

Controller's Office

To the Honorable Mayor and City Council of the City of Houston, Texas:

I hereby certify, with respect to the money required for the contract, agreement, obligation or expenditure contemplated by the ordinance set out below that:

- (✓) Funds have been encumbered out of funds previously appropriated for such purpose.
- () Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- () Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- () No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- () The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- () A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated hereby by this reference.
- () Other - Grant Funds Available

[Handwritten Signature]
James B. Brown
City Controller of the City of Houston, Texas

Date: 9-29, 2020 City Controller of the City of Houston, Texas

MB

FUND REF: 2312-2000-521420 AMOUNT: \$ 594,811.00 ENCUMB. NO. 45-333401
SRD
DE OA 46-16231

City of Houston, Texas Ordinance No. 2020-831

[Handwritten Initials]

AN ORDINANCE AWARDING A CONTRACT TO ANGEL BROTHERS ENTERPRISES, LTD. FOR ASPHALTIC PAVEMENT OVERLAY SERVICES FOR HOUSTON PUBLIC WORKS; PROVIDING A MAXIMUM CONTRACT AMOUNT; CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

* * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. Having duly advertised for and received competitive bids for the contract described in the title of this ordinance, the City Council hereby finds and determines that the lowest responsible and secure bid was submitted by Angel Brothers Enterprises Ltd. in the amount of \$2,974,055.00 (which amount is only an estimate if unit prices are included in the bid proposal of said bidder) and that such bid is the most advantageous for the City. Such contract is hereby awarded to said bidder.

Section 2. The City Council hereby approves and authorizes the Contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents (including any related surety bonds) on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 3. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such contract, agreement, or other undertaking in the event of changed circumstances.

Section 4. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

Section 5. The total allocation for the contract, agreement or other undertaking approved and authorized hereby shall never exceed \$2,974,055.00 unless and until this sum is increased by ordinance of City Council.

Section 6. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 30th day of September, 20 20.

APPROVED this _____ day of _____, 20 _____.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is OCT 06 2020.

Pat J. Kline
City Secretary

Funding Source:

\$2,974,055.00 – from fund 2312 – DDSRF-Metro Et AI Funds

Prepared by Strategic Purchasing Department, SueEllen Arredondo at Extension 3.9131.

This Ordinance 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.

9-11-2020
Date

Brenda Perry
Legal Assistant *me*

(Basic Form GMS159:AWARD-APPROV-SUPP. ALLOCAT. ORD.; Approved by City Attorney 10/95
_____)

AYE	NO	
✓		MAYOR TURNER
....	COUNCIL MEMBERS
✓		PECK
	ABSENT	DAVIS
✓		KAMIN
✓		EVANS-SHABAZZ
✓		MARTIN
✓		THOMAS
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		POLLARD
✓		MARTHA CASTEX-TATUM
✓		KNOX
✓		ROBINSON
	ABSENT-ON PERSONAL BUSINESS	KUBOSH
✓		PLUMMER
✓		ALCORN
CAPTION	ADOPTED	

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EXHIBITS

- "A" DEFINITIONS
- "B" SCOPE OF SERVICES
- "C" DRUG POLICY COMPLIANCE AGREEMENT
- "D" CERTIFICATION OF NO SAFETY IMPACT POSITIONS
- "E" DRUG POLICY COMPLIANCE DECLARATION
- "F" FEES AND COSTS

1.03 PARTS INCORPORATED

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

1.04 CONTROLLING PARTS

1.04.1 If a conflict between the sections or exhibits arises, the sections control over the exhibits.

1.05 DEFINITIONS

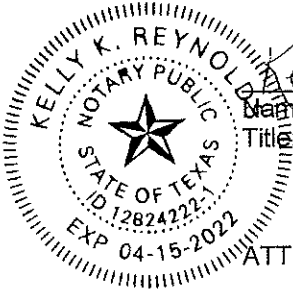
1.05.1 Certain terms used in this Agreement are defined in Exhibit "A".

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

1.06 **SIGNATURES**

1.06.1 The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

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



Kelly K. Reynolds
Name: Kelly K. Reynolds
Title: Notary

ATTEST/SEAL:

**CONTRACTOR:
Angel Brothers, Enterprises, Ltd.**

[Signature]
By: _____
Name: _____
Title: **Kevin Guy, Vice President**
Federal Tax ID Number: 74-1710671

CITY OF HOUSTON, TEXAS
Signed by: _____

City Secretary

Mayor

APPROVED:
[Signature]
Director, Human Resources Department

COUNTERSIGNED BY:

City Controller

APPROVED:
[Signature]
Chief Procurement Officer

COUNTERSIGNATURE DATE:

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

[Signature]
Legal Assistant
Date: 9-11-2020

APPROVED AS TO FORM:
[Signature]
Assistant City Attorney
L.D. File No. 0672000019001

ARTICLE 2. DUTIES OF CONTRACTOR

2.01 SCOPE OF SERVICES

2.01.1 In consideration of the payments specified in this Agreement, Contractor shall provide all supervision, labor, tools, equipment, permits, parts, expendable items, material, and supplies necessary to perform the services described in Exhibit "B".

2.02 COORDINATE PERFORMANCE

2.02.1 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.

2.03 TIME EXTENSIONS

2.03.1 If Contractor requests an extension of time to complete its performance, then the Director, in consultation with the CPO, 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).

2.03.2 If the Director requests an extension of time to complete Contractor's performance, then the CPO may, upon consultation with the Director involved, extend the time so long as the extension does not exceed 90 calendar 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).

2.04. REPORTS

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

2.05 PAYMENT OF SUBCONTRACTORS

2.05.1 In accordance with the Texas Prompt Payment Act, Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment by, through, or under Contractor in the performance of this Agreement.

2.05.2 **IN ACCORDANCE WITH THE TEXAS PROMPT PAYMENT ACT, CONTRACTOR SHALL MAKE TIMELY PAYMENTS TO ALL PERSONS AND ENTITIES THAT CONTRACTOR HAS HIRED TO SUPPLY 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 REGARDLESS OF WHETHER THE FAILURE TO PAY IS CAUSED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), OR GROSS NEGLIGENCE, (WHETHER SOLE, JOINT OR CONCURRENT), STRICT LIABILITY, INTENTIONAL ACTS, OR OTHER CONDUCT OR**

LIABILITY OF THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES.

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

2.06 RELEASE

2.06.1 CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. CONTRACTOR HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.

2.07 INDEMNIFICATION

2.07.1 CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, 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:

2.07.1.1 CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS 2.07.1.1 THROUGH 2.07.1.3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

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

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

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

2.08 SUBCONTRACTOR'S INDEMNITY

2.08.1 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.

2.09 INDEMNIFICATION PROCEDURES

2.09.1 Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving Party shall give written notice to the other Party within 30 days. The notice must include the following:

2.09.1.1 a description of the indemnification event in reasonable detail;

2.09.1.2 the basis on which indemnification may be due; and

2.09.1.3 the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30-day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

2.09.2 Defense of Claims

2.09.2.1 Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. Contractor shall then control the defense and any negotiations to settle the claim, subject to the City Attorney's consent or agreement to the settlement, which consent or agreement shall not unreasonably be withheld. 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.

2.09.2.2 Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations.

