

THE STATE OF TEXAS §  
COUNTY OF HARRIS §

RFQ#S30-L22137  
ORD# 2013-0818  
CONTRACT # 4160012264

I. PARTIES

A. Address

**THIS AGREEMENT FOR PROFESSIONAL SERVICES** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a Home Rule City of the State of Texas, and **NIGHTINGALE REHABILITATION, INC.**, ("Contractor"), a Texas corporation.

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

City

Houston Police Department  
Budget & Finance Division  
1200 Travis - 17th Floor  
Houston, Texas 77002

Contractor

Nightingale Rehabilitation, Inc.  
5802 Holly Street  
Houston, TX 77074  
Ph: 713-478-4136  
Fax: 713-589-2510

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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**EXHIBITS**

A. <b>Scope of Services</b>	
B. <b>Equal Employment Opportunity</b>	
C. <b>Drug Policy Compliance Agreement</b>	
D. <b>Firm's Certification of No Safety Impact Positions</b>	
E. <b>Drug Policy Compliance Declaration</b>	
F. <b>Pricing Form</b>	
C. <u>Parts Incorporated</u>	

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

D. Controlling Parts

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

E. Signatures

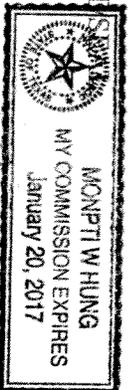
The Parties have executed this Agreement in multiple copies, each of which is an original.

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

NIGHTINGALE REHABILITATION INC.

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

By: Philip Chung  
Name: Philip Chung  
Title: President



ATTEST  
Monica W. Hung  
City Secretary

CITY OF HOUSTON, TEXAS  
Signed by: Armine D. Pagan  
Mayor Armine D. Pagan

APPROVED:  
[Signature]  
Houston Police Chief

COUNTERSIGNED BY:  
Ronald C. Khan  
City Controller Jane Adl

APPROVED:

DATE COUNTERSIGNED:

[Signature]  
City Purchasing Agent

9-25-13

APPROVED AS TO FORM:

[Signature]  
Sr. Assistant City Attorney  
L.D. File No. 0371300049001

## II. DEFINITIONS

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

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

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

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

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

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

"Documents" means 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.

"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.

### III. DUTIES OF CONTRACTOR

#### A. Scope of Services Services in General

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform deaf and hearing impaired interpreter and closed captioning services for the Houston Police Department ("HPD"), as more fully described in Exhibit "A" attached hereto and incorporated herein.

#### 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. Time Extensions

If Contractor requests an extension of time to complete its performance, then the Director may, in his or her sole discretion, extend the time so long as the extension does not exceed (6) months. 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).

#### D. Reports

Contractor shall submit all reports and progress updates required by the Director.

#### E. Schedule of Performance

The Director shall provide Contractor a written Notice to Proceed specifying a date to begin performance (Start Date). Contractor shall begin its performance no later than the Start Date. Contractor acknowledges time is of the essence and shall proceed diligently in performing services under this Agreement.

F. 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.

G. Personnel of the Contractor

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

H. RELEASE

CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS AND LEGAL REPRESENTATIVES (COLLECTIVELY IN THIS SECTION 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.

I. INDEMNIFICATION

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS AND LEGAL REPRESENTATIVES (COLLECTIVELY IN THIS SECTION 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 BE REQUIRED TO INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

**J. SUBCONTRACTORS' INDEMNIFICATION**

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.

K. 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
- (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that Contractor 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. Contractor shall inform the City of all offers 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 the defense and any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless the settlement (1) 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.

L. Insurance

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

- (1) Risks and Limits of Liability. Contractor shall maintain the following coverages and limits of liability:

<u>(Coverage)</u>	<u>(Limit of Liability)</u>
Workers' Compensation Including Broad Form All States Endorsement	Statutory for Workers' Compensation
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)
Commercial General Liability: Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations	Bodily Injury and Property Damage, combined limits of \$500,000 each occurrence and \$1,000,000 aggregate
Automobile Liability Insurance (for vehicles Contractor uses in performing under this Agreement, including Employer's Non-Owned and Hired Auto Coverage)	\$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.

