

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]
Jerald Pich

Date: 10-10, 2020 City Controller of the City of Houston, Texas

[Handwritten initials]

FUND REF: 1005-6700-520124 AMOUNT: 348,930.23 SAO ENCUMB. NO. 45-334122
OK 0A46-16242

City of Houston, Texas Ordinance No. 2020-897

[Handwritten initials]

AN ORDINANCE AWARDING A CONTRACT TO BEAR SERVICES, L.P. FOR MAINTENANCE AND REPAIRS OF FUEL DISPENSERS AND AUTOMATED NETWORK SERVICES FOR THE FLEET MANAGEMENT DEPARTMENT; 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 Bear Services, L.P in the amount of \$2,083,267.10 (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 \$2,083,267.10 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 21st day of October, 2020.

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 27 2020.

At J. Harriel
City Secretary

Funding Source:

\$2,083,267.10 – from fund 1005 – Fleet Management Fund

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: **OCT 27 2020**

Prepared by Strategic Purchasing Department, Eloise Gonzalez at Extension 3.8728.

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.

8-31-2020
Date

D. Gray
Legal Assistant

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

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

Rev. 5/18

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BID # S63-L29413
ORDINANCE # _____
CONTRACT# _____

**AGREEMENT FOR MAINTENANCE AND REPAIRS OF FUEL DISPENSERS AND
AUTOMATED NETWORK SERVICES**

ARTICLE 1. PARTIES

**THIS AGREEMENT FOR MAINTENANCE AND REPAIRS OF FUEL DISPENSERS AND
AUTOMATED NETWORK SERVICES** (this "Agreement") is made on the date countersigned by
the City Controller between the **CITY OF HOUSTON, TEXAS** (the "City"), a home-rule city of the
State of Texas principally situated in Harris County and **Bear Services, L.P.** ("Contractor"), a
Domestic Limited Partnership doing business in Texas.

1.01 ADDRESS:

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

City

Director or Designee
Fleet Management Department
City of Houston
P. O. Box 1562
Houston, Texas 77251

Contractor

Bear Services, L.P.
2815 Spring Cypress Rd.
Spring, Texas 77388
Attention: Flavil W. Phillips Sr.

The Parties agree as follows:

1.02 TABLE OF CONTENTS

1.02.1 This Agreement consists of the following sections:

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

TABLE OF CONTENTS

	<u>Page No.</u>
ARTICLE 1. PARTIES	1
1.01 ADDRESS.....	1
1.02 TABLE OF CONTENTS	1
1.03 PARTS INCORPORATED.....	3
1.04 CONTROLLING PARTS.....	3
1.05 DEFINITIONS	3
1.06 SIGNATURES	4
ARTICLE 2. DUTIES OF CONTRACTOR.....	5
2.01 SCOPE OF SERVICES.....	5
2.02 COORDINATE PERFORMANCE	5
2.03 TIME EXTENSIONS.....	5
2.04 REPORTS.....	5
2.05 PAYMENT OF SUBCONTRACTORS	5
2.06 RELEASE	6
2.07 INDEMNIFICATION	6
2.08 SUBCONTRACTOR'S INDEMNITY.....	7
2.09 INDEMNIFICATION PROCEDURES	7
2.10 INSURANCE	8
2.11 WARRANTIES	9
2.12 CONFIDENTIALITY	10
2.13 USE OF WORK PRODUCTS	10
2.14 LICENSE AND PERMITS.....	10
2.15 COMPLIANCE WITH LAWS.....	11
2.16 COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY ORDINANCE ..	11
2.17 MWBE COMPLIANCE.....	11
2.18 DRUG ABUSE DETECTION AND DETERRENCE	12
2.19 CONFLICTS OF INTEREST.....	12
2.20 PAY OR PLAY	13
2.21 CONTRACTOR'S PERFORMANCE	13
2.22 ADDITIONS AND DELETIONS	13
2.23 CHANGES	14
2.24 ENVIRONMENTAL LAWS	15
2.25 ANTI-BOYCOTT OF ISRAEL	15
2.26 ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES.....	15
2.27 PRESERVATION OF CONTRACTING INFORMATION.....	15
ARTICLE 3. DUTIES OF CITY.....	16
3.01 PAYMENT TERMS	16
3.02 TAXES	17
3.03 METHOD OF PAYMENT.....	17
3.04 LIMIT OF APPROPRIATION	17
3.05 ACCESS TO SITE.....	18
3.06 ACCESS TO DATA.....	18
ARTICLE 4. TERM AND TERMINATION.....	18