2.10 **INSURANCE**

2.10.1 **Risks and Limits of Liability.** Contractor shall maintain the following insurance coverages in the following amounts:

<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> • Bodily Injury by Accident \$500,000 (each accident) • Bodily Injury by Disease \$500,000 (policy limit) • Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$2,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit for: (i) Any Auto; or (ii) All Owned, Hired, and Non-Owned Autos
Professional Liability (if applicable)	\$1,000,000 per occurrence; \$2,000,000 aggregate
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	\$1,000,000
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

2.10.2 **Insurance Coverage.** At all times during the term of this Agreement and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Agreement requirements. Prior to beginning performance under the Agreement, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay: (i) all premiums; and (ii) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

2.10.3 **Form of insurance.** The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never: (i) excuse non-compliance with the terms of this Section; or (ii) waive or estop the City from asserting its rights to terminate this Agreement. The

policy issuer shall: (i) have a Certificate of Authority to transact insurance business in Texas; or (ii) 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 Best's Key Rating Guide.

2.10.4 **Required Coverage.** The City shall be an Additional Insured under this Agreement, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Agreement provisions. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also 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. If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Agreement with a duration of two years after substantial completion. All certificates of insurance submitted by Contractor shall be accompanied by endorsements for: (i) Additional Insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and (ii) Waivers of Subrogation in favor of the City for Commercial General Liability, Automobile Liability and Workers' Compensation/Employers' Liability policies. The Director will consider all other forms on a case-by-case basis.

2.10.5 **Notice.** **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

2.10.6 **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.

2.11 WARRANTIES

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

Agreement.

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

2.11.2.1 that all items are free of defects in title, design, material, and workmanship;

2.11.2.2 that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed;

2.11.2.3 that each replacement item is new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new); and

2.11.2.4 that no item or its use infringes any patent, copyright, or proprietary right.

2.12 **CONFIDENTIALITY**

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

2.13. **USE OF WORK PRODUCTS**

2.13.1 The City may use all Documents that Contractor prepares or obtains under this Agreement. In addition, Contractor shall provide the Director with supporting schedules, flow charts or other analysis necessary to understand the reported findings and recommendations. Generally, this information is attached as exhibits to the final report; however, if requested by the Director, Contractor shall provide this information from its work paper files.

2.13.2 Contractor warrants that it owns the copyright to the Documents.

2.13.3 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.

2.14 **LICENSES AND PERMITS**

2.14.1 Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation for the performance under this Agreement. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action

against its license.

2.15 **COMPLIANCE WITH LAWS**

2.15.1 Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances in its performance under this Agreement.

2.16 **COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY ORDINANCE**

2.16.1 Contractor shall comply with City's Equal Employment Opportunity Ordinance as set out in in Section 15-17 of the Code of Ordinances.

2.17 **MWBE COMPLIANCE**

2.17.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 19% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO") and will comply with them.

2.17.2 Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

[Name of MWBE subcontractor] shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Office of Business Opportunity Director (the "Director").

[Name of MWBE subcontractor] shall permit representatives of the City of Houston, at all reasonable times, to perform: (i) audits of the books and records of the subcontractor; and (ii) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

Within five Business Days of execution of this subcontract, Contractor and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

Any controversy between the Parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract may be submitted to the Director. The Director may prescribe procedures to provide dispute resolution by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

2.18. **DRUG ABUSE DETECTION AND DETERRENCE**

- 2.18.1 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 (the "Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- 2.18.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
- 2.18.2.1 a copy of its drug-free workplace policy;
 - 2.18.2.2 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
 - 2.18.2.3 if applicable (e.g., no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "D".
- 2.18.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "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.
- 2.18.4 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.
- 2.18.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

2.19 **CONFLICTS OF INTEREST**

- 2.19.1 If an actual or potential conflict arises between the City's interests and the interests of other client(s) Contractor represents, Contractor shall immediately notify the Director in writing. The City Controller shall issue a letter of consent or non-consent to Contractor's representation, potential or otherwise, of the other client(s) within 10 Business Days after receipt of Contractor's notice. If the City Controller issues a non-consent letter, Contractor shall immediately terminate its representation, potential or otherwise, of the other client(s) whose interests are or may be in conflict with those of the City.

2.20. **PAY OR PLAY**

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

2.21. **CONTRACTOR'S PERFORMANCE**

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

2.22. **ADDITIONS AND DELETIONS**

2.22.1 Additional Products and Services. Subject to the allocation of funds, the CPO may add similar equipment, supplies, services, or locations, within the scope of this Agreement, to the list of equipment, supplies, services, or locations to be performed or provided by giving written notification to Contractor. For purposes of this Section, the "Effective Date" means the date specified in the notification from the CPO. As of the Effective Date, each item added is subject to this Agreement, as if it had originally been a part, but the charge for each item starts to accrue only on the Effective Date. In the event the additional equipment, supplies, services, or locations are not identical to the items(s) already under this Agreement, the charges therefor will then be Contractor's normal and customary charges or rates for the equipment, supplies, services, or locations classified in the Fees and Costs (Exhibit "F").

2.22.2 Exclusion of Products and Services. If a deliverable or service that is subject to this Agreement is deleted, lost, stolen, destroyed, damaged, sold, replaced, or otherwise disposed of, the CPO may exclude it from the operation of this Agreement by notifying Contractor in writing. The notice takes effect immediately on its receipt by Contractor. More than one notice may be given. When a notice is received, Contractor shall delete the charge for the excluded deliverable or service from the sum(s) otherwise due under this Agreement.

2.22.3 The total charges for additions and deletions to this Agreement must never exceed 25% of the original contract amount unless:

2.22.3.1 The additions are exempt from the competitive bidding or proposal requirements set forth in Tex. Local Govt. Code Chapter 252; or

2.22.3.2 The City acquires the additions from Contractor through a competitive bid or competitive proposal.

2.23. **CHANGES**

2.23.1 At any time during the Agreement Term, the CPO 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.

2.23.2 The CPO will issue the Change Order in substantially the following form:

<u>CHANGE ORDER</u>	
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 CPO]

2.23.3 The CPO may issue more than one Change Order, subject to the following limitations:

2.23.3.1 The City Council expressly authorizes the CPO to approve a Change Orders up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.

2.23.3.2 If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.

2.23.3.3 The total of all Change Orders issued under this section may not increase the original contract amount by more than 25%.

2.23.4 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 CPO's decision regarding a time extension is final.

2.23.5 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.

2.23.6 Change Orders are subject to the Allocated Funds provisions of this Agreement.

2.24 **ENVIRONMENTAL LAWS**

2.24.1 Contractor shall comply with all rules, regulations, statutes, and orders of the Environmental Protection Agency, the Texas Commission on Environmental Quality, and any other governmental agency with the authority to promulgate environmental rules and regulations (the "Environmental Laws"). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply with Environmental Laws.

2.24.2 Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Laws. "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.

2.25 **ANTI-BOYCOTT OF ISRAEL**

2.25.1 Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

2.26 **ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES**

2.26.1 The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of the Countersignature Date. Contractor shall notify the CPO, City Attorney, and the Director of any information regarding possible violation by Contractor or its subcontractors providing services or goods under this Agreement within 7 days of Contractor becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

2.27 **PRESERVATION OF CONTRACTING INFORMATION**

2.27.1 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that this Agreement can be

terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Agreement, then for the duration of this Agreement (including the initial term, any renewal terms, and any extensions), Contractor shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Contractor shall provide any Contracting Information related to this Agreement that is in the custody or possession of Contractor. Upon the expiration or termination of this Agreement, Contractor shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this Agreement that is in the custody or possession of Contractor, or (b) preserve the Contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or City policy.

