

**SECTION C
GENERAL TERMS & CONDITIONS**

THE STATE OF TEXAS

BID # S30-L22229

COUNTY OF HARRIS

ORDINANCE # 07-1102
CONTRACT # 4600007901

I. PARTIES

A. Address

THIS AGREEMENT FOR BUS RENTAL SERVICES ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and **Heights Transportation, Inc.** ("Contractor or Vendor"), a corporation doing business in Texas.

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

City

City Purchasing Agent for Director
of Parks and Recreation Department
City of Houston
P.O. Box 1562
Houston, Texas 77251

Contractor

Heights Transportation, Inc.
8646 Catalina Lane
Houston, Texas 77075
Phone: 713-802-1144
Fax: 713-802-0422

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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EXHIBITS

- A. DEFINITIONS
- B. SCOPE OF SERVICES
- * C. EQUAL EMPLOYMENT OPPORTUNITY
- * D. MWBE SUBCONTRACT TERMS
- * E. DRUG POLICY COMPLIANCE AGREEMENT
- * F. CERTIFICATION OF NO SAFETY IMPACT POSITIONS
- * G. DRUG POLICY COMPLIANCE DECLARATION
- H. FEES AND COSTS

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

C. Parts Incorporated

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

D. Controlling Parts

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

E. Definitions

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

F. Signatures

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

ATTEST/SEAL (if a corporation):

Heights Transportation, Inc.

WITNESS (if not a corporation):

By: *Renee M. Gallo*
Name: RENE E M. GALLO
Title: PRESIDENT

By: *Renee M. Gallo*
Name: RENE E M. GALLO
Title: SECRETARY
Federal Tax ID Number: 84-1675006

ATTEST/SEAL:

Con Russell
City Secretary

CITY OF HOUSTON, TEXAS

Signed by:

Bill White *Sammy Scott*
Mayor

APPROVED:

Galvin D. Wells
City Purchasing Agent

COUNTERSIGNED BY:

Annise D. Parker
City Controller *Matthew P. Appel*

DATE COUNTERSIGNED:

10-16-07

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

8-23-07
Date

David Richards
Legal Assistant

II. DUTIES OF CONTRACTOR

A. Scope of Services

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit "B."

B. RELEASE

PRIME CONTRACTOR/SUPPLIER AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

C. INDEMNIFICATION

PRIME CONTRACTOR/SUPPLIER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, 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) PRIME CONTRACTOR/SUPPLIER'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "PRIME CONTRACTOR/SUPPLIER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (2) THE CITY'S AND PRIME CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER PRIME CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT; AND

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

PRIME CONTRACTOR/SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. PRIME CONTRACTOR/SUPPLIER'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. PRIME CONTRACTOR/SUPPLIER SHALL NOT INDEMNIFY THE CITY FOR THE CITY ' S SOLE NEGLIGENCE.

D. 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 10 days. The notice must include the following:
- (a) a description of the indemnification event in reasonable detail,
 - (b) the basis on which indemnification may be due, and the anticipated amount of the indemnified loss.

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

- (2) Defense of Claims
- (a) Assumption of Defense. Prime Contractor/Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Prime Contractor/Supplier shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Prime Contractor/Supplier must advise the City as to whether or not it will defend the claim. If Prime Contractor/Supplier does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.
 - (b) Continued Participation. If Prime Contractor/Supplier elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Prime Contractor/Supplier may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that 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.

E. Insurance

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

- (1) Commercial General Liability insurance including Contractual Liability insurance:

\$500,000 per occurrence; \$1,000,000 aggregate

- (2) Workers' Compensation including Broad Form All States endorsement:

Statutory amount

- (3) Automobile Liability insurance

\$1,000,000 combined single limit per occurrence

Defense costs are excluded from the face amount of the policy.

Aggregate Limits are per 12-month policy period unless otherwise indicated.

- (4) Employer's Liability

Bodily injury by accident \$100,000 (each accident)

Bodily injury by disease \$100,000 (policy limit)

Bodily injury by disease \$100,000 (each employee)

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

- (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.

F. Warranties

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

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

- (1) that all items are free of defects in title, material, and workmanship,
- (2) that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,
- (3) that each replacement item is new in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and
- (4) that no item or its use infringes any patent, copyright, or proprietary right.

G. Licenses and Permits

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

H. Compliance with Equal Opportunity Ordinance

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

I. MWBE Compliance

Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 11% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them.

