, the City can combine or consolidate Proposals, or portions thereof, for the purposes mentioned above.

- 12.7 All Proposals submitted must be the original work product of the Proposer. The copying or paraphrasing of the work product of another Proposer is not permitted.
- 12.8 The RFP and the related responses of the selected Proposer may by reference (within a contract) become part of any formal Agreement between the selected Proposer and the City. The City and the selected Proposer may negotiate a contract or contracts for submission to City Council for consideration and approval. In the event an Agreement cannot be reached with the selected Proposer, the City reserves the right to select an alternative Proposer. The City reserves the right to negotiate with the selected Proposer ("Contractor") the exact terms and conditions of the contract.
- 12.9 Proposers, their authorized representatives, and their agents are responsible for obtaining, and will be deemed to have, full knowledge of the conditions, requirements, and specifications of the Request for Proposal at the time a Proposal is submitted to the City.
- 12.10 If necessary for the completion of tasks required under the project, the City will provide reasonable working space to the Contractor.
- 12.11 Clerical support and reproduction of documentation costs shall be the responsibility of the contractor. If required, such support and costs shall be defined in the negotiated contract.
- 12.12 Contractor personnel essential to the continuity and successful and timely completion of the project should be available for the duration of the project unless substitutions are approved in writing by the Director of the Convention & Entertainment Facilities Department (the "Director").
- 12.13 The Contractor will be expected to adhere to all standard contractual requirements of the City which will include, but are not limited to, provisions for: Time Extensions, Appropriation of Available Funds, Approvals, Term and Termination, Independent Contractor, Business Structure and Assignments, Subcontractors, Parties in Interest, Non-waiver, Applicable Laws, Notices, Use of Work Products, Equal Employment Opportunity, Force Majeure, and Inspections and Audits.
- 12.14 The City may terminate its performance under a contract in the event of a default by the Contractor and a failure to cure such default after receiving notice of default from the City. Default may result from the Contractor's failure to perform under the terms of the contract or from the Contractor becoming insolvent, having a substantial portion of its assets assessed for the benefit of creditors, or having a receiver or trustee appointed.
- 12.15 Contractor must promptly report to the Director any conditions, transactions, situation, or circumstances encountered by the Contractor, which would impede or impair the proper and timely performance of the contract.

- 12.16 The City of Houston has sole discretion and reserves the right to cancel this RFP or to reject any or all Proposals received prior to contract award.
- 12.17 The City reserves the right to waive any formalities canceling this RFP, or to reject any or all Proposals or any part thereof.
- 12.18 The City reserves the right to request clarification of any Proposal after all Proposals have been received.
- 12.19 The City reserves the right to select elements from different individual Proposals and to combine and consolidate them in any way that best serves the City's interest. The City reserves the right to reduce the scope of the project and evaluate only the remaining elements from all Proposals. The City reserves the right to reject specific elements contained in all Proposals and to complete the evaluation process based only on the remaining items.
- 12.20 Proposers must furnish a "Certificate of Vote" signed by their Chief Executive officers or managing partners, which lists the specific officers who are authorized to execute Agreements on behalf of the company.
- 12.21 The selected Proposer must furnish a "Certificate of Registration" which authorizes them to conduct business in the State of Texas prior to the awarding of the contract. Such Registration is obtained from the Texas Secretary of State's Office, which will also provide the certification thereof.
- 12.22 After contract execution, the Contractor is the prime and responsible party for contracting and communicating the work to be performed to subcontractors and for channeling other information between the City and subcontractors. Any subcontracting must be specified in the Proposal. Any subcontracting not specified in the Proposal will need prior express approval from the Director.
- 12.23 Contractor assumes total responsibility for the quality and quantity of all work performed, whether it is undertaken by the Contractor or is subcontracted to another organization.
- 12.24 If subcontractor involvement is required in the use of license, patent, or proprietary process, the Contractor is responsible for obtaining written authorization from the subcontractor to use the process or providing another process comparable to that which is required and which is acceptable to the City, all at no additional cost or liability to the City.
- 12.25 The initial term of the contract resulting from award of this RFP will be three (3) years, with two (2) optional one-year renewals. The contract will be self-renewing unless terminated consistent with provisions of the contract.

### **13. Interpreting Specifications**

The specifications and product references contained herein are intended to be descriptive rather than restrictive. The City is soliciting Proposals to provide a complete product and service package, which meets its overall requirements. Specific equipment and system references may be included in this RFP for guidance, but they are not intended to preclude Proposers from recommending alternative solutions offering comparable or better performance or value to the

City. Unless specifically stated otherwise with regard to a specific item of equipment, it should be assumed that the City requires all equipment proposed for this project to be supported by a manufacturer's warranty, which is equal to or better than the prevailing standard in the industry.

Changes in the specifications, terms and conditions of this RFP will be made in writing by the City prior to the Proposal due date. Results of informal meetings or discussions between a potential Proposer and a City of Houston official or employee may not be used as a basis for deviations from the requirements contained in this RFP.

**14. Local Minority/Women Businesses Enterprises Participation**

Pursuant to City Council Motion No. 86-2204 passed August 5, 1986, each Proposer must agree that if awarded the contract, the Proposer will make good faith efforts to award subcontracts or purchase Agreements of at least **15%** of the total value of the contract to M/WBE firms certified by the City's Affirmative Action Division. Evidence of this Good Faith Effort must be included in the Proposal. **Exhibit I**, "Minority and Women Business Enterprise Contract Requirements" is included for informational purposes only.

**15. Performance Bond**

The successful Contractor shall be required to provide a Performance Bond or a Clean Irrevocable Letter of Credit in the amount of **\$175,000.00** throughout the term of the contract. The contract term is an initial three-year with two one-year options to renew for a total five-year term. The bond will be renewed for each year of the contract term including extension terms. The Performance Bond shall be in the same form as that distributed by the City (as noted in **Exhibit III**), all duly executed by the Proposer (as "Principal") and by a Corporate Surety Company licensed to do business in the State of Texas, and shown in the most recent edition of United States Treasury Circular 570 as having an "underwriting limitation" at least as great as that amount of the Performance Bond.

**16. Bid Bond**

The Proposer shall be required to provide a Bid Bond in the amount of **\$50,000.00**. The Bid Bond shall be in the same form as that distributed by the City, and attached hereto as **Exhibit IX**, all duly executed by this Proposer (as "Principal") and by a corporate surety company licensed to do business in the State of Texas. Cashier Checks made payable to the City are also accepted. Bid Bonds will be held by the City until the contract is approved.

**17. City of Houston Fair Campaign Ordinance**

The City of Houston Fair Campaign Ordinance makes it unlawful for a contractor to offer any contribution to a candidate for City elective office. For purposes of this ordinance a contract is defined as any contract for goods or services having a value in excess of \$30,000 or more, regardless of the way by which it was solicited or awarded. **Exhibit V** of this RFP describes the contract and documentation requirements relating to this ordinance.

**18. Drug Detection and Deterrence Procedures for Contractors**

It is the policy of the City to achieve a drug-free workforce and to provide a workplace that is free from the use of illegal drugs and alcohol. It is also the policy of the City that the manufacture, distribution, dispensation, possession, sale or use of illegal drugs or alcohol by

contractors while on City premises is prohibited. Accordingly, effective September 1, 1994, and pursuant to the Mayor's Executive Order 1-31, as a condition to the award of any contract for labor or services, a successful Proposer must certify to its compliance with this policy. **Exhibit VI** contains the standard language, which will be used in each contract for labor or services, as well as the Executive Order 1-31 disclosure and compliance forms (Attachments A, B and C). The forms must be completed and returned prior to award.

**19. Pay or Play Program**

The requirement and terms of the City of Houston Pay or Play Program, as set out in Executive Order 1-7, as amended, will be incorporated into the Agreement for all purposes. Proposer should review Executive Order 1-7, as amended, and shall agree to comply with its terms and conditions as they are set out at the time of City Council approval of the Agreement. This provision requires certain contractors to offer to certain employees a minimal level of health insurance benefits or to contribute a designated dollar amount to be used to offset the costs of providing health care to uninsured people in the Houston/Harris County area. Failure to complete the "Pay or Play Acknowledgement Form in **Exhibit XII** may be just cause for rejection of your bid or proposal. The selected Proposer will be required to submit additional "Pay or Play" forms (see Attachment **Exhibit XII**—Pay or Play Forms). Detailed information about the Pay or Play Program's requirements and additional Pay or Play forms are available at the following website: <http://www.houstontx.gov/aacc/popforms.html>.

**20. Schedule**

Listed below are important dates and times by which actions related to this Request for Proposal (RFP) should be completed.

<u>EVENT</u>	<u>DATE</u>
Date of issue of the RFP	February 12, 2010
Pre-Proposal Conference	February 22, 2010
Questions from Proposers due to City	February 26, 2010
Proposals due from Proposers	March 12, 2010
Notification of intent to award ( <i>Estimated</i> )	April 16, 2010
Contract start date	June 1, 2010

**SECTION II. SCOPE OF SERVICES**

Please review the Scope of Services in the draft contract attached hereto as **Exhibit XI**—"DRAFT Contract—Legal Requirements."