- 2.27.2 If Contractor fails to comply with any one or more of the requirements of this Section, Preservation of Contracting Information, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Contractor and may terminate this Agreement. To effect final termination, the Director must notify Contractor in writing with a copy of the notice to the CPO. 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.

ARTICLE 3. DUTIES OF CITY

3.01 PAYMENT TERMS

- 3.01.1 Subject to all terms and conditions of this Agreement, the City agrees to pay for the services described in Exhibit "B" that are rendered by Contractor based upon monthly invoices showing the number of individual tasks and related services performed at the rates set forth in Exhibit "F". The fees must only be paid from Allocated Funds as provided below.
- 3.01.2 Early Payment Discount. The City of Houston's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tex. Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from Contractor as follows:

Payment Time - 10 Days: 2% Discount
Payment Time - 20 Days: 1% Discount

- 3.01.3 If the City fails to make a payment according to the early payment schedule above,

but does make the payment within the time specified by the Prompt Payment Act, the City shall not receive the discount, but shall pay no other penalty. When the payment date falls on a Saturday, Sunday, or official holiday when City offices are closed and City business is not expected to be conducted, payment may be made on the following Business Day.

3.02 TAXES

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

3.03 METHOD OF PAYMENT

3.03.1 The City shall pay on the basis of monthly invoices submitted by Contractor and approved by the Director showing the services performed and the attendant fee. The City shall make payment to Contractor within 30 days of the receipt and approval by the City of such invoices. If the City disputes any item 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 any 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.

3.04 LIMIT OF APPROPRIATION

3.04.1 The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

3.04.2 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 **\$594,811.00** to pay money due under this Agreement during the City's current fiscal year (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds (each a "Supplemental Allocation" and collectively, the "Supplemental Allocations") for this Agreement, but they are not obligated to do so. Therefore, the Parties have agreed to the following procedures and remedies:

3.04.2.1 The City has not allocated supplemental funds or made a Supplemental Allocation for this Agreement unless the City has issued to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

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

\$ _____

3.04.2.2 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.

3.05 ACCESS TO SITE

3.05.1 Contractor may enter and leave the premises at all reasonable times without charge. Contractor and its employees may use the common areas and roadways of the premises where it is to perform the services together with all facilities, equipment, improvements, and services provided in connection with the premises for common use. This excludes parking for Contractor's personnel. Contractor shall repair any damage caused by it or its employees as a result of its use of the common areas.

3.06 ACCESS TO DATA

3.06.1 The City shall, to the extent permitted by law, allow Contractor to access and make copies of documents in the possession or control of the City or available to it that are reasonably necessary for Contractor to perform under this Agreement.

3.06.2 The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Contractor's use.

3.06.3 For any raw data created, assembled, used, maintained, collected, or stored by Contractor for or on behalf of the City, Contractor shall provide the City either the raw data itself or the ability to extract the raw data in a format mutually agreed upon by both Parties at no additional cost to the City.

ARTICLE 4. TERM AND TERMINATION

4.01. AGREEMENT TERM

4.01.1 This Agreement is effective on the Countersignature Date and shall remain in

effect for three (3) years, unless sooner terminated under this Agreement (the "Initial Term").

4.02 **NOTICE TO PROCEED**

4.02.1 Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the CPO or Director.

4.03. **RENEWALS**

4.03.1 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two (2) successive 1-year terms on the same terms and conditions. If the Director chooses not to renew this Agreement, he or she shall notify Contractor and the CPO of non-renewal at least 30 days before the expiration of the then-current term.

4.04. **TERMINATION FOR CONVENIENCE BY CITY**

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

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

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

4.05. **TERMINATION FOR CAUSE BY CITY**

4.05.1 If Contractor defaults under this Agreement, the Director may terminate this Agreement after providing Contractor written notice and an opportunity 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 that exist now or in the future. Default by Contractor occurs if:

4.05.1.1 Contractor fails to perform any of its material duties under this

Agreement;

4.05.1.2 Contractor becomes insolvent;

4.05.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or

4.05.1.4 a receiver or trustee is appointed for Contractor.

4.05.2 If a default occurs and the Director determines that the City wishes to terminate the Agreement, then the Director must deliver a written notice to Contractor describing the default and the proposed termination date, with a copy of the notice to the CPO. The date must be at least 30 days after Contractor receives notice. The Director, at his or her sole option, may extend the termination date to a later date. If Contractor cures the default before the proposed termination date, then the proposed 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.

4.05.3 To effect final termination, the Director must notify Contractor in writing, with a copy of the notice to the CPO. 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.

4.06 **TERMINATION FOR CAUSE BY CONTRACTOR**

4.06.1 Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date. The date must be at least 30 days after the Director receives the 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.

4.07. **REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS**

4.07.1 Upon expiration or termination of this Agreement, Contractor is permitted 10 days within which to remove contractor-owned material and equipment from the City's premises. This 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.

ARTICLE 5. MISCELLANEOUS

5.01 INDEPENDENT CONTRACTOR

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

5.02 FORCE MAJEURE

5.02.1 Timely performance by both Parties is essential to this Agreement. However, neither Party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a Party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, strikes, court orders, and the acts of superior governmental or military authority, and which the affected Party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn, or other factors of general application, or an event that merely makes performance more difficult, expensive, or impractical. Force Majeure does not entitle Contractor to extra reimbursable expenses or payment.

5.02.2 This relief is not applicable unless the affected Party does the following:

5.02.2.1 uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and

5.02.2.2 provides the other Party with prompt written notice of the cause and its anticipated effect.

5.02.3 The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days.

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

5.02.5 If the Force Majeure continues for more than 7 days from the date performance is affected, 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 UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

5.03 **SEVERABILITY**

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

5.04 **ENTIRE AGREEMENT**

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

5.05 **WRITTEN AMENDMENT**

5.05.1 Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance 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.

5.06 **GOVERNING LAW AND VENUE**

5.06.1 This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

5.07 **NOTICES**

5.07.1 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, 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 Article 1 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.

5.08 **CAPTIONS**

5.08.1 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.

5.09 **NON-WAIVER**

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

5.09.2 An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

5.10 **INSPECTIONS AND AUDITS**

5.10.1 City representatives may perform, or have performed: (i) audits of Contractor's books and records; and (ii) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least three years after this Agreement terminates. If the books and records are located outside of Harris County, Texas, Contractor agrees to make them available in Harris County, Texas. This provision does not affect the applicable statute of limitations.

5.11 **ENFORCEMENT**

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

5.12 **AMBIGUITIES**

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

5.13 **SURVIVAL**

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

5.14 **PUBLICITY**

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

5.15 **PARTIES IN INTEREST**

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

5.16 **SUCCESSORS AND ASSIGNS**

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

of the City.

5.17 **BUSINESS STRUCTURE AND ASSIGNMENTS**

5.17.1 Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest under Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the Director and CPO 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.

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

5.18 **REMEDIES CUMULATIVE**

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

5.19 **CONTRACTOR DEBT**

5.19.1 IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, HE OR 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"

DEFINITIONS

In addition to the words and terms defined elsewhere in this Agreement, the following terms have the meanings set out below. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural. The word "shall" is always mandatory and not merely permissive.