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

\$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

J. 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 "E", together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F".

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G". Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

(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.

K. Environmental Laws

Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with

the authority to promulgate environmental rules and regulations (Environmental Laws). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.

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

L. Contractor's Performance

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

M. Payment of Employees and Subcontractors

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

Failure of Contractor to pay its employees as required by law shall constitute a default under this contract for which the Contractor and its surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.

Contractor shall defend and indemnify the City from any claims or liability arising out of Contractor's failure to pay its subcontractors as required by law. Contractor shall submit disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

III. DUTIES OF CITY

A. Payment Terms

The City shall pay and Contractor shall accept fees at the unit prices provided in Exhibit H for all services rendered and the Deliverables furnished by Contractor. The fees must only be paid from Allocated Funds, as provided below.

Any quantities of services or Deliverables shown in any part of this contract or its exhibits are estimated only and are not any guarantee that the City will not purchase more or less of those services or Deliverables. The City will pay only for the services or Deliverables actually ordered and only at the unit prices set out.

B. Taxes

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

C. Method of Payment

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

D. Method of Payment - Disputed Payments

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

E. 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

\$75,000.00 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

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

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]

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

DATE: [Date of notice]

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

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$_____, upon the request of the below-signed Director, has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

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

SIGNED:

(Signature of the City Controller)

City Controller of the City

REQUESTED:

(Signature of the Director)

Director

- (4) 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.

F. Changes

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

CHANGE ORDER

TO: [Name of Contractor]

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

DATE: [Date of Notice]

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

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

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

Signed:

[Signature of City Purchasing Agent or Director upon written notice to the City Purchasing Agent]

- (3) The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may issue more than one Change Order, subject to the following limitations:
 - (a) Council expressly authorizes the City Purchasing Agent or Director upon written

authorization by the City Purchasing Agent, to approve a Change Order of up to \$25,000. A Change Order of more than \$25,000 over the approved contract amount must be approved by the City Council.

- (b) If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
 - (c) The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- (4) Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The City Purchasing Agent's or Director's decision regarding a time extension is final.
- (5) A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.
- (6) Change Orders are subject to the Allocated Funds provisions of this Agreement.

IV. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and expires two (2) years after the date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement.

B. Notice to Proceed

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

C. Renewals

If sufficient funds are allocated, the City Purchasing Agent, at his or her sole discretion, may make a request to

Contractor to renew this Agreement for up to three additional 1-year option periods, upon at least 30 days' written notice before expiration of the initial term, or first option period, as applicable. Any renewal, pursuant to this Section, shall be upon the same terms and conditions of the Agreement.

D. Time Extensions

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

E. Termination for Convenience by the City

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

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

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

F. Termination for Cause by City

If Contractor defaults under this Agreement, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent 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 City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's or Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the City Purchasing Agent or Director upon written notice to the City Purchasing Agent may terminate this Agreement on the termination date, at no further obligation of the City.

To effect final termination, the City Purchasing Agent or Director upon written notice to the City Purchasing Agent 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.

G. 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.

H. Removal of Contractor Owned Equipment and Materials

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

V. MISCELLANEOUS

A. Independent Contractor

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

B. Force Majeure

1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
2. This relief is not applicable unless the affected party does the following:
 - (a) uses due diligence to remove the Force Majeure as quickly as possible; and
 - (b) provides the other party with prompt written notice of the cause and its anticipated effect.
3. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.
4. If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may terminate this Agreement by giving 30 days' written notice to Contractor. This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.

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 duly adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

F. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

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

G. Notices

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

H. 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.

I. Inspections and Audits

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 3 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

J. 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.

K. 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.

L. 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.

M. Parties In Interest

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

N. Successors and Assigns

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

O. Business Structure and Assignments

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

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

P. 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.

Q. 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 from any payments owed to Contractor under this agreement, and Contractor waives any recourse therefor.

EXHIBIT "A" **DEFINITIONS**

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

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

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

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

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

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

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

"Contract Term" is defined in Article IV.

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

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

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

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

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

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

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

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

EXHIBIT "B"

SECTION B

Scope of Work

1.0 General

The scope of work requires the Contractor to provide all transportation, labor, supplies, tools and supervision necessary to provide transportation for various trips throughout Harris County and adjoining regions for the City of Houston Parks and Recreation Department. This transportation will involve shuttling, multiple pick-ups and drop-offs per scheduled events/field trips. The Contractor shall supply all superintendence, labor, materials, supplies, and equipment necessary for the services described herein. Contractor shall be able to furnish a combination of up to 35 buses, coaches, mini-bus and/or van for an event.