**SECTION III. PROPOSAL OUTLINE AND CONTENT**

To simplify the review process and to obtain the maximum degree of comparability, the proposal must follow the outline as set forth below and, at a minimum, contain the information as requested. Proposers are encouraged to include additional relevant information. Proposals should provide a straightforward, concise description of the Proposer's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness, clarity of content, and conveyance of the information requested by the City.

**1. Title Page**

The title page should include the RFP subject and RFP number, the name and address of the Proposer and the date of the Proposal.

**2. Letter of Transmittal**

The original copy of the Proposal must be organized into the following response item sections:

1. Cover letter addressed to the City Purchasing Agent that states the Proposer's understanding of the services to be provided. Include any additional information believed necessary that is not requested elsewhere in the RFP.
2. The names, titles, addresses, and telephone numbers of the individuals who are authorized to make representations on behalf of the Proposer.
3. A description of the methodology to be used, including, but not limited to, commitment of adequate appropriate resources.
4. The Proposer must assure the City that he/she will to the best of her/his knowledge, information and belief, be cognizant of, comply with, and enforce, where applicable and to the extent required, all applicable federal or state statutes and local ordinances.
5. Disclosure of any obligations posing a potential conflict of interest, including service on City boards and/or commissions and any current contracts with the City of Houston. This would apply to the Proposer as well as companies subcontracted by the Proposer.
6. Include any material the Proposer wishes to submit that is not specifically requested in the above categories. If the Proposal includes any comment over and above the specific information requested in the RFP, it is to be included as a separate section of the Proposal.
7. A statement that the person signing the transmittal letter is authorized to legally bind the Proposer; that the proposal and the total fixed price contained therein shall remain firm for a period of one hundred-eighty (180) days after receipt of the best and final offer and that the proposal will comply with the requirements and arrangements in Section I of this RFP.

**NOTE: PROPOSAL MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE PROPOSER, WHICH MUST BE THE ACTUAL LEGAL ENTITY THAT WILL PERFORM THE CONTRACT IF AWARDED.**

**3. Financial Statement**

Please submit your company's most recent three years of financial statements, certified by an independent CPA firm.

A financial profile of your company should include number of current customers with similar programs and requirements, years of experience in parking operations and management services, and most recent annual report or comparable audited statements.

#### 4. Contents

The contents should be identified by section, description, and page number. The submittal should include, at a minimum, the following requirements:

- 4.1 Title Page
- 4.2 Signed and Notarized Submittal Form (Exhibit II)
- 4.3 Letter of Transmittal
- 4.4 Organizational Chart, Resumes & Certifications/Licenses of proposed key personnel
- 4.5 Financial Statement and Dunn & Bradstreet Reports or Federal Tax Forms Filed for past two years
- 4.6 Signed M/WBE Forms: Attachment "A" Schedule of M/WBE Participation and Attachment "B" Letter of Intent (Exhibit I)
- 4.7 List of Previous Customers and List of Proposed Subcontractors (Exhibit II)
- 4.8 Fair Campaign Ordinance Form "A" (Exhibit V)
- 4.9 Drug Compliance Agreement Attachment "A" (Exhibit VI)
- 4.10 Anti-Collusion Statement (Exhibit VII)
- 4.11 Affidavit of Ownership or Control (Exhibit VIII)
- 4.12 Bid Bond (Exhibit IX)
- 4.13 Proposed fees, using **Exhibit X** to this RFP—"Pricing Workbook"
- 4.14 City Contractors' Pay or Play Acknowledgement Form (Exhibit XII)
- 4.15 Conflict of Interest Questionnaire (Exhibit XIII – Download Form at <http://www.ethics.state.tx.us/forms/CIQ.pdf>)
- 4.16 Requested Information Outlined in the Scope of Work & Other Additional Relevant/Supporting Information
- 4.17 A statement of the firm's capabilities and related experience
- 4.18 A statement of past experience operating and maintaining a multiple shuttle bus operation
- 4.19 Statement of successful experience handling special event parking
- 4.20 Evidence of five years of experience managing and operating multiple locations owned and controlled by the same entity
- 4.21 Locally accessible senior management available to the Director
- 4.22 To continue billing continuity, the successful Proposer must utilize the City's existing licensed billing system, PARIS (Parkers Accounts Receivable Information System). Note: The new Contractor will be responsible for continuing efforts to collect the existing accounts receivable
- 4.23 Local management must have three years' experience operating Federal APD Scan Net Central Management System
- 4.24 Provide an organizational chart detailing staff positions and the roles each will have in supporting this contract
- 4.25 Qualifications of key personnel assigned to the project. Provide resumes and an organizational chart for all key personnel (the resumes of the key personnel, including subcontractors, may be included as a separate section at the end of the RFP response). In the event that any such personnel are reassigned from the subject assignment, the City requires that the information required herein shall be submitted for any and all replacement personnel in advance of the time such replacement is made
- 4.26 Provide a complete list of local, senior company personnel over and above those who would be directly responsible for this parking contract
- 4.27 Provide a complete list of your company's locations that operate within a five-block

radius of the George R. Brown Convention Center and the Theater District Parking Garages

- 4.28 Describe all previous involvement with the City of Houston Convention & Entertainment Facilities Department parking contract
- 4.29 A detailed description of the proposed services
- 4.30 A listing of accounts of similar size and scope that use the Proposer's services, including addresses, telephone numbers, and the names of contact persons
- 4.31 Provide information about your company's current personnel policies, including employee benefits
- 4.32 Proof of previous Insurance and Performance Bond compliance
- 4.33 Your company's employee handbook

## **5. Company Profile**

In ten pages or less, provide the following general information about your company:

- a) Name, address, web site, and phone number of company headquarters.
- b) Age of company, year of incorporation, and number of employees and revenues related specifically to the delivery of municipal Parking Operations and Management services.
- c) Provide a concise description of any business partners, major subcontractors, or subsidiaries that may be providing support services as a part of this RFP. This information should include the same information as requested above from the primary Proposer. Please clearly define the nature of the relationship (i.e., reseller, subcontractor, subsidiary, parent, unrelated joint vendor, etc.).
- d) Provide a list of all major municipal clients or other similar facility locations where you provide parking operations and management services specific to the convention center and theater businesses. Indicate client locations, total square footage by location, the range of services you provide at each location, and current facility manager's name and contact numbers.
- e) Define any current relationship with the City, including the current services and products provided to the City.
- f) Highlight the services or attributes that differentiate you from other parking operations and management companies.

## **6. Service Enhancement Plan**

Provide a detailed summary of the specific steps and actions you would propose to improve service levels and/or reduce expenses associated with delivering the proposed services. Address any strategies you would propose for eliminating any current, inefficient processes the City may be utilizing. How would your company propose to assist the City in transitioning towards the enhanced services?

## **7. Draft Contract—Legal Requirements**

A "Draft Contract—Legal Requirements" is included in this RFP as **Exhibit XI**. Please note that the "Draft Contract" contains major terms and conditions, but not necessarily all provisions.

Please review the terms and conditions in detail and note any concerns ***within your cover letter*** relative to signing a document containing the provisions as stated. An authorized signatory must execute a statement either agreeing to the provisions as stated, or agreeing to the provisions with the exceptions noted on the submittal.

**8. Conditions of the Bid**

In submitting a response to this RFP, Proposer acknowledges and accepts the following conditions, and makes the following representations. **Please initial each sub-paragraph below in your response:**

<p><b><u>Ownership of Proposals</u></b> – All Proposals in response to this RFP are to be the sole property of the City.</p>	
<p><b><u>Oral Contracts</u></b> – Any alleged oral contracts or arrangements made by a Proposer with any employee of the City will be superseded by the written contract.</p>	
<p><b><u>No Gratuities or Favors:</u></b> The Proposer shall not offer any gratuities, favors, or anything of monetary value to any official or employee of the City (including any and all members of Proposal evaluation committee) for the purpose of influencing consideration of a Proposal.</p>	
<p><b><u>Amending or Canceling Requests</u></b> – The City reserves the right to amend or cancel this RFP at any time, if it is in the City’s best interest.</p>	
<p><b><u>Rejection for Default or Misrepresentation</u></b> – The City reserves the right to reject the proposal of any Proposer that is in default of any prior contract, owes the City outstanding debts, or has made misrepresentations.</p>	
<p><b><u>Clerical Errors in Awards</u></b> – The City reserves the right to correct inaccurate awards resulting from its clerical errors.</p>	
<p><b><u>Rejection of Qualified Proposals</u></b> – Proposals are subject to rejection in whole or in part if they limit or modify any of the terms and/or specifications of the RFP.</p>	
<p><b><u>Presentation of Supporting Evidence</u></b> – If requested, Proposer(s) shall present evidence of experience, ability and financial standing necessary to satisfactorily meet the requirements set forth in the RFP or those implied in the Proposals.</p>	
<p><b><u>Changes to Proposals</u></b> – No additions or other changes to the original RFP submissions will be allowed after submittal. While changes are not permitted, the City may request clarifications at the sole expense of the Proposer.</p>	
<p><b><u>Collusion</u></b> – In submitting a Proposal, the Proposer implicitly states that the Proposal is not made in connection with any competing Proposer submitting a separate response to the RFP, and is in all respects fair and without collusion or fraud. It is further implied that the Proposer did not participate in the RFP development process, had no knowledge of the specific contents of the RFP prior to its issuance, and that no City employee participated directly or indirectly in the Proposer’s Proposal preparation.</p>	