4.01	AGREEMENT TERM	18
4.02	NOTICE TO PROCEED	19
4.03	RENEWALS	19
4.05	TERMINATION FOR CONVENIENCE BY CITY.....	19
4.06	TERMINATION FOR CAUSE BY CITY	19
4.07	TERMINATION FOR CAUSE BY CONTRACTOR	20
4.08	REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS	20
ARTICLE 5.	MISCELLANEOUS	21
5.01	INDEPENDENT CONTRACTOR.....	21
5.02	FORCE MAJEURE.....	21
5.03	SEVERABILITY.....	22
5.04	ENTIRE AGREEMENT.....	22
5.05	WRITTEN AMENDMENT	22
5.06	GOVERNING LAW AND VENUE	22
5.07	NOTICES	22
5.08	CAPTIONS.....	22
5.09	NON-WAIVER.....	22
5.10	INSPECTIONS AND AUDITS.....	23
5.11	ENFORCEMENT.....	23
5.12	AMBIGUITIES	23
5.13	SURVIVAL	23
5.14	PUBLICITY.....	23
5.15	PARTIES IN INTEREST	23
5.16	SUCCESSORS AND ASSIGNS	23
5.17	BUSINESS STRUCTURE AND ASSIGNMENTS	24
5.18	REMEDIES CUMULATIVE.....	24
5.19	CONTRACTOR DEBT.....	24

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.

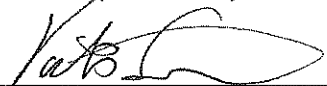
1.05 **DEFINITIONS**

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

1.06 **SIGNATURES**

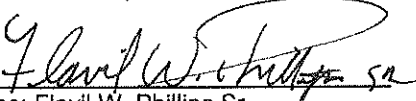
1.06.1 The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other 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):**



Name: Victor Saienni
Title: Director of Operations

CONTRACTOR:
Bear Services, L.P.

By: 

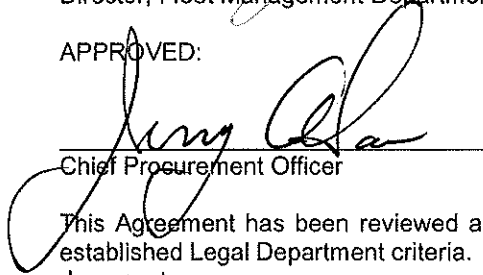
Name: Flavil W. Phillips Sr.
Title: President of General Partnership
Federal Tax ID Number: 76-047333

ATTEST/SEAL:

City Secretary

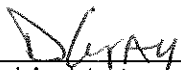
APPROVED:


Director, Fleet Management Department

APPROVED:


Chief Procurement Officer

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.



Legal Assistant
Date: 8-31-2020

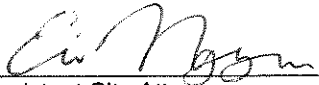
CITY OF HOUSTON, TEXAS
Signed by:

Mayor

COUNTERSIGNED BY:

City Controller

COUNTERSIGNATURE DATE:

APPROVED AS TO FORM:


Assistant City Attorney
L.D. File No. 0342000146001

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 stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 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 **11%** of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's 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 **\$348,930.23** 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 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 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 Fleet Management 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.

EXHIBIT "B"

SCOPE OF SERVICES

1.0 SCOPE OF SERVICES:

1.1 The Contractor shall provide all supervision, labor and materials to provide repair services and maintenance to various fuel dispensers and automated networks. The Contractor shall provide all replacement parts and equipment necessary to maintain and repair fuel dispensers, automated fuel systems, as well as liquid removal from any sump, containment or tank and other services needed for aboveground and underground storage tanks. The Contractor must be registered with the TCEQ (Texas Commission on Environmental Quality) as an Underground Storage Tank Contractor and hold an on-site supervisor License A and B. The contractor must be registered as an LPST (Leaking Petroleum Storage Tank) Correction Action Specialist and must have OSHA certification. The Contractor must be factory trained and certified with Multiforce Systems at various City locations. The Contractor shall have replacement parts readily available, and at the repair site during the repair visit. Services described herein shall be executed only upon issuance of a work request by an authorized representative of the Fleet Management Department (FMD). (See Exhibit A for List of Active Tanks).