2.0 Assignment of Work

- 2.1 The work shall be issued via a Work Order by the Director of the Parks and Recreation Department or designee.
- 2.2 Work Orders may be issued by electronic mail or facsimile for service to be performed.
- 2.3 The City will issue a Work Order no later than 24 hours before a scheduled event.
- 2.4 Contractor shall supply transportation for events within three (3) days advance notice from the Director or designee.
- 2.5 Contractor shall accept changes to a Work Order at least up to twelve (12) hours prior to the original event time for changes such as pick-ups/drop-off locations, number of buses needed and others as specified by the Director or designee.

3.0 Personnel

- 3.1 Contractor shall require the following conditions from each driver who supplies services on this Contract and shall make the information available to the Director or designee any time such information is requested.
 - 3.1.1 Contractor shall maintain a defensive driver's certification current every two years on all driver's assigned to this contract.
 - 3.1.2 Possesses a valid Commercial Driver's License as defined by the Texas Department of Transportation.
 - 3.1.3 Have no history of habitual or severe traffic violations on their driver's records.
 - 3.1.3 A thorough background check will be required for drivers assigned to drive for the Parks and Recreation Department. The contractor shall be required to submit the results of the background checks to the Parks and Recreation Department.

3.1.4 The Contractor's driver shall wear a company uniform and a name tag at all times while servicing this contract.

3.1.5 Contractor shall secure thorough background checks on drivers assigned to drive for the Parks and Recreation Department. The contractor shall be required to submit the results of the background checks to the Parks and Recreation Department.

3.1.6 Contractor shall ensure all drivers assigned to this contract are in compliance with all of Texas Department of Transportation's regulations as well as regulations pertaining to other transportation regulatory agencies.

ANY BUS DRIVER WITH A RECORD OF (DWI) OR DRIVING WHILE INTOXICATED OR DRIVING UNDER THE INFLUENCE SHALL BE UNACCEPTABLE AND IMMEDIATELY REMOVED.

4.0 **Vehicle Requirements**

No standees shall be allowed on any bus.

4.1 **School Bus Requirements**

4.1.1 Minimum seats per bus: 28

4.1.2 Maximum seats per bus: 72

4.1.3 Seating Capacity:
12 years and under - 3 per seat
13 years and older - 2 per seat

4.1.4 Minimum of two (2) handicapped accessible bus per event shall be available.

4.2 **Coach Bus**

Coach buses shall be air conditioned and have available storage under coach carriage for each passenger to store one small luggage (12" x 18" x 23" Minimum size)

4.2.1 Minimum seats per bus 47

4.2.2 Maximum seats per bus 59

4.2.3 Seating Capacity must be 1 per seat

4.2.4 Minimum of one (1) handicapped accessible Coach bus per event shall be available.

4.3 **Mini Bus/Mini Van**

4.3.1 Minimum seats per bus: 18

4.3.2 Maximum seats per bus: 25

4.3.3 Seating Capacity:
2 per seat

4.4 **Van**

- 4.4.1 Minimum seats per van: 10
- 4.4.2 Maximum seats per van: 12 (including driver)
- 4.4.3 Seating Capacity:
 - 12 years and under - 4 per seat
 - 13 years and older - 3 per seat

Vehicles used shall be licensed for operation as Commercial Motor Vehicles as administered by the Federal Department of Transportation and Texas Department of Transportation. All vehicles shall be clean and in sanitary condition. In addition, vehicles must have functional HVAC system and a functional Odometer to record event mileage.

5.0 Service Description

- 5.1 All vehicles shall be operated in a manner in compliance with all traffic laws, rules and regulations.
- 5.2 Trip boundaries shall be within 250 miles radius of Harris County.
- 5.3 Some trips shall be in time periods of 4 to 12 hours between the hours of 5:00 a.m. to 11:00 pm.
- 5.4 Driver's attendance is required to remain at the site during the entire time interval of the event.
- 5.5 Maximum shuttle site per event shall not exceed four (4) pickups and four (4) deliveries.
 - 5.5.1 Trip boundaries are Houston suburbs as defined by the State of Texas Railroad Commission.