<p><b>Costs</b> – Proposer shall be liable for any costs incurred in the preparation of its Proposal.</p>	
<p><b>Subcontractors</b> – The use of subcontractors must be clearly identified and explained in the Proposal. The Proposer shall be wholly responsible for the performance of the contract in its entirety whether or not subcontractors are used. Subcontractors shall be bound by the terms and conditions of this RFP. The Proposer shall indemnify and hold the City harmless from any and all activities related to the services provided by their subcontractor(s) under the contract.</p>	

**9. Alternative Processes and Methods**

The City is open to considering other approaches, service delivery models, and pricing models outside of what has been specified within this Request for Proposal. This section has been provided intentionally to allow you the opportunity to propose alternative processes, methods or creative solutions for any of the services included within the RFP. Provide explicit detail on your alternative recommendation and a justification as to the strategic value that your solution will bring to the City. Clearly delineate within this section (only), by scope, specifically which service(s) would be provided using the alternate method and summarize the impact on service, quality and price. To the extent possible, provide examples.

**10. Additional Services**

Please provide detail on any additional or unique services provided by your organization, beyond the services sought within this RFP. Generic information without detail will be excluded from the analysis. Any **fees** associated with any extraordinary services should be clearly defined.

**11. References**

Provide three (3) references of companies that have used your services on the same or similar basis as is proposed to the City for a minimum of three years. Contact name(s) and phone number(s) must be included. Ensure the client references are appropriately senior that they can provide a strategic overview. Also, please indicate the length of the relationship, date of service commencement, and what products or services are supplied to the client.

Also provide three references of companies that have used your services on the same or similar basis as is proposed to the City for a period of more than 12 months, but less than 24 months. Contact name(s) and phone number(s) must be included. Ensure the client references are appropriately senior that they can provide a strategic overview.

Provide a list of at least three (3) references for companies that recently issued a bid to your company that you were **not** awarded, or that replaced your services with another provider within the last 24 months. Contact name(s) and phone number(s) must be included.

**12. Pricing Workbook**

Proposers must complete and include in their response a Pricing Workbook, substantially in the same format as provided in **Exhibit X** (page 51 of 141). Add additional lines if necessary and adjust formulas in the Excel workbook if necessary to ensure accuracy.

The Proposer may offer any other consideration of value to the City as suggested by the RFP. Where pricing or commissions to the City vary each year, list pricing or commissions for all five (5) contract years.

**13. Proposer Experience**

Each Proposer is requested to submit a list of customer references in order to receive award consideration. To the extent possible, the Proposer should demonstrate that it is currently in, or has previously engaged in, parking operations and management services Agreements with other municipalities, government, or business entities similar in scope to this contract.

Reference listing should include the mailing address, email address, telephone numbers and the name of individuals to contact.

**14. Recommendations/Exceptions**

If your organization takes exceptions to the services and/or equipment requested in this RFP, please state specifically within your Proposal your objection. If you feel the technical specifications are slanted toward one particular vendor or service provider, please state in writing your concerns. If you feel that another firm has been given any type of an advantage in responding to this RFP, please notify the City of Houston, Administration and Regulatory Affairs Department, Strategic Purchasing Division, Attn: Douglas Moore (832) 393-8724, Fax (832) 393.8759, [douglas.moore@cityofhouston.net](mailto:douglas.moore@cityofhouston.net), 901 Bagby, Houston, Texas 77002.

**15. Indemnity and Release**

The contract will contain the Release and Indemnification sections shown in **Exhibit XI—Draft Contract—Legal Requirements**.

**16. Insurance Requirements**

For the purpose of submitting a Proposal, Proposers should include an example insurance certificate in their proposals, to indicate that they are able to obtain suitable insurance coverage.

After the City selects a Proposer to enter into an Agreement, however, the selected Proposer shall obtain and maintain in effect insurance coverage, as set forth in **Exhibit XI—Draft Contract**, before the Agreement begins and continuing throughout the term of the Agreement. See **Exhibit IV--Insurance Requirements--**for a sample insurance certificate.

**Only unaltered original insurance certificates endorsed by the underwriter are acceptable for the agreement. Photocopies are unacceptable.**

**17. Contractor Performance Language**

Contractor should make citizen satisfaction a priority in providing services under this contract. Contractor's employees should be trained to be customer-service oriented and to positively and politely interact with citizens when performing contract services. Contractor's employees should be clean, courteous, efficient, and neat in appearance at all times and committed to offering the highest degree of service to the public. If, in the Director's determination, the Contractor is not interacting in a positive and polite manner with citizens, the Contractor shall take all remedial

steps to conform to the standards set by this contract and is subject to termination for breach of contract.

**18. Inspections and Audits**

City representatives may have the right to 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 three (3) years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

**SECTION IV. EVALUATION AND SELECTION PROCESS**

**1. Selection Process**

The award of this contract will be made to the Proposer(s), offering the response which best meets the needs of the City. The City may make investigations, as it deems necessary, to determine the capabilities of the Proposer to create, modify and implement the required services. The Proposer shall furnish to the City such data as the City may request for this purpose. The City reserves the right to reject any offer if the evidence submitted by, or the investigation of, the Proposer fails to satisfy the City that the Proposer is properly qualified to provide the services contemplated.

Each Proposer will be evaluated on the basis of the following evaluation criteria, which are listed in order of importance.

a)	Financial return to City/Management Fees	25%
b)	Number of years in business with comparable facilities/ experience of proposer	15%
c)	Financial stability	15%
d)	Qualifications of management	15%
e)	Customer service plan/marketing	10%
f)	Operation plan	10%
g)	Cleaning plan	5%
h)	M/WBE participation	<u>5%</u>
		100%

**2. Evaluation Team**

The evaluation team will arrive at a short list of Proposers and these short listed Proposers may be scheduled for structured oral presentations and interviews. Such presentations will be at no cost to the City of Houston. At the end of the oral presentations and interviews, the evaluation of the short listed Proposers will be completed. The oral presentations and interviews may be recorded and/or videotaped.

**NOTE: THE CITY RESERVES THE RIGHT TO EXPAND THE CRITERIA LISTED ABOVE OR TO EXPAND SPECIFIC CRITERIA; THE CITY WILL NOT ELIMINATE ANY LISTED CRITERIA.**

**EXHIBIT I**

**GOAL ORIENTED MINORITY/WOMEN BUSINESS  
ENTERPRISES CONTRACT REQUIREMENTS**

**ATTACHMENT "A"**  
**CITY OF HOUSTON**  
**SCHEDULE OF MWBE PARTICIPATION**

DATE OF REPORT: \_\_\_\_\_

BID No.: \_\_\_\_\_

FORMAL BID TITLE: \_\_\_\_\_

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

**ATTACHMENT "A" (CONTINUED)**

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


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

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

\_\_\_\_\_  
**BIDDER COMPANY NAME**

\_\_\_\_\_  
**SIGNATURE OF AUTHORIZED OFFICER OR AGENT OF BIDDER**

\_\_\_\_\_  
**NAME (TYPE OF PRINT)**

\_\_\_\_\_  
**TITLE**

**ATTACHMENT "B"**  
**SAMPLE LETTER OF INTENT**

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

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

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

**LETTER OF INTENT**

Contract Bid Number: \_\_\_\_\_

Bid Title: \_\_\_\_\_

Bid Amount: \_\_\_\_\_

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

1. \_\_\_\_\_ agrees to perform work/supply goods and/or  
**Name of Minority/Women Business Enterprise**  
services in connection with the above-named contract and \_\_\_\_\_ as:  
**Name of Prime Contractor**

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

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

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

The terms and conditions of Attachment "C" attached hereto are incorporated into this Letter of Intent for all purposes.