1. "Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
2. "Business Day" means any calendar day except Saturdays, Sundays and full-day holidays for employees of the City (as designated by City Council).
3. "Chief Procurement Officer" ("CPO") means the Chief Procurement Officer of the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.
4. "City" is defined in the preamble of this Agreement and includes its successors and permitted assigns.
5. "Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.
6. "Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.
7. "Director" means the Director of the City of Houston Public Works Department or such other person as he or she designates.
8. "Documents" mean notes, manuals, notebooks, plans, computations, computer databases and diskettes, software, 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.
9. "Effective Date" means the date this Agreement is countersigned by the City Controller.
10. "Notice to Proceed" means a written communication from the Director or the CPO to Contractor instructing Contractor to begin performance.
11. "Party" or "Parties" means one or all of the entities set out in the Preamble who are bound by this Agreement.
12. "COR" is defined as the "Contracting Officer Representative." This individual is generally an Assistant Director and is authorized to start and request termination of the contract; approve payment of invoices; provide guidance to the CTR; and recommend a CTR and/or UDR to the COR.
13. "CTR" is defined as the "Contract Technical Representative." This individual is generally responsible for verification of services invoiced; maintenance of record of available funds;

compliance with the terms of the contract; review of the contract at the time of renewal and act as a contact person for day-to-day contract administration.

14. "UDR" is defined as the "User Department Representative." This individual is generally responsible for administering the day-to-day activities of specific contracts; maintaining a record of and ensuring availability of funds; ensuring warranty requirements of the contract(s) are protected and adhered to by the Contractor; review of contract at time of renewal; compliance with the terms of the contract; and act as a contact person for day-to-day contract administration.

EXHIBIT "B"

SCOPE OF SERVICES

1.0 PROJECT GENERAL

1.1 The Contractor shall be required to furnish all labor, materials, equipment and supplies, and shall perform all work necessary for asphaltic pavement overlay services citywide. The work will consist of using asphaltic material for repairing pavement failure, filling excavated and/or damaged areas of roadway, for the mitigation of pavement hazards, and/or improvement of existing pavement.

1.2 WORK COVERED BY CONTRACT DOCUMENTS

1.2.1 The work includes, but is not limited to, leveling course if directed; asphaltic pavement overlay of approximately 2 inches of hot mix asphaltic, reclaimed asphalt pavement (RAP), concrete pavement; accessible ramps; pavement marking; and a variety of miscellaneous work, as needed or as directed by the Streets and Drainage Division (SDD) project manager.

1.2.1.1 The Contractor shall be required to lay down two inches (2") of hot asphaltic mix. The Contractor shall also be required to mill down to the original concrete street level on concrete streets and within a half inch, to one inch ($\frac{1}{2}$ " – 1"), on open ditch streets.

1.2.2 Curb ramps along intersections of roads/streets to be overlaid shall be evaluated for compliance with the Americans with Disabilities Act (ADA) standards. Ramps must be compliant with the Federal Regulations for ADA Standards for Accessible Design, 28 CFR 36, revised September 15, 2010. If the evaluated ramps do not meet these standards, the Contractor shall be required to upgrade or replace them. Speed humps will be replaced only as directed by SDD Project Manager.

1.2.3 Truncated domes shall be utilized and are incidental to curb ramps.

1.2.4 All level up work for manholes and valve boxes is incidental to asphalt overlay work.

1.2.5 Contract document includes, City-furnished specifications, Contractor use of Premises, and Warranty.

1.3 CITY-FURNISHED PRODUCTS

1.3.1 No items will be furnished by the City.

1.4 CONTRACTOR'S RESPONSIBILITIES

1.4.1 Arrange and pay for product delivery to the site.

- 1.4.2 Receive and unload products at the site; jointly with the City, inspect for completeness or damage.
- 1.4.3 Handle, store, Install, and finish Products.
- 1.4.4 Repair or replace damaged items.

1.5 CONTRACTOR USE OF PREMISES

- 1.5.1 Comply with procedures for access to the site and Contractor's use of rights-of-way.
- 1.5.2 Construction Operations: Limited to the City's rights-of-way provided by the City and areas shown or described in the work order documents provided at time of work request.
- 1.5.3 Utility Outages and Shutdown: Provide a minimum of 48-hour notice to the City and private utility companies (when applicable), excluding weekends and holidays, in advance of required utility shutdown. Coordinate all work as required.
- 1.5.4 The Contractor will deliver a notification letter and door hangers to all residents and businesses one week prior to the beginning of any construction activity. The letter should include (but not limited to) indication of the daily start and ending time, general description of scope of work and sequence of work to be performed, Contractors and City contact names and phone numbers. Sample door hangers will be provided by SDD project manager. The Contractor shall be responsible for informing the public in advance when vehicles need to be removed within the construction limits of the project.

1.6 WARRANTY

- 1.6.1 The Contractor shall be required to warrant all work rendered for a minimum of one calendar year from the date the work is accepted by the City for each job location.

1.7 ADDITIONAL CONDITIONS FOR SUBSTANTIAL COMPLETION

- 1.7.1 Prior to beginning any work, Project Identification signs shall be placed on the job site as specified in the Work Order or as directed by the SDD Project Manager.
- 1.7.2 The location of utilities is not shown on the plans, it is the Contractor's responsibility to determine the exact location of all utilities before commencing work and protect them from damage during construction. To arrange for utility line locations, call the TEXAS ONE CALL SYSTEM at 1-800-669-8344 at least 48 hours prior to the commencement of work.

1.7.3 PERFORMANCE OF WORK

- 1.7.3.1 Prior to overlay, the Contractor shall be required to provide an approved laboratory test run of TEX-227-F on approved mix designs.
- 1.7.3.2 Materials for asphaltic overlay shall be furnished by the contractor in accordance with TXDOT. (See website below) <https://www.dot.state.tx.us/business/specifications.htm>
- 1.7.3.3 The work will be assigned to the contractor through work orders distributed by the Houston Public Works' Streets and Drainage Division Personnel.
- 1.7.3.4 Work Orders will be grouped by areas as designated in the Houston Harris County Key Map (by Key Map, Inc.).
- 1.7.3.5 The Contractor shall make all data available from laboratory testing to the inspector prior to overlay.
- 1.7.3.6 The inspector will observe HMAC-RAP rolling pattern determination.
- 1.7.3.7 NICET or TXDOT certified asphalt technician from the lab would be present with functioning nuclear gauge.
- 1.7.3.8 The lab will take two samples from every 300 tons of HMAC-RAP. The testing lab will test a maximum of two samples per day, unless instructed otherwise by the Project Manager/Engineer.
- 1.7.3.9 The testing laboratory will record type and number of passes to obtain the specified density.
- 1.7.3.10 If the mix design density is not achieved, inspector will immediately notify SDD project manager.
- 1.7.3.11 The Contractor shall make additional trials to achieve density in mix design.
- 1.7.3.12 Prior to HMAC-RAP construction, the Contractor shall be required to provide material testing of eight (8) random cores (two cores per location) by the testing laboratory at the test area. All lab testing will be done by the Contractor and results will be provided to City for final approval.
- 1.7.3.13 The testing laboratory shall determine actual core density. The minimum core density is 91% using the maximum theoretical density (Rice) value of the HMAC-RAP.
- 1.7.3.14 The testing laboratory shall adjust nuclear density gauge for

correlation with actual core density.