6.0 Requirements

Contractor shall maintain and enforce a safety procedure whereby drivers will report any problem and or potential problems, which may affect the safe transportation of passengers.

- 6.1 Contractor shall provide, at no additional charge, alternate transportation in the case of mechanical failure and/or accident with any vehicle used for services on this Contract. In the event of any accidents, mechanical failures and/or any changes pickup and delivery of passengers, the Contractor must notify the Director or its designee immediately.
- 6.2 Any necessary alternate transportation shall be provided within sixty (60) minutes for buses, coaches and shuttles that have passed the pickup time period(s).
- 6.3 The Contractor shall maintain and operate a mobile two-way system of have cellular telephone equipment to facilitate continuous communication with all on duty drivers during events for the City of Houston. A paging system shall not be considered to be an adequate communication system.
- 6.4 Liquidated damages will apply for Contractor's failure to meet given schedules.
- 6.5 Contractor must possess a Houston Charter and Site Seeing License and all other

licenses needed to operate in and around the City of Houston.

6.6 All vehicles shall comply with Federal, State and Local safety standards.

7.0 Liquidated Damages

A Contractor that does not meet the set schedules issued or reporting of an accident(s)/incident(s) with-in the given time frame specified, liquidated damages shall be charged per bus. Liquidated damages in the amount of Twenty-Five Dollars (\$25.00) shall be charged for every 15 minutes of late pickup(s) and One Hundred Dollars (\$100.00) for every unreported accidents/incidents. There shall be a grace period for the first 15 minutes only, any additional minutes charges will be assessed in fifteen minutes increments. The charges will be deducted from the invoice(s) amount for which services are rendered.

8.0 Communication

- 8.1 The Parks and Recreation Department will provide chaperones for bus trips to coordinate an event scheduled.
- 8.2 Contractor shall provide each driver either a two-way communication and/or cell phone(s) as a way of communicating with company dispatch to track and/or report accidents or problems that may occur.

9.0 Cancellation & Turnaround Charges

- 9.1 Cancellations submitted 48 hours in advance will be at no charge to the City.
- 9.2 Cancellations submitted less than 48 hours in advance will be charged per fee schedule.
- 9.3 Turnaround charges will occur should the City require fewer buses than originally requested and the decision shall be made after all buses have reported for duty. Should City reduce the number of buses, then cancellation charges shall apply.
- 9.4 Vehicles shall report to the designated event staging area at least fifteen minutes prior to their scheduled operating time(s). The fifteen minute report time shall not be considered part of revenue service.

10.0 Safety and Regulations Requirements:

- 10.1 All vehicles used to service this contract shall be in compliance with all applicable safety requirements and regulations for operation of vehicles described herein. This includes, but is not limited to, standards established by the United States Department of Transportation, including the Federal Motor Vehicle Safety Standards (FMVSS), the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA), the Texas Department of Transportation and the Texas Natural Resource Conservation Commission (TNRCC).

10.2 All vehicles used in this contract shall have a first aid kit with a minimum of the following items: Gloves (2 Pair), assorted bandages (30), antiseptic wipes (30), scissors, instant cold pack, 4' x 4' sterile pads and alcohol wipes.

10.3 The Contractor shall give notices and comply with all Federal, State and Municipal laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of this Contract, including, but not limited to, the laws referred to in this Contract. Upon request, the Contractor shall furnish to METRO certificates of compliance with all such laws, ordinances rules, regulations and orders. The Contractor shall also be responsible for obtaining all necessary permits and licenses required for performance under the contract.

11.0 Warranty of Services:

a) *Definitions:* "Acceptance" as used in this clause, means the act of an authorized representative of the City by which the City assumes for itself, approval of specific services as partial or complete performance of the contract.

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

b) Notwithstanding inspection and acceptance by the City or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Contract. The City shall give written notice of any defect or non-conformance to the Contractor within a one-year period from the date of acceptance by the City. This notice shall state either (1) that the Contractor shall correct or re-perform any defective or non-conforming services at no additional cost to the City, or (2) that the City does not require correction or re-performance.

c) If the Contractor is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the City thereby, or make an equitable adjustment in the contract price.

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

12.0 Invoicing

The Contractor shall submit invoices after each event/service performed for the City of Houston. The Contractor shall submit one original invoice to Accounts Payable and a copy to the Director and/or his/her designee. All invoices shall be original invoices or certified original invoices on Contractor's company stationery with the original signed by an authorized agent of the company. The invoice number shall not be duplicated during the term of the contract period(s). Each invoice shall detail the following information:

City of Houston Contract No. and Ordinance No.