\_\_\_\_\_  
Signed-Prime Contractor

\_\_\_\_\_  
Signed-Minority/Women Business Enterprise

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTACHMENT "C"**  
**CITY OF HOUSTON CERTIFIED M/WBE SUBCONTRACT TERMS**

Contractor shall insure that all subcontracts with M/WBE subcontractors and suppliers are clearly labeled **"THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT"** and contain the following terms:

1. \_\_\_\_\_ (M/WBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director")
2. \_\_\_\_\_ (M/WBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform 1) audits of the books and records of the subcontractor, and 2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
3. Within five (5) business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the City Code of Ordinances, along with the street and mailing address and phone number of such agent.
4. As conclude by the parties to this subcontract, and as evidenced by their signatures hereto, any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 – "the Act"). Arbitration shall be conducted according to the following procedures:
  - a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
  - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with American Arbitration Association on file in the Office of the City's Affirmative Action Division.
  - c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
  - d. In the event the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

These provisions apply to goal oriented contracts. A goal oriented contract means any contract for the supply of goods or non-personal or non-professional services in excess of \$100,000.00 for which competitive bids are required by law; not within the scope of the MBE/WBE program of the United States Environmental Protection Agency or the United States Department of Transportation; and, which the City Purchasing Agent has determined to have significant M/WBE subcontracting potential in fields which there are an adequate number on known MBEs and/or WBE's to compete for City contract.

The M/WBE policy of the City of Houston will be discussed during the pre-bid. For information assistance, and/or to receive a copy of the City's Affirmative action policy and/or ordinance contact the Affirmative Action Division at (713) 837-9015, 611 Walker, 7<sup>th</sup> Floor, Houston, Texas.



**EXHIBIT II**

**LIST OF PREVIOUS CUSTOMERS/  
LIST OF SUBCONTRACTORS/  
SUBMITTAL FORMS**

**LIST OF PREVIOUS CUSTOMERS:**

In order to receive award consideration, the Bidder is asked to demonstrate that they are currently engaged, in, or have previously been engaged in, as a Prime Contractor, a contract for parking operation and management services that is similar in scope to this contract. The reference(s) should be included in the space provided below. Please attach another piece of paper if necessary.

1. Name: \_\_\_\_\_ Phone No.: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contract Award Date: \_\_\_\_\_ Contract Completion Date: \_\_\_\_\_  
Contract Name/Title: \_\_\_\_\_  
Contract Description: \_\_\_\_\_  
\_\_\_\_\_

2. Name: \_\_\_\_\_ Phone No.: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contract Award Date: \_\_\_\_\_ Contract Completion Date: \_\_\_\_\_  
Contract Name/Title: \_\_\_\_\_  
Contract Description: \_\_\_\_\_  
\_\_\_\_\_

3. Name: \_\_\_\_\_ Phone No.: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contract Award Date: \_\_\_\_\_ Contract Completion Date: \_\_\_\_\_  
Contract Name/Title: \_\_\_\_\_  
Contract Description: \_\_\_\_\_  
\_\_\_\_\_

4. Name: \_\_\_\_\_ Phone No.: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contract Award Date: \_\_\_\_\_ Contract Completion Date: \_\_\_\_\_  
Contract Name/Title: \_\_\_\_\_  
Contract Description: \_\_\_\_\_  
\_\_\_\_\_



**SUBMITTAL FORM**

**NOTE:      PROPOSAL MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE BIDDER, WHICH MUST BE THE ACTUAL LEGAL ENTITY THAT WILL PERFORM THE CONTRACT IF AWARDED.**

The undersigned, as Bidder, certifies that the only person or parties interested in this Proposal as principals are those named herein; that the Bidder has not, either directly or indirectly entered into any Agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the award of this contract.

Respectfully Submitted:

\_\_\_\_\_

(print or type name of Contractor – full company name)

By: \_\_\_\_\_  
(signature of authorized officer or agent)

Name: \_\_\_\_\_

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

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

Attest/Witness: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_

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

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

Address of Contractor: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone No. of Contractor: (\_\_\_\_\_) \_\_\_\_\_

\_\_\_\_\_  
(signature, name and title of Affiant)

\_\_\_\_\_  
Notary Public in and for

\_\_\_\_\_ County, Texas

My Commission Expires: \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

**EXHIBIT III**  
**PERFORMANCE BOND**

**PERFORMANCE BOND**

**THE STATE OF TEXAS   §  
  §  
COUNTY OF HARRIS   §**

**KNOW ALL MEN BY THESE PRESENTS**

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

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS,** the Contractor has on or about this day executed a Contract in writing with the City of Houston, Texas, for Parking Operations and Management Services, City of Houston Request for Proposal #S10-T23535, all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set in full herein.

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

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

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

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

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

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

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

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

**ATTEST, SEAL:** (if a corporation)  
**WITNESS:** (if not a corporation)

\_\_\_\_\_  
(Name of Contractor)

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**ATTEST/WITNESS:** (SEAL)

\_\_\_\_\_  
(Full Name of Surety)  
  
\_\_\_\_\_  
(Address of Surety for Notice)

\_\_\_\_\_  
Name: (Typed)  
Title:  
Date:

By: \_\_\_\_\_  
Name: (Typed)  
Title:  
Date:

Address of the Purchasing Agent  
901 Bagby  
Houston, TX 77002

\_\_\_\_\_  
Purchasing Agent of the City of Houston

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Legal Assistant

**EXHIBIT IV**  
**INSURANCE REQUIREMENTS**  
**FOR**  
**PARKING OPERATIONS SERVICE CONTRACT**

To comply with the terms and conditions for insurance in a City of Houston service contract, the Contractor's Insurance Certificate must be prepared as follows and shall meet the requirements set forth in Exhibit XI—Draft Contract—Legal Requirements, Article III, Section I. A sample insurance certificate is provided below.

# SAMPLE FOR AWARD OVER \$15,000.00

## ACORD. CERTIFICATE OF INSURANCE

Issue Date (MM/DD/YY)

PRODUCER

ISSUERS OF POLICIES. THE ISSUER SHALL HAVE A RATING OF AT LEAST B + AND FINANCIAL SIZE OF CLASS VI OR BETTER ACCORDING TO THE CURRENT YEAR'S BEST RATING.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

SAMPLE FORM

**COMPANIES AFFORDING COVERAGE**

- COMPANY A .....
- COMPANY B .....
- COMPANY C .....
- COMPANY D .....
- COMPANY E .....

**COVERAGE'S**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR.	TYPE OF INSURANCE	POLICY NUMBER	EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION (MM/DD/YY)	POLICY LIMITS
A.	<b>General Liability</b> <input checked="" type="checkbox"/> Commercial General Liability Claims Made <input checked="" type="checkbox"/> Occur. Owners & Contractors Prot.				General Aggregate \$2,000,000 Products-Comp/Op Agg. \$1,000,000 Personal & Adv. Injury \$1,000,000 Each Occurrence \$1,000,000 Fire Damage (Any one fire) \$ 50,000 Med. Expense \$ 5,000 (Any one person)
A.	<b>Automobile Liability</b> <input checked="" type="checkbox"/> Any Auto <input checked="" type="checkbox"/> All Owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-Owned Autos Garage Liability	Auto Liability Insurance for autos furnished or used in the course of performance of this Contract. Including Owned, Non-owned, and Hired Auto coverage. (Any Auto coverage may be substituted for Owned, Non-owned and Hired Auto Coverage.)			Combined Single Limit \$1,000,000 Bodily Injury (Per person) \$ Bodily Injury (Per Accident) \$ Property Damage \$
	<b>Excess Liability</b>				Each Occurrence \$ Aggregate \$1,500,000
	<b>Worker's Compensation and Employee Liability</b>	Statutory Limits		<input checked="" type="checkbox"/> <b>Statutory Limits</b>	Each Accident \$ 500,000 Disease - Policy Limit \$ 500,000 Disease - Each Employee \$ 500,000
	<b>Other</b>				
	<b>Garagekeepers Legal Liability</b>		<input checked="" type="checkbox"/>		\$2,500,000 combined single limit Each occurrence
	<b>Crime</b>		<input checked="" type="checkbox"/>		<b>Policy Limits</b> \$10,000 commercial blanket \$10,000 broad form money-inside \$10,000 broad form money-outside

**DESCRIPTION OF OPERATION/LOCATIONS/VEHICLES/SPECIAL ITEMS**

City of Houston and its officers, agents and employees are named as additional insureds on Auto and General Liability policies, and Waiver of Subrogation on Auto, General Liability, and Worker's Compensation. Material alteration on cancellation notice as shown below.  
For (Parking Operations and Management Agreement)

**CERTIFICATE HOLDERS**

CITY OF HOUSTON  
CONVENTION & ENTERTAINMENT FACILITIES DEPARTMENT  
Attn: Contract Administrator  
P.O. BOX 61469  
HOUSTON, TEXAS 77208

**CANCELLATION SHALL BE MODIFIED AS FOLLOWS:**  
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED NON-RENEWED OR MATERIALLY ALTERED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL THIRTY (30) DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDERS NAMED TO THE LEFT.