- 1.7.3.15 Nuclear gauge densities shall be taken daily. Final rolling pattern nuclear gauge densities will be taken throughout the day per street to establish representative data results.
- 1.7.3.16 The approved rolling pattern shall be established and followed on a daily basis.
- 1.7.3.17 The testing laboratory shall inform the Contractor and the Inspector immediately if the required HMAC-RAP mix design material properties and HMAC-RAP core densities have not been achieved.
- 1.7.3.18 The Contractor shall be required to correct conditions, where design requirements were not met at the Contractor's expense. It is the Contractor's responsibility and risk if he decides to continue overlaying, when nuclear density results are below the required minimum compaction.
- 1.7.3.19 No existing survey data, no proposed horizontal and vertical control, and top of curb and centerline elevations are provided to the Contractor as part of this project. The Contractor may use the services of a professional surveyor, if he/she wishes so, to provide all pertinent data at Contractor's cost.
- 1.7.3.20 The approximate location of existing utilities is given for reference only. The Contractor shall be responsible for verifying the location and elevation of all utilities in the construction area. Conflicts that result due to negligence by the Contractor to locate horizontally and vertically existing utilities, which are shown on the construction drawings or which the contractor has been given notice or has knowledge of, shall be the sole responsibility of the contractor.
- 1.7.3.21 The Contractor shall be responsible for damage to fences, concrete, driveway, curbing and other structures in or adjacent to the right-of-way.
- 1.7.3.22 The Contractor shall be required to overlay existing asphaltic concrete limits only.
- 1.7.3.23 The "Scope of Work" and "Street Location Map" sheets will be provided during construction by the SDD personnel.
- 1.7.3.24 The Contractor is responsible for the repair of any base failures encountered during the overlay process.
- 1.7.3.25 Any manhole located in the path of proposed pavement must have its rim adjusted to the new pavement level. No manhole

top shall be paved over.

- 1.7.3.26 The Downtown Street Work shall be scheduled for week night work from 7:00 PM and ends 5:00 AM and weekends from 7:00 PM Friday and ends 5:00 AM Monday. Downtown is defined as the Major Business Area located within Key Map Grids 493L, M, and Q and bounded by IH- 10 to the North, IH-45 to the west and south, and US-59 to the east. This is a generic street overlay project. The actual streets that will be overlaid will be determined after awarding the contract.
- 1.7.3.27 The Contractor will not be able to close the street; the Contractor will need to clean the area before it leaves the area and/or street so that there is no debris left behind.
- 1.7.3.28 The City will clear all debris from streets prior to the Contractor beginning work. The Contractor shall be required to clear all debris after the work begins throughout the work order period. This material becomes the property of the Contractor to be legally disposed of in an approved manner at no additional cost to the City. This material becomes the property of the Contractor to be legally disposed of in an approved manner at no additional cost to the City.
- 1.7.3.29 The Contractor shall be required to use the Storm Water Pollution Prevention Plan and the Traffic Control Plan for the major thoroughfares.
- 1.7.3.30 The Contractor shall be required to leave the street in a satisfactory condition for traffic at the end of each work period as directed by the field inspector. Striping will not be required. If the City requests work in a unique work area requiring striping, the City will request an add-services proposal from the Contractor.
- 1.7.3.31 After milling, The Contractor shall be required to properly taper with asphalt all exposed elevated manhole utility covers to ensure that traffic can maneuver over them without damage to vehicles. A damage vehicle cost claim sustained by these elevated tapered manhole covers shall be the responsibility of the Contractor. (City of Houston Standard Specification No. 01555 -Traffic Control and Regulation., which can be viewed at the following link:
- <http://edocs.publicworks.houstontx.gov/engineering-and-construction/specifications.html>**
- 1.7.3.32 Traffic Control – Contractor Furnished (Separate Bid Item): Traffic control on two-lane type (non-divided) highways. The contractor shall supply and be responsible for all labor

including a competent and certified flagger, equipment, signs, sign supports, cones and any other materials necessary. All temporary traffic control devices and flagger control shall conform to the current edition of the Manual of Uniform Traffic Control Devices. .

Flagmen must be certified by Metropolitan Transit Authority of Harris County, Texas (METRO). Flagmen shall wear safety apparel and be equipped with devices as prescribed in section 6E01 and section 6E02. Flagging procedures shall be in accordance with section 6E04. Flagging stations shall be located such that approaching road users will have sufficient distance to stop at an intended stopping point and as further described in section 6E05. Flagmen shall be dedicated to traffic control duties only. If relief for the flagger is required, another person shall assume the duties and responsibilities until the flagger returns. (See the link below for flagger training and certification requirements)

<http://ftp.dot.state.tx.us/pub/txdot-info/trf/tmutcd/2011-rev-2/revision-2.pdf>

1.7.3.33 1.7.3.34 PERMITS: The Contractor shall be responsible for securing any and all permits for the proposed work. Any fee charged for these permits should be the responsibility of the Contractor and not the City of Houston.

2.0 COMPLETION OF WORK ORDERS

2.1 The Contractor shall notify the SDD representative and/or Contract Technical Representative (CTR) before the initiation of the project.

2.1.1 City personnel shall be authorized to observe all materials and work performed.

2.1.2 Such observation will not relieve the Contractor from any obligation to perform the work in strict accordance with these specifications.

2.2 Any extension of the original completion date requires prior approval, in writing, from the SDD and/or CTR representative.

2.3 Any deficiency listed by the City representative shall be corrected by the Contractor before final acceptance of the work (work order) is granted and the invoices are approved for payment.

3.0 CONTRACTOR USE OF PREMISES

- 3.1.1 Comply with procedures for access to the site and Contractor's use of rights-of-way.
- 3.1.2 Construction Operations: Limited to the City's rights-of-way provided by the City and areas shown or described in the work order documents provided at time of work request.
- 3.1.3 Utility Outages and Shutdown: Provide a minimum of 48-hour notice to the City and private utility companies (when applicable), excluding weekends and holidays, in advance of required utility shutdown. Coordinate all work as required.
- 3.1.4 The Contractor will deliver a notification letter and door hangers to all residents and businesses one week prior to the beginning of any construction activity. The letter should include (but not limited to) indication of the daily start and ending time, general description of scope of work and sequence of work to be performed, Contractors and City contact names and phone numbers. Sample door hangers will be provided by SDD project manager. The Contractor shall be responsible to inform the public in advance when vehicles need to be removed within the construction limits of the project.

3.1.5 DRAINAGE NOTES

- 3.1.5.1 All material used shall be free of vegetation debris.
- 3.1.5.2 The Contractor will be required to maintain the same width of the road and shoulders as prior to milling unless directed differently by the Project Manager in writing.
- 3.1.5.3 The Contractor shall protect all trees along the right-of-way line and the adjacent 5 feet outside the right-of-way (no separate pay).
- 3.1.5.4 The Contractor shall be required to return the construction site to the original or better condition (no separate pay).

4.0 PRICE ADJUSTMENT

4.1 Producer Price Index (PPI)

Price adjustments will be based on the Producer Price Index for Asphalt Paving and Roofing Materials (Group), Asphalt Paving (Item), Series ID PCU32412 as published by the U.S. Department of Labor, Bureau of Labor Statistics.

4.2 Adjustment Frequency

A price adjustment review will be conducted annually. If the PPI changed up or down compared to the twelve months prior, an adjustment will be done. The price adjustment will become effective on the 10th of the month.

4.2.1 Formula

Price adjustments shall be calculated by applying the simple percentage method to the PPI data. This method is defined as dividing the index value at the time of the calculation by the index value of the base period (*one year earlier*), then multiplying the percentage by the base price.