Copy of Work Order

Ordering Department and Facility Name and address where services were performed

Date(s) and time(s) services performed

Total Invoice cost

All unit prices invoiced shall be listed and easily identified against contract pricing.

Contractor shall mail invoices to: Parks and Recreation Department
Accounts Payable
2999 S. Wayside Dr.
Houston, Texas 77023

13.0 Additions & Deletions:

The City, by written notice from the City Purchasing Agent to the Contractor, at any time during the term of this contract, may add or delete like or similar equipment, supplies, locations and/or services to the list of equipment, supplies, locations, and/or services to be provided. Any such written notice shall take effect on the date stated in the notice from the City. Similar equipment, supplies, services, or locations added to the contract shall be in accordance with the contract specification/scope of services, and the charges or rates for items added shall be the same as specified in the fee schedule. In the event that the additional equipment, supplies, locations and/or services are not identical to the item(s) already under contract, the charges therefor will then be the Contractor's normal and customary charges or rates for the equipment, supplies, locations and/or services classified in the fee schedule.

14.0 ESTIMATED QUANTITIES NOT GUARANTEED

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

Schedule H Fee Schedule

Year One - Bus Rental

Item #	Description	Unit of Measure	Unit Price
--------	-------------	-----------------	------------

- | | | | |
|----|--|--|------------------|
| 1. | School Bus Rental – Non Shuttle within 100 mile radius of City Hall
Monday – Friday (5-8 hours) | | \$61.25 per hour |
| 2. | School Bus Rental – Shuttle within mile radius of City Hall
Monday – Friday (5-8 hours) | | \$65.00 per hour |
| 3. | School Bus Rental – Shuttle within 100 mile radius of City Hall,
Saturday and Sunday | | \$65.00 per hour |

Year Two - Bus Rental

Item #	Description	Unit of Measure	Unit Price
--------	-------------	-----------------	------------

- | | | | |
|----|--|--|------------------|
| 1. | School Bus Rental – Non Shuttle within 100 mile radius of City Hall
Monday – Friday (5-8 hours) | | \$61.25 per hour |
| 2. | School Bus Rental – Shuttle within mile radius of City Hall
Monday – Friday (5-8 hours) | | \$65.00 per hour |
| 3. | School Bus Rental – Shuttle within 100 mile radius of City Hall,
Saturday and Sunday | | \$65.00 per hour |

Year Three - Bus Rental

Item #	Description	Unit of Measure	Unit Price
--------	-------------	-----------------	------------

- | | | | |
|----|--|--|------------------|
| 1. | School Bus Rental – Non Shuttle within 100 mile radius of City Hall
Monday – Friday (5-8 hours) | | \$61.25 per hour |
| 2. | School Bus Rental – Shuttle within mile radius of City Hall
Monday – Friday (5-8 hours) | | \$65.00 per hour |
| 3. | School Bus Rental – Shuttle within 100 mile radius of City Hall,
Saturday and Sunday | | \$65.00 per hour |

Year Four - Bus Rental

Item #	Description	Unit of Measure	Unit Price
---------------	--------------------	------------------------	-------------------

- | | | | |
|----|--|--|------------------|
| 1. | School Bus Rental – Non Shuttle within 100 mile radius of City Hall
Monday – Friday (5-8 hours) | | \$67.50 per hour |
| 2. | School Bus Rental – Shuttle within mile radius of City Hall
Monday – Friday (5-8 hours) | | \$71.50 per hour |
| 3. | School Bus Rental – Shuttle within 100 mile radius of City Hall,
Saturday and Sunday | | \$71.50 per hour |

Year Five - Bus Rental

Item #	Description	Unit of Measure	Unit Price
---------------	--------------------	------------------------	-------------------

- | | | | |
|----|--|--|------------------|
| 1. | School Bus Rental – Non Shuttle within 100 mile radius of City Hall
Monday – Friday (5-8 hours) | | \$67.50 per hour |
| 2. | School Bus Rental – Shuttle within mile radius of City Hall
Monday – Friday (5-8 hours) | | \$71.50 per hour |
| 3. | School Bus Rental – Shuttle within 100 mile radius of City Hall,
Saturday and Sunday | | \$71.50 per hour |