AUTHORIZED REPRESENTATIVE

**EXHIBIT V**

**CITY OF HOUSTON FAIR CAMPAIGN ORDINANCE  
CONTRACT REQUIREMENTS**

## **CITY OF HOUSTON FAIR CAMPAIGN ORDINANCE**

The City of Houston Fair Campaign Ordinance makes it unlawful for a Contractor to offer any contribution to a candidate for City elective office (including elected officers and officers-elect). All respondents to this invitation to bid must comply with Houston Code of Ordinances Chapter 18 as amended relating to the contribution and solicitation of funds for election campaigns. Provisions of this ordinance are provided in part in the paragraphs that follow. Complete copies may be obtained from the office of the City Secretary.

Candidates for city office may neither solicit nor receive contributions except during a period commencing 270 calendar days prior to an election date for which a person is a candidate for such office and ending 90 calendar days after the election date, including run off elections if such candidate is on the ballot.

Further, it shall be unlawful either for any person who submits a bid or Proposal to contribute or offer any contribution to a candidate or for any candidate to solicit or accept any contribution from such person for a period commencing at the time of posting of the City Council Meeting Agenda including an item for the award of the Contract and ending upon the 30th day after the award of the Contract by City Council.

For the purposes of this Ordinance, a **Contract** is defined as each Contract having a value in excess of \$30,000 that is let by the City for professional services, personal services, or other goods or services of any other nature whether the Contract is awarded on a negotiated basis, request for proposal basis, competitive proposal basis or formal sealed competitive bids. The term **Contractor** includes proprietors of proprietorships, all partners of partnerships, (including limited liability partnerships and companies), all officers and directors of corporations (including limited liability corporations), and all holders of 10% or more of the outstanding shares of corporations.

**A STATEMENT DISCLOSING THE NAMES AND BUSINESS ADDRESSES EACH OF THOSE PERSONS WILL BE REQUIRED TO BE SUBMITTED WITH EACH BID OR PROPOSAL FOR A CITY CONTRACT.** Completion of the attached form entitled "**Contractor Submission List**" will satisfy this requirement. Failure to provide this information may be just cause for rejection of your Bid or Proposal.

**FORM A  
CONTRACTOR SUBMISSION LIST  
CITY OF HOUSTON FAIR CAMPAIGN ORDINANCE**

The City of Houston Fair Campaign Ordinance makes it unlawful for a Contractor to offer any contribution to a candidate for City elective office (including elected officers-elect) during a certain period of time prior to and following the award of the Contract by the City Council. The term "Contractor" includes proprietors of proprietorships, partners or joint venturers having an equity interest of 10 percent or more for the partnership or Joint venture, and officers, directors and holders of 10 percent or more of the outstanding shares of corporations. A statement disclosing the names and business addresses of each of those persons will be required to be submitted with each bid or proposal for a City Contract. See Chapter 18 of the Code of Ordinances, Houston, Texas, for further information.

This list is submitted under the provisions of Section 18-36(b) of the Code of Ordinances, Houston, Texas, in connection with the attached proposal, submission or bid of:

Firm or Company Name: \_\_\_\_\_

Firm or Company Address: \_\_\_\_\_

**The firm/company is organized as a (Check one as applicable) and attach additional pages if needed to supply the required names and addresses:**

**SOLE PROPRIETORSHIP**

Name \_\_\_\_\_ Proprietor                      \_\_\_\_\_ Address

**A PARTNERSHIP**

**List each partner having equity interest of 10% or more of partnership (if none state "none")**

Name \_\_\_\_\_ Partner                      \_\_\_\_\_ Address

Name \_\_\_\_\_ Partner                      \_\_\_\_\_ Address

**A CORPORATION**

**LIST ALL DIRECTORS OF THE CORPORATION (IF NONE STATE "NONE")**

Name \_\_\_\_\_ Director                      \_\_\_\_\_ Address

Name \_\_\_\_\_ Director                      \_\_\_\_\_ Address

Name \_\_\_\_\_ Director                      \_\_\_\_\_ Address

**LIST ALL OFFICERS OF THE CORPORATION (IF NONE STATE NONE”)**

Name \_\_\_\_\_  
Officer \_\_\_\_\_ Address \_\_\_\_\_

Name \_\_\_\_\_  
Officer \_\_\_\_\_ Address \_\_\_\_\_

Name \_\_\_\_\_  
Officer \_\_\_\_\_ Address \_\_\_\_\_

**LIST ALL INDIVIDUALS OWNING 10% OR MORE OF OUTSTANDING SHARES OF STOCK OF THE CORPORATION (IF NONE STATE “NONE”)**

Name \_\_\_\_\_  
Address \_\_\_\_\_

Name \_\_\_\_\_  
Address \_\_\_\_\_

Name \_\_\_\_\_  
Address \_\_\_\_\_

**I certify that I am duly authorized to submit this list on behalf of the firm, that I am associated with the firm in the capacity noted below and that I have personal knowledge of the accuracy of the information provided herein.**

\_\_\_\_\_  
Preparer

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Note: This list constitutes a **government record** as defined by § 37.01 of the Texas Penal Code.

8/23/01

**EXHIBIT “ VI”**

**DRUG DETECTION AND DETERRENCE  
PROCEDURES FOR CONTRACTORS**

**CITY OF HOUSTON  
DRUG DETECTION AND DETERRENCE PROCEDURE**

- (a) It is the policy of the City to achieve a drug-free workforce and to provide a workplace that is free from the use of illegal drugs and alcohol. It is also the policy of the City that the manufacture, distribution, dispensation, possession, sale or use of illegal drugs or alcohol by contractors while on City premises is prohibited. By executing this Contract, Contractor represents and certifies that it meets and shall comply with all the requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 ("Mayor's Policy") and the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), both of which are on file in the Office of the City Secretary.
  
- (b) Confirming its compliance with the Mayor's Policy and Executive Order, Contractor, as a condition precedent to City's obligations under this Contract, will have filed with the Contract Compliance Officer for Drug Testing ("CCODT"), prior to execution of this Contract by the City, (i) a copy of its drug-free workplace policy, (ii) the Drug Policy Compliance Agreement substantially in the format set forth in Attachment "A" to the Executive Order, together with a written designation of all safety impact positions, and (iii) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the format set forth in Attachment "C" to the Executive Order. If Contractor files written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six (6) months during the performance of this Contract or upon the completion of this Contract if performance is less than six (6) months, a Drug Policy Compliance Declaration in a form substantially similar to Attachment "B" to the Executive Order. The Drug Policy Compliance Declaration shall be submitted to the CCODT within thirty days of completion of this Contract. The first six (6) month period shall begin to run on the date City issues its notice to proceed hereunder or if no notice to proceed is issued, on the first day Contractor begins work under this Contract.
  
- (c) Contractor shall have the continuing obligation to file with the CCODT written designations of safety impact positions and Drug Policy Compliance Declarations at anytime during the performance of this Contract that safety impact positions are added if initially no safety impact positions were designated. Contractor also shall have the continuing obligation to file updated designations of safety impact positions with the CCODT when additional safety impact positions are added to Contractor's employee work force.
  
- (d) The failure of Contractor to comply with the above Sections shall be a breach of this Contract entitling City to terminate in accordance with Article IV.

**DRUG POLICY COMPLIANCE AGREEMENT  
ATTACHMENT A**

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**

## DRUG POLICY COMPLIANCE DECLARATION ATTACHMENT "B"

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 six months from \_\_\_\_\_ to \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_ A written Drug Free Workplace Policy has been implemented and employees notified. The policy  
**Initials** 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 Mayor's Drug  
**Initials** Detection and Deterrence Procedures for Contractors, Executive Order 1-31. Employees have  
 been notified of such procedures.

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

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

\_\_\_\_\_ From \_\_\_\_\_ to \_\_\_\_\_ the following testing has occurred:  
**Initials** (start date) (end date)

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

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

\_\_\_\_\_ I affirm that falsification or failure to submit this declaration timely in accordance with  
**Initials** 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

\_\_\_\_\_  
 Contractor Name

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Title

**Contractor's Certification of No Safety Impact Positions  
In Performance Of A City Contract  
ATTACHMENT "C"**

I, \_\_\_\_\_  
(Name) (Print/Type) (Title)

as an owner or officer of \_\_\_\_\_ (Contractor) have authority to bind the Contractor with respect to its bid, and I 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 this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

---

---

**CONTRACTOR'S CERTIFICATION OF NON-APPLICATION OF  
CITY OF HOUSTON DRUG DETECTION AND DETERRENCE PROCEDURES  
FOR CONTRACTORS  
ATTACHMENT "D"**

I, \_\_\_\_\_ as an owner or officer of  
(NAME) (PRINT/TYPE)

\_\_\_\_\_ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also 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 this City Contract. Safety impact position means a Contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CONTRACTOR'S NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

**EXHIBIT "VII"**

**Anti-Collusion Statement**

The undersigned, as Bidder, certifies that the only person or parties interested in this proposal as principals are those named herein; that the Bidder has not, either directly or indirectly entered into any Agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the award of this contract.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Bidder Signature

## **EXHIBIT VIII**

### **AFFIDAVIT OF OWNERSHIP OR CONTROL**

City Council requires knowledge of the identities of the owners of entities seeking to contract with the City in order to review their indebtedness to the City prior to entering contracts. Therefore, all respondents to this RFP must comply with Houston Code of Ordinances Chapter 15, as amended (Sections 15-122 through 15-126) relating to the disclosure of owners of entities bidding on, proposing for or receiving City contracts.