1.2 For the City's Automated MultiForce Fuel System, the Contractor shall perform on-site diagnostics and repair utilizing, where possible, spare parts provided by the City. The Contractor will communicate with the MultiForce customer service group as necessary to identify and correct problems.

1.3 Response Time

1.3.1 The operation of the fuel equipment is essential in the daily operation of all City departments and adherence to the response time for Standard and Emergency Service is a critical issue.

1.4 Standard Service

1.4.1 The Contractor shall respond to requests for standard service within twenty-four (24) hours of receipt of work request. An email to the Contractor's designated email address with the attached work request shall be considered acceptable notification. The time automatically recorded on the email shall begin the notification period. All work must be accomplished within forty-eight (48) hours of receipt of work request. If the service cannot be completed within this period, the Contractor shall submit first by phone and then via email within a twelve (12) hour period to the designated contacts within FMD an explanation for failure to complete the service and the amount of time required to

complete the project. Extensions shall be approved only by an authorized FMD representative. Approvals shall be in writing (or email) by the authorized representative of FMD. Failure to complete the work within the allotted time without an approved extension from the department representative will result in adjustments to invoices as outlined in Section 1.5 of the Scope of Work, and/or in the Contractor being found in breach of contract, and the contract terminated. Individuals that will always be on 24-hour call for notification of completion of repairs will be provided by FMD.

1.5 Adjustments to Invoices for Failure to Complete Services within Allotted Timeframe

1.5.1 City and Contractor agree that the City will suffer damages if the Contractor fails to provide the services requested within the allotted time period, and that the amount of damages will be difficult or impossible to determine. In order to provide a reasonable mechanism to compensate the City for its damages, the Contractor agrees to pay an amount to be calculated as indicated in section 1.5.2 of this work scope, provided written notice is provided to the Contractor as soon as reasonably possible but no later than forty-eight (48) hours and documentation of deduction is provided to the Contractor within five (5) days of the event causing the deduction.

1.5.2 If the Contractor shall fail to provide required services, the Contractor shall deduct from the invoice(s) and retain by the City, an amount equal to \$100.00 for each 24-hour period (or portion thereof), or the City shall charge back to the Contractor the actual cost incurred for supplying an alternative means for completing the services.

1.6 Emergency Service

1.6.1 Contractor shall respond to requests for emergency services within two (2) hours of verbal notification by FMD to the designated phone number specified by the Contractor. During normal working hours Monday - Friday an email to the Contractor's designated email address of the work request shall be considered acceptable notification. The time stamp recorded on the received email shall begin the notification period. In the event of an emergency, the department contact may notify the Contractor verbally, by phone, but must confirm the notice by email of a confirming work order as soon as possible (first work day if notification occurs on weekend). All work must be accomplished within twenty-four (24) hours of receipt of work request. If the service cannot be completed within this period, Contractor shall submit first by phone, and then in writing via

email to the designated contacts within FMD, an explanation for failure to complete the service and the amount of time required to complete the project. Extensions shall be approved only by an authorized representative of FMD. Approvals shall be in writing or by phone by the authorized representative of FMD. Failure to complete the work within the allotted time without an approved extension from the department representative, may result in adjustments to invoices as outlined in Section 1.5 of the Scope of Work, and/or the Contractor being found in breach of contract, and the contract terminated.

2.0 SERVICE AUTHORIZATION:

- 2.1** If the Contractor identifies a major problem at the fuel site and/or additional work that needs to be performed, the Contractor should call for approval from FMD before continuing with the repairs.
- 2.2** Should more than one day be required to complete service the Contractor should notify FMD.