Example

Award date: February 15, 2012 Bid Price: \$40.00
PPI for February 2012: 252.1
PPI for February 2013: 257.6
First price adjustment: March 10, 2013
Calculation: $(\text{PPI } 02/13 - \text{PPI } 02/12) / \text{PPI } 02/12$
= Percentage of Increase Old Price * 1 *
Percentage of Increase = New Price
 $(257.6 - 252.1) / 252.1 = .0218$
 $\$40.00 * 1 * .0218 = \40.87

4.3 Adjustment Request

The Contractor will notify the City of Houston in writing *annually* the changes in the PPI. The Contractor must either state that there were no changes in the PPI and no price adjustment will be requested/implemented at this time, or the Contractor will use the formula referenced in Sub-section 4.4.1.2 to calculate the new price. The Contractor's price adjustment notification, accompanied by the applicable PPI data, must be sent to the following address:

Chief Procurement Officer
P.O. Box 1562
Houston, Texas 77251

If the Chief Procurement Officer approves the price increase, he or she shall notify Contractor in writing; no price increase will be effective until Contractor receives this notice. If the Chief Procurement Officer does not approve Contractor's price increase, Contractor may terminate its performance upon **sixty (60) days** advance written notice to the Chief Procurement Officer. Termination of performance is Contractor's only remedy if the Chief Procurement Officer does not approve the price increase.

If, at any time after approving a price increase, the Chief Procurement

Officer determines that the City can obtain the same item at a lower price from a different source without violating the State bid laws, the City may then purchase the item from the lower price source without any obligation to the Contractor.

5.0 MEASUREMENT AND PAYMENT

5.1 Payment at the unit price shall be full compensation for furnishing all the labor, equipment, tools, and material. In addition, waste materials shall be removed, and surrounding area restored.

5.2 Payment shall be made at the unit price bid item in accordance to Exhibit "F", entitled Fees and Costs.

6.0 TOLERANCES

6.1 The completed pavement will be checked longitudinally and transversely for smoothness. All humps and/or depressions exceeding the specified dimensions shall be corrected. The Contractor shall be required to correct all defective work and shall be required to remove and replace with new materials at no additional cost to the City.

6.2 The Contractor shall be required to perform asphaltic pavement repair shall be when the ambient temperature is greater than 40 degrees Fahrenheit.

6.3 The Contractor shall be required to warrant all work rendered by a minimum of one calendar year from the date the work was accepted on each job.

7.0 WORK SCHEDULE, SAFETY, FACILITY SECURITY AND TRAFFIC CONTROL

7.1 All work shall be performed between the hours of 6:00 a.m. and 4:00 p.m., Monday through Friday, unless otherwise authorized. (Holidays as prescribed by the City Council not included).

7.2 The Contractor shall be responsible for ensuring a safe work environment in accordance with rules and regulations of O.S.H.A., T.C.E.Q. and other governmental agencies for all persons entering the work area, i.e., traffic cones or traffic signs for street construction and others applicable. (See *Bid Line Item No. 2 on the Electronic Bid Form.*)

7.3 If it is necessary, for whatever reason, to stop work and leave an open excavation, adequate safety signs, barricades and/or steel plates shall be placed to establish a secure area at no expense to the City.

7.4 All safety equipment used for the Project will be incidental to the unit price of the specified work.

7.5 TRAFFIC CONTROL

7.5.1 Traffic control for the work contained in this contract shall be the responsibility of the Contractor. All traffic control and protection; including but not limited to placement, removal, material, labor and devices shall be as needed and provided by the Contractor (i.e. barricades, competent flagman, etc.). Traffic controls will be utilized to provide a safe workplace and maintain quality work procedures. All traffic control devices, methods, and layouts must comply with the City of Houston standards.

7.5.2 Traffic Control – Contractor Furnished (Separate Bid Item): Traffic control on two-lane type (non-divided) highways. The contractor shall supply and be responsible for all labor including a competent and certified flagger, equipment, signs, sign supports, cones and any other materials necessary. All temporary traffic control devices and flagger control shall conform to the current edition of the Manual of Uniform Traffic Control Devices, pages 531 through 546.

7.5.3 Flagmen must be certified by Metropolitan Transit Authority of Harris County, Texas (METRO). Flagmen shall wear safety apparel and be equipped with devices as prescribed in section 6E01 and section 6E02. Flagging procedures shall be in accordance with section 6E04. Flagging stations shall be located such that approaching road users will have sufficient distance to stop at an intended stopping point and as further described in section 6E05. Flagmen shall be dedicated to traffic control duties only. If relief for the flagger is required, another person shall assume the duties and responsibilities until the flagger returns.

7.5.4 PERMITS: Successful Contractor shall be responsible for securing any and all permits for proposed work. Any fee charged for these permits should be the responsibility of the Contractor and not the City of Houston.

8.0 COMPLETION OF WORK ORDERS:

8.1 The Contractor shall notify the Street and Drainage Division (SDD) Representative and/or Contract Technical Representative (CTR) before the initiation of the project.

8.1.1 City personnel shall be authorized to observe all materials and work performed.

8.1.2 Such observation will not relieve the Contractor from any obligation to perform the work in accordance with the requirements of these specifications.

8.2 Any extension of the original completion date must be with the prior approval in writing from the Street and Drainage Division (SDD) and/or CTR.

8.3 Any deficiency listed by the City representative shall be corrected by the

contractor before final acceptance of the work (work order) is granted and the invoices are approved for payment.

9.0 LIABILITY

- 9.1 All work shall be accomplished in such a manner as to prevent damage to the City of Houston facilities, equipment, roads, grounds, utilities, processes, etc. or to any private property to include but not limited to driveways, sidewalks, curbs, gutters, vehicles, mailboxes, or to any other existing utilities.
- 9.2 The Contractor shall be liable for any damage to electrical, water, gas, etc. which occurs during the performance of work under this contract.
- 9.3 When such damage is due to the failure of the Contractor to take precautionary actions, or to exercise sound judgment, or fail to utilize proven construction practices, the Contractor shall restore, repair, or replace equipment within 24 hours.
- 9.3.1 The restoration, repair or replacement shall be to a state that it had been before the damage occurred without additional charge to the City of Houston.
- 9.4 No additional compensation for repairs will be allowed.
- 9.5 If necessary, actual costs of repairs, or replacement, may be withheld from contract payment by the City of Houston or the Contractor may issue a credit payment to the City.

10.0 SEQUENCE OF WORK ORDER EXECUTION

- 10.1 The Contractor must respond with its construction cost quotation within three (3) working days after receiving the cost estimation from the department. The contractor's quotation must include a breakdown for the service to be provided, including the quantity and total cost for each line item. The unit cost for each line item shall be as shown in the contract "Fees and Costs" schedule.
- 10.2 If the Contractor's construction cost quotation is acceptable, the Street and Drainage Division (SDD) Representative and/or CTR will issue a Work Order authorizing the Contractor to perform work at the specified site.
- 10.2.1 The Contractor will not commence work on the project until the SDD has approved the submitted schedule of work. The Contractor must also obtain approval of the schedule of work prior to mobilization to the site.
- 10.3 The Contractor must start the construction within thirty (30) working days

after the Work Order is issued. The specified response time includes the time required for building inspection, underground utility lines staking and material requisition. However, the Contractor agrees to start a specified construction work within five (5) working days or less if an emergency condition exists.

10.3.1 The Contractor shall be required to have a weekly progress meeting with the CTR or its representative to discuss schedule updates.