Completion of **Exhibit VIII** –“Affidavit of Ownership or Control” will satisfy this requirement. Failure to provide this information may be just cause for rejection of your bid or proposal.





**6. Optional Information**

Contracting Entity and/or \_\_\_\_\_ [NAME OF OWNER OR NON-PROFIT OFFICER] is actively protesting, challenging or appealing the accuracy and/or amount of taxes levied against \_\_\_\_\_ [CONTRACTING ENTITY, OWNER OR NON-PROFIT OFFICER] as follows:

Name of Debtor: \_\_\_\_\_  
Tax Account Nos. \_\_\_\_\_  
Case or File Nos. \_\_\_\_\_  
Attorney/Agent Name \_\_\_\_\_  
Attorney/Agent Phone No. (\_\_\_\_\_) \_\_\_\_\_  
Tax Years \_\_\_\_\_

Status of Appeal [DESCRIBE] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Affiant certifies that he or she is duly authorized to submit the above information on behalf of the Contracting Entity, that Affiant is associated with the Contracting Entity in the capacity noted above and has personal knowledge of the accuracy of the information provided herein, and that the information provided herein is true and correct to the best of Affiant's knowledge and belief.

\_\_\_\_\_  
Affiant

**SWORN TO AND SUBSCRIBED** before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Notary Public

**NOTE:**

This affidavit constitutes a **government record** as defined by Section 37.01 of the Texas Penal Code. Submission of a false government record is punishable as provided in Section 37.10 of the Texas Penal Code. Attach additional pages if needed to supply the required names and addresses.

**Exhibit IX**  
**BID BOND**

THE STATE OF TEXAS       §  
  §       **KNOW ALL MEN BY THESE PRESENTS**  
COUNTY OF HARRIS       §

THAT \_\_\_\_\_, a corporation organized under the laws of \_\_\_\_\_ (hereinafter called the "Principal"), and \_\_\_\_\_, a corporation of the State of Texas which is licensed to do business in the State of Texas (hereinafter referred to as the "Surety"), are held and firmly bound unto the City of Houston, Texas (hereinafter called the "City") in the full and just sum of **FIFTY THOUSAND DOLLARS (\$50,000.00)** to the payment of which sum and truly to be made, the said Principal and Surety bind themselves, their heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal has prepared for submission to the City a proposal S10-T23535 to provide **parking operations and management services** to the City's Convention & Entertainment Facilities Department; and

**WHEREAS**, the City requires this Bond as further assurance that the Principal will execute the required Agreement and provide the required Performance Bond if it is awarded the contract;

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH** that if the Principal shall not withdraw said bid until the Agreement has been awarded or until all bids therefore have been rejected, and the Principal shall, if it is awarded the Agreement, enter into a written Agreement with the City and provide an executed Performance Bond or Letter of Credit to City, each in the form provided as a part of the bid documents within fourteen (14) days after said Agreement has been awarded by the City or in the event of the failure to do so, if the Principal shall pay to the City the sum of **FIFTY THOUSAND DOLLARS (\$50,000.00)** within said fourteen (14) day period, then this obligation shall be void; otherwise, it shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Principal and the Surety have caused these presents to be executed and their seals affixed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:

PRINCIPAL:

\_\_\_\_\_  
Secretary

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

[AFFIX CORPORATE SEAL]

WITNESSES:

SURETY:

\_\_\_\_\_  
\_\_\_\_\_

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

OR

ATTEST:

\_\_\_\_\_  
Secretary

[AFFIX CORPORATE SEAL]

**EXHIBIT X**  
**PRICING WORKBOOK**

**NOTE:**

**DOWNLOAD THIS WORKBOOK FILE FROM THE CITY OF HOUSTON E-BID WEBSITE:**

**[HTTP://PURCHASING.HOUSTONTX.GOV/](http://PURCHASING.HOUSTONTX.GOV/)**

**AND CLICK ON THE "VENDOR LOGIN" LINK LOCATED AT THE LOWER-RIGHT CORNER OF SCREEN.**

**COMPLETE AND SUBMIT (9) COPIES IN A SEPARATE ENVELOPE**

**ENCLOSED WITHIN YOUR RFP PACKAGE.**

**EXHIBIT XI**

**DRAFT CONTRACT—LEGAL REQUIREMENTS**

# DRAFT CONTRACT

THE STATE OF TEXAS     §  
  §  
COUNTY OF HARRIS     §

## I. PARTIES

### A. Address

**THIS AGREEMENT FOR PARKING OPERATIONS AND MANAGEMENT SERVICES AGREEMENT** ("Agreement") is made between the **CITY OF HOUSTON, TEXAS** ("City"), a home-rule city of the State of Texas, and \_\_\_\_\_, **INC.** ("Contractor"), 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:

<u>City</u>	<u>Contractor</u>
Director of Convention and Entertainment Facilities Department or Designee City of Houston P. O. Box 61469 Houston, Texas 77208	_____

The Parties agree as follows:

### B. Table of Contents

This Agreement consists of the following sections:

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**EXHIBITS**

- A. Scope of Services
- B. Payments
- B-1. Direct Cost Budget and Pricing Information  
(See Exhibit X to RFP—"Pricing Workbook")
- C. Performance Incentive Program
- D. Drug Policy Compliance Agreement (included in Exhibit VI to RFP)
- E. Certification of No Safety Impact Positions (included in Exhibit VI to RFP)
- F. Drug Policy Compliance Declaration (included in Exhibit VI to RFP)
- G. M/WBE Subcontract Terms (see Exhibit I, Attachment C to RFP)
- H. Equal Employment Opportunity

C. Controlling Parts

If a conflict among the sections of this Agreement and the exhibits to this Agreement arises, the sections shall control over the exhibits.

D. Signatures

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

ATTEST/SEAL:

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS  
Signed by:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Mayor

APPROVED:

COUNTERSIGNED BY:

\_\_\_\_\_  
Director, Convention and Entertainment  
Facilities Department

\_\_\_\_\_  
City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

\_\_\_\_\_  
Assistant City Attorney  
L.D. File No.

\_\_\_\_\_

## 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.

**"Convention District Garage"** means the underground parking garage located across the street from the George R. Brown Convention Center, at 1002 Avenida de las Americas, Houston, Texas 77010.

**"Corporate Customers"** means multiple contract accounts.

**"Correction" or "Correct"** means the re-performance of the services identified in the Director's written notice to Contractor for failure to meet the requirements of this Agreement as set out in Article III, Section K below.

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

**"Department"** means the City of Houston Convention and Entertainment Facilities Department or its successor department.

**"Direct Costs"** - subject to the exceptions in Section 2.3, "Direct Costs" includes those actual costs incurred by Contractor, and pre-approved by the Director, to operate and maintain the Premises in accordance with this Agreement. Unless pre-approved by the Director, the total amount of Direct Costs shall not exceed the budgeted amounts set forth in **Exhibit "B."**

**"Director"** means the Director of the Convention and Entertainment Facilities Department, or the person he or she designates.

**"Documents"** mean notes, manuals, notebooks, plans, computations, databases, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.

**"George R. Brown Convention Center Surface Lots"** includes seven parking lots surrounding the George R. Brown Convention Center ("GRBCC"), including any other lots which may be acquired during the term of this Agreement. Of the seven surface parking lots, lot number six is located on the Texas Department of Transportation's right-of-way, and lot number four is used for employee parking, so no parking fees are collected at those two lots, as of the Agreement commencement date.

**“The Houston Center for the Arts Parking Lot”** is that parking lot on the south side of D'Amico Street between Rosine Street and Rochow Street.

**“Houston Police Department (“HPD”) Parking Lot”** is the City-owned parking lot located near the intersection of Preston and Artesian Streets. Ordinarily, Contractor shall be required to have trash picked up at the HPD parking lot, but few, if any, other services will be required at that lot on a regular basis, unless there is an unanticipated change in the usage of the parking lot. Although the HPD parking lot is managed by the Department, it is used mainly by HPD employees, and the potential for special event hours is estimated to be no more than 50 event hours per year. The Department also leases the HPD parking lot to the Houston Aquarium restaurant from time to time.

**“Imprest Funds”** is a card deposit refund fund maintained in a separate account at Contractor's designated bank, as approved by the Director. Contractor shall provide a monthly balance showing names and amounts, and shall provide copies of the bank statements upon request by the Parking Operations Manager.

**“Lots C and H”** means:

1. **Lot C:** that parking lot bounded by Memorial Drive, West Capitol, Buffalo Bayou, and Interstate 45.
2. **Lot H:** that parking lot bounded by Memorial Drive, Interstate 45, and Fonde Recreation Center.