3.0 ACCEPTANCE OF REPAIR:

- 3.1** All work performed under this contract shall be inspected by the City at the time of completion or within one (1) working day of completion for workmanship, appearance, proper functioning of equipment and systems, and conformance to all other requirements of this specification. The Contractor must notify FMD at time of completion by email. In the event deficiencies are detected, the work will be rejected, and Contractor shall make the necessary repairs, adjustments or replacements. Payment shall not be made until Contractor corrects deficiency and the work is re-inspected and accepted. FMD will notify the Contractor by phone and by email at the first determination of non-compliance of the repair. The Contractor will have until the end of the following workday to respond to the site and meet with FMD.
- 3.2** Contractor shall provide a service ticket of all completed repairs in easily legible form. The service ticket must provide a detailed description of all services provided, parts replaced, and the amount of time required for labor. The service ticket shall be submitted to the on-site department representative prior to leaving the site. A second copy of the service ticket must be emailed to FMD the same day or the following business day.
- 3.3** Repair Technicians
 - 3.3.1** The Contractor's repair technicians shall at a minimum be authorized and certified by Multiforce to provide the services

outlined in the Scope of Services and throughout this contract.

3.4 Replacement Parts

- 3.4.1 The Contractor shall supply all original equipment manufacturer (OEM) parts or parts meeting OEM's specifications when required for all repair work. Contractor shall have replacement parts readily available on site at time of repair.
- 3.4.2 The items furnished shall be the latest product in production to commercial trade, and shall be of the highest quality as to materials used.
- 3.4.3 If new parts are not readily available, the Contractor can use rebuilt parts on approval by FMD.
- 3.4.4 When parts are readily available within the City, the Contractor must purchase those parts from the supplier as opposed to FMD parts.
- 3.4.5 If the Contractor intends to utilize a used part, FMD must be notified immediately. All used parts will be negotiated between FMD and the Contractor to establish a fair and reasonable price for the used part only.

3.5 Any Tools purchased by the Contractor are the expense of the Contractor and are not to be billed to the City of Houston.

3.6 Equipment rental that is outside the normal day-to-day maintenance of the fuel sites may be billed to the City.

3.7 The Contractor may sub-contract out work that requires special skills like electricians and tank cleaning.

4.0 FUEL SITE ACCESS:

4.1 The City shall work with the Contractor to assure they have proper accessibility to all tanks and fuel dispensing equipment. Some sites will require escorts while on City property.

4.2 If the Contractor has a Specialist (sub-contractor) the Contractor must escort the Specialist at all times while on City property.

5.0 INVOICING:

5.1 Contractor shall submit invoices with supporting documentation for payment no later than 30-days after work is completed by e-mail (electronic mail) or via the U.S. Postal System on the Contractor's company stationary with the original signed by an authorized agent of the

company. The invoice number shall not be duplicated during the term of the contract periods. Each invoice shall include the following information:

5.1.1 The City Contract Number, City Ordinance Number, and Contractor's Job Number.

5.1.2 Detailed Labor hours and rates as listed on Exhibit B, Fees and Costs Schedule.

5.2 Submit invoices to Accounts Payable:

finaccountspayable@houstontx.gov or

City of Houston

Finance Department; Accounts Payable

P.O. Box 3685

Houston, TX 77251-3685

5.3 The City reserves all rights to review all payments made to Contractors by auditing at a later date. Subject to such audit, any overpayments may be recovered from the Contractor.

6.0 SILENCE OF SPECIFICATIONS:

6.1 The apparent silence of these specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of these specifications shall be made on the basis of this statement. The Contractor shall be an established supplier of the bid items.

7.0 TRANSFER OR SUBLETTING:

7.1 The Contractor shall not sublet or transfer this Contract without the consent of the City Council. No subcontract shall, under any circumstances, relieve the Contractor of his liabilities and obligations under this contract should such subcontractor fail to perform the work undertaken by him in a satisfactory manner. If subcontractor should fail to perform the work undertaken, it will be the responsibility of the Contractor to repair any and all problems associated to the repair.

7.2 Nothing contained in the Contract Documents shall create any contractual relationship between the City and any subcontractor.