- (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 shall have a Certificate of Authority to transact insurance business in Texas or 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, Property-Casualty United States.
- (4) Insured Parties. Each policy, except those for Workers' Compensation and Employer's Liability, must name the City (and its officers, agents and employees) as Additional Insured parties 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. Policies may not be canceled, materially modified, or nonrenewed unless Contractor gives the Director 30 days' advance written notice. Contractor shall give written notice to the Director within five days of the date on which total claims by any party against Contractor reduce the aggregate amount of coverage below the amounts required by this Agreement. In the alternative, the policy may contain an endorsement establishing a policy aggregate for the particular project or location subject to 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. 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.
- (11) Proof of Insurance.
- (a) On the effective date and at any time during the term of this Agreement, Contractor shall furnish the Director with certificates of insurance, along with an affidavit from Contractor 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.

M. Warranties

Contractor's performance shall conform to the professional standards prevailing in Harris County, Texas, with respect to the scope, quality, due diligence, and care of the services and products Contractor provides under this Agreement.

N. Use of Work Products

- (1) The City may use all Documents, if any, that Contractor prepares or obtains under this Agreement.
- (2) Contractor warrants that it owns the copyright to the Documents.
- (3) Contractor shall deliver the original Documents to the Director on request.

Within five working days after this Agreement terminates, Contractor shall deliver to the Director the original Documents, and all other files and materials Contractor produces or gathers during its performance under this Agreement, if any.

O. Licenses and Permits

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

P. Compliance with Laws

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

Q. Compliance with Equal Opportunity Ordinance

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

R. 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 "C," 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."

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

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

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

S. Pay or Play

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.

#### IV. DUTIES OF CITY

##### A. Payment Terms

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

##### 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 unit prices. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

##### 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 \$79,855.00 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 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.

## V. TERM AND TERMINATION

### A. Contract Term

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

### B. Renewals

If the Director, at his or her sole discretion, makes a written request for renewal 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, this Agreement is renewed for two (2) successive one-year terms upon the same terms and conditions.

### 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. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services

actually performed, but not already paid for, in the same manner as prescribed in Section IV-A unless the fees exceed the allocated funds remaining under this Agreement.

D. Termination for Cause by the City

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.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION, 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.

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 10 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 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;
  - (b) provides the other party with prompt written notice of the cause and its anticipated effect; and
  - (c) provides the other party with written notice describing the actual delay or non-performance incurred within 7 days after the Force Majeure ceases.
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 7 days, the Director may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.**
5. Contractor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees.

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, 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. Additions and 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 therefore 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.

G. 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 Work orders or sites for 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.

H. 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.

I. 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.

J. 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.

K. 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.

L. Inspections and Audits

City representatives 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 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

M. 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.

N. 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.

O. Parties In Interest

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

P. Successors and Assigns

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

Q. Business Structure and Assignments

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

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

R. Remedies Cumulative

Unless otherwise specified, 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 FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

## EXHIBIT "A"

### SCOPE OF SERVICES

The company will be responsible for providing services as follows:

- A. The Contractor shall provide all labor, material, and supervision necessary to perform deaf and hearing impaired interpreter and closed captioning services for the Houston Police Department and the Department of Neighborhoods ("the Department(s)").
- B. The Contractor shall provide Qualified Certified Interpreters anywhere within the City of Houston, 24 hours a day, 7 days a week, as required by the Department(s). **Qualified Certified Interpreters shall be required to attend between two and five Positive Interaction Program (PIP) divisional and PIP citywide meetings each month. Annual Police Week services will require two state certified American Sign Language (ASL) services for the one day scheduled for the deaf and Hard of Hearing community at the Houston Poice Academy or any other location requested during the term of this contract. The Contractor shall accommodate the required service on the day that will be determined and scheduled by the Houston Police Department for each year of the contract.**
- C. The Contractor shall respond to requests for services anywhere within the City of Houston within **one** hour of receiving notice from the designated HPD employees.
- D. Closed Captioning Services are referred to as "CART" services in Exhibit "F", "Pricing Form," below.