**“Parking Facilities or Premises”** includes all parking garages, surface lots, tunnels, stairwells, parking garage elevators, entrance ramps, entrance signs and parking equipment owned and/or operated by the Convention & Entertainment Facilities Department. Included are the Theater District Parking Garages, the George R. Brown Convention Center Surface Lots, the Convention District Garage, the two Staging Lots at 2200 Dallas Street, Houston Center for the Arts parking lot, Houston Police Department parking lot, Lots C and H, and such other parking garages or parking surface lots as the Director may designate from time to time.

**“Parking Operations Manager(s)”** means the Department's Facility Manager and/or the Assistant Facility Manager of the Department's Parking Operations Division.

**“Parking Pass Accounts”** are invoiced bill-backs for approved passes previously issued through pre-arranged agreements.

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

**“Performance Incentive”** is defined in **Exhibit “B.”**

**“Revenue or Gross Revenue”** Parking Revenue or Gross Revenue is defined as the sum of Contract Parking Income, Validation Income, and Parking Operating Income. The Revenue upon which the Performance Incentive will be calculated is comprised only of the revenue derived from the charges for customer parking in the Parking Facilities net of sales tax (Net Revenue) as follows:

1. **Contract Parking Income**—that revenue derived from monthly license fee payments by contract parkers. **The following are excluded from Contract Parking Income:** Exhibitor and group permit sales by the George R. Brown

Convention Center, and parking fees paid by City employees and City departments, and the Greater Houston Convention & Visitors Bureau ("GHCVB").

2. **Validation Income**—that revenue derived from Parking Pass Accounts, validation coupons, and value cards sold for validated parking. This also includes validated parking revenue for any Department lessees, adjacent business or event parking. Contractor shall establish procedures to ensure source documentation is maintained and an audit trail enabling verification of Validation Income on a daily basis for each account billed. **The following are excluded from Validation Income:** Exhibitor and group permit sales by the George R. Brown Convention Center, and parking fees paid by City employees and City departments.
3. **Parking Operating Income**—all other revenue derived from the fees, rates, and charges for parking in the Convention & Entertainment Parking Facilities collected by the Contractor, including revenue from valet parking. **The following are excluded from Parking Operating Income:** Exhibitor and group permit sales by the George R. Brown Convention Center, and parking fees paid by City employees and City departments, and the GHCVB.

**"Shuttle Bus"** means one or more shuttle buses owned by the City of Houston and operated by the Department.

**"Staging Lots"** means the two parking lots located at 2200 Dallas Street, near the George R. Brown Convention Center. The two Staging Lots are used primarily by the GRBCC's clients who need to park large trucks nearby for the purpose of moving items into or out of the GRBCC for conventions and other events.

**"Theater District Parking Garages"** include the areas informally referred to as the Civic Center Garage, Large Tranquillity Garage and Small Tranquillity Garage.

**"Tram"** means one or more large multi-passenger golf carts, used to transport Theater District patrons within the Theater District Parking Garages.

**"Tunnels"**—The term "Tunnels" means any one or all of the tunnel locations listed below, and any additional tunnels the Director may designate. A map of the Tunnels is available in the Department's Parking Operations offices.

1. **"Alley Theatre Tunnel" (or "Alley Corridor")**—a tunnel beginning at the termination of the Bank of America Center tunnel, running along the east wall of the Civic Center Garage and ending at the south end of the tunnel under Texas Avenue (at the commencement of the existing Alley Tunnel).
2. **"City Hall Basement Tunnel"** refers to a tunnel leading from the south wall of the Large Tranquillity Garage into the basement of the City Hall.
3. **"Jones Hall Tunnel"**—a section of tunnel from the Jones Hall courtyard to the base of the stairs at the tunnel entrance to Bank of America.
4. **"Orange Concourse Tunnel"**—a section of tunnel beginning at the double doors of the Bank of America tunnel and ending at the west end of the Civic Center Garage.

5. "T-Tunnel" refers to tunnel from Large Tranquillity Garage to City Hall Annex Garage. The tunnel also has an entrance into the Hobby Center for the Performing Arts.
6. "Y-Tunnel" refers to the section of tunnel from the west wall of the Civic Center Garage, and under Bayou Place Phase II.
7. "611 Walker Tunnel Drop-Off Area"—a glass enclosed transition area located in the southeast corner of the Yellow Level of the Theater District Garage.

Other definitions may be found in the Exhibits.

### III. DUTIES OF CONTRACTOR

#### A. License

In consideration of the License granted herein, Contractor shall provide all labor, material, and supervision necessary to perform the services described in **Exhibit "A."**

#### 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. Prompt 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 M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

#### D. Personnel of the Contractor

Contractor shall replace any of its personnel or subcontractors whose work performance is deemed unsatisfactory by the Director.

#### E. RELEASE

**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.**

**F. INDEMNIFICATION**

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, 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 PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (2) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND
- (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.

CONTRACTOR 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 SOLE NEGLIGENCE.

**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 - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT**

CONTRACTOR AGREES 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 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 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS 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 EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.**

**I. INDEMNIFICATION PROCEDURES**

(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 30 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 30 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.

(2) Defense of Claims

(a) 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.

(b) 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.

**J. Insurance**

Contractor shall maintain in effect certain insurance coverage, which is described as follows:

- (1) Minimum Insurance Requirements. Contractor shall maintain the following insurance coverage in the following amounts:

<u>(Coverage)</u>	<u>(Limit of Liability)</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	Bodily Injury by accident \$500,000 (each accident) Bodily Injury by Disease \$500,000 (policy limit) Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence and \$2,000,000 aggregate
Automobile Liability Insurance (for vehicles Contractor uses in performing under this Agreement, including Shuttle Buses, Employer's Non-Owned and Hired Auto Coverage)	\$1,000,000 combined single limit per occurrence
Umbrella Excess Coverage	\$1,500,000
Garage-Keepers Legal Liability	\$2,500,000 combined single limit each occurrence
Crime-Policy Limits	\$10,000 commercial blanket \$10,000 broad form money-inside \$10,000 broad form money-outside

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

- (2) Form of Policies. The Director may approve the form of the insurance policies, but nothing the Director does or fails to do relieves Contractor from its duties to provide the required coverage under this Agreement. The Director's actions or inactions do not waive the City's rights under this Agreement.
- (3) Issuers of Policies. 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 of Best's Key Rating Guide.

- (4) Insured Parties. Each policy, except those for Workers' Compensation, and Employer's Liability, must name the City as Additional Insured on the original policy and all renewals or replacements.
- (5) Deductibles. Contractor shall be responsible for and bear any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.
- (6) Cancellation. CONTRACTOR SHALL GIVE 30 DAYS' WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELLED, MATERIALLY CHANGED OR NON-RENEWED. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be cancelled, materially changed, or nonrenewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may
  - (a) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
  - (b) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.
- (7) Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.
- (8) Endorsement of Primary Insurance. Each policy, except Workers' Compensation, must contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement.
- (9) Liability for Premium. Contractor shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.
- (10) Subcontractors. Contractor shall require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements except amount. The amount must be commensurate with the amount of the subcontract, but in no case less than \$500,000 per occurrence. Contractor shall provide copies of insurance certificates to the Director upon request.
- (11) Proof of Insurance.
  - (a) Prior to execution of this Agreement, Contractor shall furnish the Director with certificates of insurance. If requested by Director, Contractor shall provide an Affidavit confirming that the Certificates accurately reflect the insurance coverage maintained. If requested in writing by the Director,

Contractor shall furnish the City with certified copies of Contractor's actual insurance policies.

- (b) Contractor shall continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If Contractor does not comply with this requirement, the Director, 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.

The City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

(12) Other Insurance. If requested by the Director, Contractor shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Contractor's operations under this Agreement.

**K. Warranties**

- 1. Contractor 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.

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

- (a) that all items are free of defects in title, design, material, and workmanship,
- (b) 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,
- (c) 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
- (d) that no item or its use infringes any patent, copyright, or proprietary right.

Contractor shall enforce all warranties on behalf of the City and shall promptly repair or replace any part or equipment that fails in normal use and service.

- (2) (a) Contractor warrants that all services it performs under this Agreement will, at the time of Acceptance, be free from defects in workmanship for a period of one year and conform to the requirements of this Agreement.

- (b) The Director will give written notice of any defect or nonconformance to Contractor within one year from the date of Acceptance by the City. In the written notice, the Director will either require (1) Contractor to Correct the services to conform to the Agreement or (2) state that the City does not require Correction of services identified in the written notice.
- (c) In the event the Director requires Contractor to Correct services already provided to City, then, Contractor shall do so at no cost to City and such services are subject to this Section to the same extent as was the work initially performed by Contractor under this Agreement. If Contractor fails to or refuses to Correct services as requested by the Director, then, the Director may have a third-party vendor correct or replace services initially performed by Contractor at Contractor's cost or make equitable adjustments to the contract price.
- (d) The Director has the option either to require Contractor to Correct services as set out above, or to make an equitable adjustment to the contract price for the services initially performed by Contractor and later found to be incorrect or not Acceptable by the Director under this Agreement.