7.3 All subcontractors must meet all requirements as outlined in this bid document.

8.0 ADDITIONS & DELETIONS:

8.1 The City, by written notice from the Chief Procurement Officer to the Contractor, at anytime during the term of this contract, may add or delete like or similar equipment, locations and/or services to the list of equipment, locations and/or services to be performed. Any such written notice shall take effect on the date stated in the notice from the City. Equipment, locations and/or services added will be subject to the contract services and charges/ rates as an item already specified in the fee schedule. In the event the additional equipment, locations and/or service is not identical to any item already under contract, the charges will then be the Contractor's charges or rates for the equipment, locations and/or services classified in the fee schedule.

9.0 ESTIMATED QUANTITIES NOT GUARANTEED:

9.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of fuel dispenser repair and automated network systems and maintenance services during the term of this contract. The quantities may vary depending upon actual needs. The quantities specified herein are good faith estimates of usage during the term of this contract. The City shall not be liable for any contractual agreements or obligations the Contractor enters into based on the City purchasing/requiring all the quantities specified herein.

10.0 WARRANTY OF SERVICES:

10.1 Definitions:

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

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

10.2 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 and/or (3) the Contractor being found in breach of contract, and the contract terminated.

10.3 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 the Contractor the cost occasioned to the City, or make an equitable adjustment in the contract price.

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

11.0 INTERLOCAL AGREEMENT:

- 11.1 Under the same terms and conditions, the Contract may be expanded to other government entities through inter-local agreements between the City of Houston and other respective government entity that encompasses 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, Flavil W. Phillips Sr., President of General Partnership as an owner or officer of
 _____ (Name) (Print/Type)
 _____ (Title)
Bear Services, LP (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.

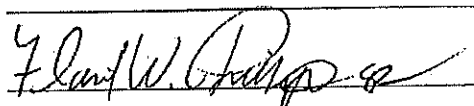
I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

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.

July 7, 2020

 Date

Contractor Name Flavil W. Phillips Sr., Bear Services, LP

 Signature 

 Title President of General Partnership


EXHIBIT "D"

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

I, Flavil W. Phillips Sr., President of General Partnership as an owner or officer of
(Name) (Print/Type) (Title)

Bear Services, LP (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.

July 7, 2020
Date

Contractor Name Flavil W. Phillips Sr., Bear Services, LP
Signature 
Title President of General Partnership

ATTACHMENT D

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

I, Flavil W. Phillips Sr., President of General Partnership as an owner or officer of
(Name) (Print/Type) (Title)

Bear Services, LP (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.

July 7, 2020
Date


Contractor Name Flavil W. Phillips Sr., Bear Services, LP
Signature 
Title President of General Partnership

EXHIBIT "E"

DRUG POLICY COMPLIANCE DECLARATION

I, Flavil W. Phillips Sr., President of General Partnership as an owner or officer of
(Name) (Print/Type) (Title)

Bear Services, LP (Contractor)
(Name of Company)

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

This reporting period covers the preceding six months from 5/31 to 11/30 2019

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

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

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

FWP Appropriate safety impact positions have been designated for employee positions performing on the City of Houston
Initials contract. The number of total employees on safety impact positions during this reporting period is 15

From 6/01/20 to 05/31/2020 the following testing has occurred:
Initial (start date) (end date)

Reasonable Post
Random Suspicion Accident Total

Number of Employees Tested

Number of Employees Positive

Percent Employees Positive

1	0	1	2
0	0	0	0
0	0	0	0

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

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

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

July 7, 2020
Date

Contractor Name Flavil W. Phillips Sr., Bear Services, LP

Signature

Flavil W. Phillips Sr.