10.4 EXISTING UTILITIES

10.4.1 It is the responsibility of the Contractor to contact all utility companies to field mark their underground lines in the area of the proposed concrete work prior to construction.

10.4.2 If a utility in an existing building is to be interrupted due to alteration work, the scheduled interruption must be coordinated with and be approved by the Transportation and Drainage Operations (TDO) Representative and/or CTR at least three (3) working days before the proposed construction. All requests must put in writing by the Contractor, and all approvals must be in writing.

11.0 GENERAL CONDITIONS

11.1 The Project's specifications listed in the Technical Specification contains modifying criteria related to working conditions, paid/unpaid items, etc. which supersede and/or represent an addendum to the respective City of Houston Standard Construction Specifications / Details. The most restrictive/critical rule between the two specifications of Technical Specification and Standard Construction Specifications will prevail for the construction requirement(s) of this project.

11.2 In addition to the Technical Specifications, the City of Houston Standard Construction Specifications is attached, as well as the Construction Detail(s) is attached. It is the Contractor's responsibility to verify the correct dimensions, materials, construction methods and other items referred in said Construction Specifications/Details for the specified bid items prior to bidding on this Project regardless of whether the documents are attached or not.

12.0 POST AWARD MEETING

12.1 Once the contract has been approved by City Council, HPW will schedule a Post Award Meeting with the successful Contractor and HPW end users. The meeting will include procurement, HPW contacts, vendor invoicing, vendor payment, and all other matters related to contract administration.

13.0 CONTRACT COMPLIANCE

13.1 The City of Houston reserves the right to monitor this contract for compliance to ensure legal obligations are fulfilled and that acceptable level of service are provided.

13.2 Monitoring may take the form of, but not necessarily limited to:

13.2.1 Site visits

13.2.2 Review of deliveries received for accuracy and timeliness

13.2.3 Review of contractor's invoices for accuracy

13.3 The responsibility for monitoring compliance rests with the department Contract Compliance Section.

14.0 ADDITIONS & DELETIONS

14.1 The City, by written notice from the Chief Procurement Officer 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.

15.0 WARRANTY OF SERVICES

15.1 Definitions: "Acceptance" as used in this clause, means the act of an authorized representative of the Transportation and Drainage Division (TDO) Representative and/or CTR by which the City assumes for itself, approval of specific services, as partial or complete performance of the Contract must be in writing.

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

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

15.4 If the Contractor is required to correct or re-perform, it shall be at no cost

to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise correct or replace with similar services and charge to the Contractor the cost occasioned to the City thereby or make an equitable adjustment in the Contract price.

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

16.0 ESTIMATED QUANTITIES NOT GUARANTEED

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

17.0 INTERLOCAL AGREEMENT

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

EXHIBIT "C"

DRUG POLICY COMPLIANCE AGREEMENT

I, Kevin Guy, Vice President as an owner or officer of
(Name) (Print/Type)
(Title)

Angel Brothers Enterprises, Ltd. (Contractor)
(Name of Company)

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.

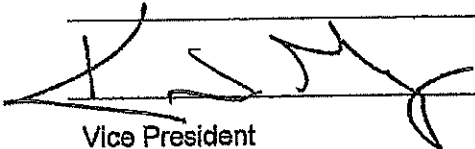
1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures 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.

June 25, 2020
Date

Contractor Name Angel Brothers Enterprises, Ltd.

Signature 

Title Vice President

Not Applicable

**Contractor's Certification of No Safety Impact Positions
In Performance of a City Contract**

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

_____ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

Date

Contractor Name _____

Signature _____

Title _____

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

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

_____ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also certify that Contractor has no employee safety impact positions as defined in 5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Safety impact position means a Contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

Date

Contractor Name _____

Signature _____

Title _____

DRUG POLICY COMPLIANCE DECLARATION

I, Kevin Guy, Vice President as an owner or officer of
(Name) (Print/Type) (Title)

Angel Brothers Enterprises, Ltd. (Contractor)
(Name of Company)

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

This reporting period covers the preceding six months from 12/23/2019 to 6/23/2020 20 20

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

KG Initials Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order 1-31. Employees have been notified of such procedures.

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

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

KG Initials From 12/12/2019 to 6/23/2019 the following testing has occurred:
(start date) (end date)

	<u>Reasonable</u>	<u>Post</u>	
	<u>Random</u>	<u>Suspicion</u>	<u>Accident</u>
			<u>Total</u>

Number of Employees Tested
 Number of Employees Positive
 Percent Employees Positive

<u>102</u>	<u>1</u>	<u>9</u>	<u>112</u>
<u>0</u>	<u>1</u>	<u>1</u>	<u>2</u>
<u>0</u>	<u>100</u>	<u>11.1</u>	<u>1.79</u>

KG 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.

KG 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 affirmallions made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

June 25, 2020
Date

Contractor Name Angel Brothers Enterprises, Ltd.

Signature

[Handwritten Signature]
Vice President

Title

EXHIBIT "F"

FEES AND COSTS

Item #	Description	U/M	Unit Price
Yr. 1 - Pavement Repair			
1	Specification - 01502: Mobilization	LS	\$14,500.00
2	Specification - 01555: Installation and maintenance of traffic control devices for each work order	EA	\$0.01
3	Specification - 01555: Flagmen	H	\$18.00
4	Specification - 01562: Tree and plant protection	LS	\$300.00
5	Specification - 01570: Reinforced filter fabric barrier	LF	\$2.00
6	Specification - 01570: Inlet protection - bagged gravel barrier	LF	\$7.00
7	Specification - 02086: Adjust existing manhole frame and cover to new grade	EA	\$200.00
8	Specification - 02086: Adjust existing valve box to new grade	EA	\$80.00
9	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 0"-2" depth of milling	YD2	\$15.00
10	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 2"-4" depth of milling	YD2	\$15.00
11	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 4"-6" depth of milling	YD2	\$15.00
12	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 6"-8" depth of milling	YD2	\$15.00

13	Specification - 02741: Remove and replace existing speed humps/bumps, all widths and depths, measured transverse to centerline of road	YD2	\$32.00
14	Specification - 02221: Remove and dispose of existing asphalt pavement with/without base	YD2	\$0.01
15	Specification - 02711: Full depth base repair and spot repair of flexible/concrete pavement including saw cutting (Type B) - depth will vary from minimum of 6" to a maximum of 12" depending on the existing base	TON	\$104.00
16	Specification - 02741: HMAC-RAP Type D (surface or level-up) including misc./tie-in to driveways, all depths	TON	\$162.00
17	Specification - 02775/02775-SA: Concrete curb ramp including truncated domes, headers, saw cutting, dowels, expansion joints & staining	FT2	\$0.01
18	Specification - 02775-SA: Modify existing accessible ramp with truncated domes	FT2	\$0.01
19	Specification - 02764: Raised pavement marker TY II two face reflective (W/Y)	FT2	\$10.00
20	Annual Construction Bond Cost	LS	\$80,000.00
Yr. 2 - Pavement Repair			
1	Specification - 01502: Mobilization	LS	\$14,500.00
2	Specification - 01555: Installation and maintenance of traffic control devices for each work order	EA	\$0.01
3	Specification - 01555: Flagmen	H	\$18.00
4	Specification - 01562: Tree and plant protection	LS	\$300.00
5	Specification - 01570: Reinforced filter fabric barrier	LF	\$2.00
6	Specification - 01570: Inlet protection - bagged gravel barrier	LF	\$7.00
7	Specification - 02086: Adjust existing manhole frame and cover to new grade	EA	\$200.00
8	Specification - 02086: Adjust existing valve box to new grade	EA	\$80.00