## EXHIBIT "B"

### EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

**EXHIBIT "C"**

**DRUG POLICY COMPLIANCE AGREEMENT**

I, \_\_\_\_\_ (Name) (Print/Type) \_\_\_\_\_ (Title) \_\_\_\_\_ as an owner or officer of  
\_\_\_\_\_ (Name of Company) \_\_\_\_\_ (Contractor)

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

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

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

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title



**EXHIBIT "E"**

**DRUG POLICY COMPLIANCE DECLARATION**

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

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

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

This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_, 20\_\_.

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

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

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

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

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

	Random Suspicion	Post Accident	Total
Number Employees Tested	_____	_____	_____
Number Employees Positive	_____	_____	_____
Percent Employees Positive	_____	_____	_____

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

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

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

\_\_\_\_\_  
 (Date) \_\_\_\_\_ (Typed or Printed Name)

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Title)

**EXHIBIT "F"**  
**PRICING FORM**

**Year One**

<b>Day</b>	<b>Time</b>	<b>Interpreter Services</b>	<b>Cart Services</b>	<b>Trip Charge</b>
Monday- Friday	8:00 a.m. – 5:00 p.m. Business Hours more than 24 hours notice	\$85.00 per hour	\$90.00 per hour	\$75 round trip
Monday- Friday	5:01 p.m. – 7:59 a.m. Extended Hours- more than 24 hours notice	\$110.00 per hour	\$125.00 per hour	\$75 round trip
Monday- Friday	8:00 a.m. – 5:00 p.m. Business Hours less than 24 hours notice	\$110.00 per hour	\$125.00 per hour	\$75 round trip
Monday- Friday	5:01 p.m. – 7:59 a.m. Extended Hours- less than 24 hours notice	\$160.00 per hour	\$165.00 per hour	\$75 round trip
Saturday/Sunday	More than 24 hours notice	\$110.00 per hour	\$125.00 per hour	\$75 round trip
Saturday/Sunday	Less than 24 hours notice	\$160.00 per hour	\$165.00 per hour	\$75 round trip
City Holidays	More than 24 hours notice	\$160.00 per hour	\$165.00 per hour	\$75 round trip
City Holidays	Less than 24 hours notice	\$160.00 per hour	\$165.00 per hour	\$75 round trip

**Year Two**

<b>Day</b>	<b>Time</b>	<b>Interpreter Services</b>	<b>Cart Services</b>	<b>Trip Charge</b>
Monday- Friday	8:00 a.m. – 5:00 p.m. Business Hours more than 24 hours notice	\$85.00 per hour	\$90.00 per hour	\$75 round trip
Monday- Friday	5:01 p.m. – 7:59 a.m. Extended Hours- more than 24 hours notice	\$110.00 per hour	\$125.00 per hour	\$75 round trip
Monday- Friday	8:00 a.m. – 5:00 p.m. Business Hours less than 24 hours notice	\$110.00 per hour	\$125.00 per hour	\$75 round trip
Monday- Friday	5:01 p.m. – 7:59 a.m. Extended Hours- less than 24 hours notice	\$160.00 per hour	\$165.00 per hour	\$75 round trip
Saturday/Sunday	More than 24 hours notice	\$110.00 per hour	\$125.00 per hour	\$75 round trip
Saturday/Sunday	Less than 24 hours notice	\$160.00 per hour	\$165.00 per hour	\$75 round trip
City Holidays	More than 24 hours notice	\$160.00 per hour	\$165.00 per hour	\$75 round trip
City Holidays	Less than 24 hours notice	\$160.00 per hour	\$165.00 per hour	\$75 round trip