**L. Licenses and Permits**

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

**M. Compliance with Laws**

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

**N. Compliance with Equal Opportunity Ordinance**

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

**O. M/WBE Compliance**

Contractor shall comply with the City's Minority and Women Business Enterprise ("M/WBE") 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 15% of the value of this Agreement to M/WBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them.

Contractor shall require written subcontracts with all M/WBE subcontractors and shall submit all disputes with M/WBEs to binding arbitration if directed to do so by the Affirmative Action Division Director. M/WBE subcontracts must contain the terms set out in Exhibit "E." If Contractor is an individual person (as distinguished from a corporation, partnership, or other

legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

**P. Performance Bond**

Contractor shall furnish a performance bond or a Clean Irrevocable Letter of Credit for **\$175,000.00**, renewable each year of the Agreement Term including extension terms, conditioned on Contractor's full and timely performance of the Agreement. The bond must be in a form approved by the City Attorney and issued by a corporate surety authorized and admitted to write surety bonds in Texas. Any Clean Irrevocable Letter of Credit must be in a form approved by the City Attorney. The surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of \$100,000 by a reinsurer listed on the U.S. Treasury list. If the City receives notice that the Performance Bond is cancelled, then the City may not make a claim against the surety for failure to renew the Performance Bond, so long as the Contractor is performing all aspects of this Agreement without default, or for Contractor's default in not obtaining a new Performance Bond, but the City may terminate the Contractor under this Agreement for default for its failure to provide a replacement bond.

**Q. 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"**—Attachment "A," 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 "D"**—Attachment "B."

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance of this Agreement or on completion of this Agreement if performance is less than six months, a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit "D"**—Attachment "C." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each six-month period of performance and within 30 days of completion of this Agreement. The first six-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.

**R. Department Policies and Procedures**

Contractor shall at all times comply with the Parking Operations Policies and Procedures, on file in the Department's Parking Operations offices, and any amendment or revisions thereto.

**IV. DUTIES OF CITY**

The City shall perform those duties assigned to its responsibility as set out in **Exhibit "A"** of this Agreement.

**A. Payment Terms**

In consideration for the services provided hereunder, City shall pay Contractor those amounts as described in **Exhibit "B."**

**B. Taxes**

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's statements to the City must not contain assessments of any of these taxes unless required by law. The Director 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 a statement Contractor submits for any reason, including lack of supporting documentation, 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 statement or on a special invoice for the disputed item only.

**D. Limit of Appropriation**

(1) The City's duty to pay money to Contractor 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 \$ \_\_\_\_\_ 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 issuing to the Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out

below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

**"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"**

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

\$ \_\_\_\_\_

(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.

(5) City Council delegates to the Director the authority to approve up to \$ \_\_\_\_\_ in supplemental allocations for this Agreement without returning to City Council.

**E. Special Services Authorizations**

(1) At any time during the Agreement Term, the Director may authorize special services to increase, decrease, change, or clarify the scope of work set forth herein and, if required, the amount to be paid to the Contractor. Contractor shall perform special services with all terms and conditions of this Agreement. Should a conflict arise between the terms and conditions of a Special Services Authorization and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control.

(2) To be effective, the Special Services Authorization prepared by the Director will be in substantially the following form:

**SPECIAL SERVICES AUTHORIZATION**

To: (Name of Contractor [the "Contractor"])  
From: City of Houston, Texas (the "City")  
Date: (Effective date of Special Services Authorization)  
Subject: Special Services Authorization pursuant to Contract No. \_\_\_\_\_ ("Contract") for  
Parking Operations and Management Services  
between the City and Contractor effective on (Effective Date)

"Subject to all terms and conditions of the Agreement, and the conditions and requirements set forth herein, the City requests:

**(Description of the increase, decrease, change or refinement to the scope of services and the corresponding credit against the City's parking revenues or other adjustment, if any, to the Contractor's or City's compensation.)**

Signed: (Signature of Director)

Fees paid for such additional work shall be at the unit prices set forth herein or for work for which no special rates are specified, at a rate agreed to by the parties.

(3) More than one Special Services Authorization may be given, subject to the following limitations:

- (a) Council expressly authorizes the Director to approve SSAs of an aggregate limit of five percent of the original Agreement amount. Any SSA in excess of this five percent aggregate must be approved by the City Council.
- (b) If a SSA describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
- (c) The total of all SSAs issued under this section may not increase the original Agreement amount by more than **25%**.

(4) Any Special Services Authorization is subject to the provisions of this Agreement. Special Services requiring additional work not described in this Agreement shall be charged against the Net Revenues otherwise due to the City.

(5) Any Special Services Authorization which purports to describe an increase in work to be performed by Contractor but which in fact describes work already required to be performed by Contractor under the terms of this Agreement shall not entitle Contractor to any additional compensation. If a dispute arises because of an issue of this nature, the parties shall conduct a meeting within five days of the date of the disputed Special Services Authorization. Failure to request a meeting during this time frame constitutes waiver of any right to protect the terms of the Special Services Authorization in this regard. Failing a resolution to the issue at the meeting, a mediator will be hired by both parties (subject to an allocation of sufficient funds by the Director), the cost of which to be evenly divided between the parties. The decision reached by the mediator relating to the issue of whether the work is already required under this Agreement or whether it is additional work shall be final. Upon this determination, the Director may elect to withdraw the Special Services Authorization with no additional payment or obligation to Contractor or may proceed with the Special Services Authorization.

(6) Contractor shall provide all labor, materials, tools, insurance, and incidentals necessary to perform under a Special Services Authorization. Special Services work, if any, shall be completed within the time prescribed in the particular Special Services Authorization; however, if no time for completion is prescribed, such work shall be completed within a reasonable time. If the work described in a Special Services Authorization causes an unavoidable delay in any other work the Contractor is required to perform under this Agreement, Contractor shall be entitled to request a time extension for the completion of any such work. The Director, in his or her sole discretion, shall have the absolute right to grant or deny such a request. Contractor shall not be entitled to damages for such delay.

**F. Additions and Deletions**

The Director, by means of a written authorization to Contractor, may add or delete Facilities from this Agreement and any items or services provided by Contractor that are reasonably related to the scope of this Agreement. Written notification of the added or deleted Facilities, items or services shall take effect upon the Contractor's receipt of such notice or on such other day as specified therein.

**V. TERM AND TERMINATION**

**A. Contract Term**

This Agreement is effective at 12:01 a.m. June 1, 2010 and remains in effect for three years (the "Initial Term"), unless sooner terminated as provided for in this Agreement.

**B. Renewals**

Unless the Director sends written notice of termination to Contractor at least 30 days before expiration of the then-current term and if sufficient funds are allocated, then, upon expiration of the Initial Term, or first renewal term as applicable, this Agreement will be automatically renewed for an additional one-year term (a "Renewal Term") upon the same terms and conditions, but not to exceed two such one-year renewal terms.

**C. Termination for Convenience by City**

The 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.

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. Within 30 days after the termination, Contractor shall pay to the City all remaining amounts due under **Exhibit "B."**

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 IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE. SHOULD THE CITY TERMINATE THIS AGREEMENT FOR CONVENIENCE, CONTRACTOR SHALL BE PAID FOR ANY AND ALL VALUE ADDED ENHANCEMENTS REFERENCED IN THIS AGREEMENT THAT HAVE BEEN PAID FOR BY CONTRACTOR, BUT NOT YET DEDUCTED FROM GROSS REVENUES, BY DEDUCTING SUCH AMOUNT FROM THE REVENUES OTHERWISE OWED TO THE CITY.

**D. 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.

#### **E. Termination for Cause by Contractor**

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. 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.

### **VI. MISCELLANEOUS**

#### **A. Independent Contractor**

Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. 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. An 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 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 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 Director will review claims that an event of Force Majeure directly impacting 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 14 days from the date performance is affected, the Director may terminate this Agreement by giving seven 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 Director is only authorized to perform the functions specifically delegated to him or her 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 to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

**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 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.

**J. Inspections and Audits**

City representatives may have the right to perform, or have performed, (i) audits of Contractor's books and records, and (ii) 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 three 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. Risk of Loss**

Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for each Product passes from Contractor to the City upon acceptance by the City.

**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. The City shall have the right and option to assign this Agreement in its sole discretion to any successor entity to the Department by providing Contractor with written notice of such assignment. 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 Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest under §9.318(c) of the Texas Business & Commerce Code. In the case of such an assignment, under Section 9.102 of the Code, 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 Director'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.

**S. Contractor Debt**

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 FOR ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR.

**T. Pay or Play**

The requirements and terms of the City of Houston Pay or Play program as set out in Executive Order 1-7, as amended, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7, as amended, and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement. Contractor shall complete and submit to the Director the POP-2 form attached in Exhibit XII prior to execution of this Agreement.

**U. Publicity**

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