Title

President of General Partnership

EXHIBIT "F"
FEES AND COSTS

Item #	Description	U/M	Unit Price
Year 1: Maintenance and Repairs of Fuel Dispensers and Automated Network Services			
1	Service Call (Rate to charge per work request to a City Location)	EA	\$30.00
2	Technician Labor -Standard- (Rate to charge per hour for technician for work performed at a City location)	H	\$52.50
3	Technician Labor - Emergency (Rate to charge per hour for technician for work performed at a City location that is considered an Emergency Service Request)	H	\$70.00
4	Specialist (Rate for sub contractor when a specific task needs to be contracted out to a specialist)	H	\$115.00
5	Removal of liquid/sludge - (Rate per gallons to properly remove and dispose of water/fuel/sludge from underground sumps, tanks or containments)	GAL	\$0.55
6	Helper Labor - Standard (Rate to charge per hour for helper for work performed at a City location)	H	\$30.00
Year 1: Mark-up for Parts and Materials (Original Invoices)			
1	Mark-up for Parts and Materials (Original Invoices)		\$70,000.00
Year 2: Maintenance and Repairs of Fuel Dispensers and Automated Network Services			
1	Service Call (Rate to charge per work request to a City Location)	EA	\$30.00
2	Technician Labor -Standard- (Rate to charge per hour for technician for work performed at a City location)	H	\$52.50
3	Technician Labor - Emergency (Rate to charge per hour for technician for work performed at a City location that is considered an Emergency Service Request)	H	\$70.00
4	Specialist (Rate for sub contractor when a specific task needs to be contracted out to a specialist)	H	\$115.00

5	Removal of liquid/sludge - (Rate per gallons to properly remove and dispose of water/fuel/sludge from underground sumps, tanks or containments)	GAL	\$0.55
6	Helper Labor - Standard (Rate to charge per hour for helper for work performed at a City location)	H	\$30.00
Year 2: Mark-up for Parts and Materials (Original Invoices)			
1	Mark-up for Parts and Materials (Original Invoices)		\$73,500.00
Year 3: Maintenance and Repairs of Fuel Dispensers and Automated Network Services			
1	Service Call (Rate to charge per work request to a City Location)	EA	\$30.00
2	Technician Labor -Standard- (Rate to charge per hour for technician for work performed at a City location)	H	\$52.50
3	Technician Labor - Emergency (Rate to charge per hour for technician for work performed at a City location that is considered an Emergency Service Request)	H	\$70.00
4	Specialist (Rate for sub contractor when a specific task needs to be contracted out to a specialist)	H	\$115.00
5	Removal of liquid/sludge - (Rate per gallons to properly remove and dispose of water/fuel/sludge from underground sumps, tanks or containments)	GAL	\$0.55
6	Helper Labor - Standard (Rate to charge per hour for helper for work performed at a City location)	H	\$30.00
Year 3: Mark-up for Parts and Materials (Original Invoices)			
1	Mark-up for Parts and Materials (Original Invoices)		\$77,175.00
Year 4: Maintenance and Repairs of Fuel Dispensers and Automated Network Services			
1	Service Call (Rate to charge per work request to a City Location)	EA	\$30.00
2	Technician Labor -Standard- (Rate to charge per hour for technician for work performed at a City location)	H	\$52.50
3	Technician Labor - Emergency (Rate to charge per hour for technician for work performed at a City location that is considered an Emergency Service Request)	H	\$70.00

4	Specialist (Rate for sub contractor when a specific task needs to be contracted out to a specialist)	H	\$115.00
5	Removal of liquid/sludge - (Rate per gallons to properly remove and dispose of water/fuel/sludge from underground sumps, tanks or containments)	GAL	\$0.55
6	Helper Labor - Standard (Rate to charge per hour for helper for work performed at a City location)	H	\$30.00
Year 4: Mark-up for Parts and Materials (Original Invoices)			
1	Mark-up for Parts and Materials (Original Invoices)		\$81,034.00
Year 5: Maintenance and Repairs of Fuel Dispensers and Automated Network Services			
1	Service Call (Rate to charge per work request to a City Location)	EA	\$30.00
2	Technician Labor -Standard- (Rate to charge per hour for technician for work performed at a City location)	H	\$52.50
3	Technician Labor - Emergency (Rate to charge per hour for technician for work performed at a City location that is considered an Emergency Service Request)	H	\$70.00
4	Specialist (Rate for sub contractor when a specific task needs to be contracted out to a specialist)	H	\$115.00
5	Removal of liquid/sludge - (Rate per gallons to properly remove and dispose of water/fuel/sludge from underground sumps, tanks or containments)	GAL	\$0.55
6	Helper Labor - Standard (Rate to charge per hour for helper for work performed at a City location)	H	\$30.00
Year 5: Mark-up for Parts and Materials (Original Invoices)			
1	Mark-up for Parts and Materials (Original Invoices)		\$85,085.00