**Year Three**

<b>Day</b>	<b>Time</b>	<b>Interpreter Services</b>	<b>Cart Services</b>	<b>Trip Charge</b>
Monday- Friday	8:00 a.m. – 5:00 p.m. Business Hours more than 24 hours notice	\$90.00 per hour	\$100.00 per hour	\$75 round trip
Monday- Friday	5:01 p.m. – 7:59 a.m. Extended Hours- more than 24 hours notice	\$115.00 per hour	\$130.00 per hour	\$75 round trip
Monday- Friday	8:00 a.m. – 5:00 p.m. Business Hours less than 24 hours notice	\$115.00 per hour	\$130.00 per hour	\$75 round trip
Monday- Friday	5:01 p.m. – 7:59 a.m. Extended Hours- less than 24 hours notice	\$165.00 per hour	\$170.00 per hour	\$75 round trip
Saturday/Sunday	More than 24 hours notice	\$115.00 per hour	\$130.00 per hour	\$75 round trip
Saturday/Sunday	Less than 24 hours notice	\$165.00 per hour	\$165.00 per hour	\$75 round trip
City Holidays	More than 24 hours notice	\$165.00 per hour	\$165.00 per hour	\$75 round trip
City Holidays	Less than 24 hours notice	\$165.00 per hour	\$165.00 per hour	\$75 round trip

**Year Four**

<b>Day</b>	<b>Time</b>	<b>Interpreter Services</b>	<b>Cart Services</b>	<b>Trip Charge</b>
Monday- Friday	8:00 a.m. – 5:00 p.m. Business Hours more than 24 hours notice	\$90.00 per hour	\$100.00 per hour	\$75 round trip
Monday- Friday	5:01 p.m. – 7:59 a.m. Extended Hours- more than 24 hours notice	\$115.00 per hour	\$130.00 per hour	\$75 round trip
Monday- Friday	8:00 a.m. – 5:00 p.m. Business Hours less than 24 hours notice	\$115.00 per hour	\$130.00 per hour	\$75 round trip
Monday- Friday	5:01 p.m. – 7:59 a.m. Extended Hours- less than 24 hours notice	\$165.00 per hour	\$170.00 per hour	\$75 round trip
Saturday/Sunday	More than 24 hours notice	\$115.00 per hour	\$130.00 per hour	\$75 round trip
Saturday/Sunday	Less than 24 hours notice	\$165.00 per hour	\$165.00 per hour	\$75 round trip
City Holidays	More than 24 hours notice	\$165.00 per hour	\$165.00 per hour	\$75 round trip
City Holidays	Less than 24 hours notice	\$165.00 per hour	\$165.00 per hour	\$75 round trip

**Year Five**

<b>Day</b>	<b>Time</b>	<b>Interpreter Services</b>	<b>Cart Services</b>	<b>Trip Charge</b>
Monday- Friday	8:00 a.m. – 5:00 p.m. Business Hours more than 24 hours notice	\$95.00 per hour	\$105.00 per hour	\$80 round trip
Monday- Friday	5:01 p.m. – 7:59 a.m. Extended Hours- more than 24 hours notice	\$120.00 per hour	\$135.00 per hour	\$80 round trip
Monday- Friday	8:00 a.m. – 5:00 p.m. Business Hours less than 24 hours notice	\$120.00 per hour	\$135.00 per hour	\$80 round trip
Monday- Friday	5:01 p.m. – 7:59 a.m. Extended Hours- less than 24 hours notice	\$170.00 per hour	\$175.00 per hour	\$80 round trip
Saturday/Sunday	More than 24 hours notice	\$120.00 per hour	\$135.00 per hour	\$80 round trip
Saturday/Sunday	Less than 24 hours notice	\$170.00 per hour	\$175.00 per hour	\$80 round trip
City Holidays	More than 24 hours notice	\$170.00 per hour	\$175.00 per hour	\$80 round trip
City Holidays	Less than 24 hours notice	\$170.00 per hour	\$175.00 per hour	\$80 round trip