9	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 0"-2" depth of milling	YD2	\$15.00
10	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 2"-4" depth of milling	YD2	\$15.00
11	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 4"-6" depth of milling	YD2	\$15.00
12	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 6"-8" depth of milling	YD2	\$15.00
13	Specification - 02741: Remove and replace existing speed humps/bumps, all widths and depths, measured transverse to centerline of road	YD2	\$32.00
14	Specification - 02221: Remove and dispose of existing asphalt pavement with/without base	YD2	\$0.01
15	Specification - 02711: Full depth base repair and spot repair of flexible/concrete pavement including saw cutting (Type B) - depth will vary from minimum of 6" to a maximum of 12" depending on the existing base	TON	\$104.00
16	Specification - 02741: HMAC-RAP Type D (surface or level-up) including misc./tie-in to driveways, all depths	TON	\$162.00
17	Specification - 02775/02775-SA: Concrete curb ramp including truncated domes, headers, saw cutting, dowels, expansion joints & staining	FT2	\$0.01
18	Specification - 02775-SA: Modify existing accessible ramp with truncated domes	FT2	\$0.01

19	Specification - 02764: Raised pavement marker TY II two face reflective (W/Y)	FT2	\$10.00
20	Annual Construction Bond Cost	LS	\$80,000.00
Yr. 3 - Pavement Repair			
1	Specification - 01502: Mobilization	LS	\$14,500.00
2	Specification - 01555: Installation and maintenance of traffic control devices for each work order	EA	\$0.01
3	Specification - 01555: Flagmen	H	\$18.00
4	Specification - 01562: Tree and plant protection	LS	\$300.00
5	Specification - 01570: Reinforced filter fabric barrier	LF	\$2.00
6	Specification - 01570: Inlet protection - bagged gravel barrier	LF	\$7.00
7	Specification - 02086: Adjust existing manhole frame and cover to new grade	EA	\$200.00
8	Specification - 02086: Adjust existing valve box to new grade	EA	\$80.00
9	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 0"-2" depth of milling	YD2	\$15.00
10	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 2"-4" depth of milling	YD2	\$15.00
11	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 4"-6" depth of milling	YD2	\$15.00
12	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 6"-8" depth of milling	YD2	\$15.00
13	Specification - 02741: Remove and replace existing speed humps/bumps, all widths and depths, measured transverse to centerline of road	YD2	\$32.00

14	Specification - 02221: Remove and dispose of existing asphalt pavement with/without base	YD2	\$0.01
15	Specification - 02711: Full depth base repair and spot repair of flexible/concrete pavement including saw cutting (Type B) - depth will vary from minimum of 6" to a maximum of 12" depending on the existing base	TON	\$104.00
16	Specification - 02741: HMAC-RAP Type D (surface or level-up) including misc./tie-in to driveways, all depths	TON	\$162.00
17	Specification - 02775/02775-SA: Concrete curb ramp including truncated domes, headers, saw cutting, dowels, expansion joints & staining	FT2	\$0.01
18	Specification - 02775-SA: Modify existing accessible ramp with truncated domes	FT2	\$0.01
19	Specification - 02764: Raised pavement marker TY II two face reflective (W/Y)	FT2	\$10.00
20	Annual Construction Bond Cost	LS	\$80,000.00
Yr. 4 - Pavement Repair			
1	Specification - 01502: Mobilization	LS	\$14,500.00
2	Specification - 01555: Installation and maintenance of traffic control devices for each work order	EA	\$0.01
3	Specification - 01555: Flagmen	H	\$18.00
4	Specification - 01562: Tree and plant protection	LS	\$300.00
5	Specification - 01570: Reinforced filter fabric barrier	LF	\$2.00
6	Specification - 01570: Inlet protection - bagged gravel barrier	LF	\$7.00
7	Specification - 02086: Adjust existing manhole frame and cover to new grade	EA	\$200.00
8	Specification - 02086: Adjust existing valve box to new grade	EA	\$80.00
9	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 0"-2" depth of milling	YD2	\$15.00

10	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 2"-4" depth of milling	YD2	\$15.00
11	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 4"-6" depth of milling	YD2	\$15.00
12	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 6"-8" depth of milling	YD2	\$15.00
13	Specification - 02741: Remove and replace existing speed humps/bumps, all widths and depths, measured transverse to centerline of road	YD2	\$32.00
14	Specification - 02221: Remove and dispose of existing asphalt pavement with/without base	YD2	\$0.01
15	Specification - 02711: Full depth base repair and spot repair of flexible/concrete pavement including saw cutting (Type B) - depth will vary from minimum of 6" to a maximum of 12" depending on the existing base	TON	\$104.00
16	Specification - 02741: HMAC-RAP Type D (surface or level-up) including misc./tie-in to driveways, all depths	TON	\$162.00
17	Specification - 02775/02775-SA: Concrete curb ramp including truncated domes, headers, saw cutting, dowels, expansion joints & staining	FT2	\$0.01
18	Specification - 02775-SA: Modify existing accessible ramp with truncated domes	FT2	\$0.01
19	Specification - 02764: Raised pavement marker TY II two face reflective (W/Y)	FT2	\$10.00
20	Annual Construction Bond Cost	LS	\$80,000.00
Yr. 5 - Pavement Repair			
1	Specification - 01502: Mobilization	LS	\$14,500.00

2	Specification - 01555: Installation and maintenance of traffic control devices for each work order	EA	\$0.01
3	Specification - 01555: Flagmen	H	\$18.00
4	Specification - 01562: Tree and plant protection	LS	\$300.00
5	Specification - 01570: Reinforced filter fabric barrier	LF	\$2.00
6	Specification - 01570: Inlet protection - bagged gravel barrier	LF	\$7.00
7	Specification - 02086: Adjust existing manhole frame and cover to new grade	EA	\$200.00
8	Specification - 02086: Adjust existing valve box to new grade	EA	\$80.00
9	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 0"-2" depth of milling	YD2	\$15.00
10	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 2"-4" depth of milling	YD2	\$15.00
11	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 4"-6" depth of milling	YD2	\$15.00
12	Specification - 02221: Milling existing asphalt pavement - full width and depth mill to original pavement on concrete streets and a half an inch to an inch (1/2"-1") to the base on open ditch streets - 6"-8" depth of milling	YD2	\$15.00
13	Specification - 02741: Remove and replace existing speed humps/bumps, all widths and depths, measured transverse to centerline of road	YD2	\$32.00
14	Specification - 02221: Remove and dispose of existing asphalt pavement with/without base	YD2	\$0.01

15	Specification - 02711: Full depth base repair and spot repair of flexible/concrete pavement including saw cutting (Type B) - depth will vary from minimum of 6" to a maximum of 12" depending on the existing base	TON	\$104.00
16	Specification - 02741: HMAC-RAP Type D (surface or level-up) including misc./tie-in to driveways, all depths	TON	\$162.00
17	Specification - 02775/02775-SA: Concrete curb ramp including truncated domes, headers, saw cutting, dowels, expansion joints & staining	FT2	\$0.01
18	Specification - 02775-SA: Modify existing accessible ramp with truncated domes	FT2	\$0.01
19	Specification - 02764: Raised pavement marker TY II two face reflective (W/Y)	FT2	\$10.00
20	Annual Construction Bond Cost	LS	\$80,000.00