

AGENDA

CITY OF HOUSTON ■ CITY COUNCIL

July 28 & 29, 2020

MAYOR
SYLVESTER TURNER

CONTROLLER
CHRIS B. BROWN

DISTRICT COUNCIL MEMBERS

Amy Peck
District A

Tiffany D. Thomas
District F

Jerry Davis
District B

Greg Travis
District G

Abbie Kamin
District C

Karla Cisneros
District H

Carolyn Evans-Shabazz
District D

Robert Gallegos
District I

Dave Martin
District E

Edward Pollard
District J

Martha Castex-Tatum
District K

AT-LARGE COUNCIL MEMBERS

Mike Knox
Position 1

Michael Kubosh
Position 3

David W. Robinson
Position 2

Letitia Plummer
Position 4

Sallie Alcorn
Position 5

Marta Crinejo Director - City Council Agenda

Pat Jefferson Daniel Interim City Secretary

In accordance with the Texas Open Meetings Act the agenda is posted for public information, at all times, for at least 72 hours preceding the scheduled time of the meeting on the bulletin board located on the exterior wall of the City Hall building at 901 Bagby.

The agenda may be accessed via the Internet at <http://houston.novusagenda.com/agendapublic/>. Copies of the agenda are available in the Office of the City Secretary in the City Hall Annex, Public Level at no charge. To receive the agenda by mail, send check or money order for \$52.00 for a one year subscription, made payable to the City of Houston to the attention of the City Secretary, P.O. Box 1562, Houston, Texas 77251.

To reserve time to appear before Council call 832-393-1100 or come to the Office of the City Secretary, City Hall Annex, Public Level at least 30 minutes prior to the scheduled public session shown on the agenda.

NOTE: If a translator is required, please advise when reserving time to speak

AGENDA - COUNCIL MEETING Tuesday, July 28, 2020 - 2:00 PM
Virtual Meeting

PRESENTATIONS

No presentations will be made

2:00 P.M. – INVOCATION AND PLEDGE OF ALLEGIANCE

Council Member Kubosh

Due to health and safety concerns related to COVID-19, this meeting will be conducted virtually via Microsoft Teams, a web-conferencing platform and streamed as usual on the City's website (<https://www.houstontx.gov/htv/index.html>), Facebook site (<https://www.facebook.com/pg/HoustonTelevision/videos/>) and the municipal channel on public television. The Council Members will be participating by videoconference in accordance with the provisions of Section 551.127 of the Texas Government Code that have not been suspended by order of the Governor. Public comment will be allowed on Tuesday via teleconference at (936) 755-1521; Conference ID# 444 704 632# and details for signing up and participating are posted at <https://www.houstontx.gov/council/meetingsinfo.html>. Members of the public may call in Wednesday via teleconference at (936) 755-1521; Conference ID# 928 414 91#, however no public input will be allowed.

ROLL CALL AND ADOPT MINUTES OF PREVIOUS MINUTES

PUBLIC SPEAKERS - Pursuant to City Council Rule 8, City Council will hear from members of the public; the names and subject matters of persons who had requested to speak at the time of posting this Agenda are attached; the names and subject matters of persons who subsequently request to speak may be obtained in the City Secretary's Office.

NOTE: If a translator is required, please advise when reserving time to speak

RECESS

RECONVENE

DESCRIPTIONS OR CAPTIONS OF AGENDA ITEMS WILL BE READ BY
THE
CITY SECRETARY PRIOR TO COMMENCEMENT

MAYOR'S REPORT

CONSENT AGENDA NUMBERS 1 through 33

ACCEPT WORK - NUMBERS 1 and 2

1. ****PULLED – Will not be considered on 7/29**

RECOMMENDATION from Director Houston Public Works for approval of final contract amount of \$4,553,637.50 and acceptance of work on contract with **JFT CONSTRUCTION, INC** for Open Ditch Improvements - Calhoun Area - 5.20% over the revised contract amount - **DISTRICT D - EVANS-SHABAZZ**

2. RECOMMENDATION from the Director Houston Public Works for approval of final contract amount of \$3,668,891.14 and acceptance of work on contract with **CYMI INDUSTRIAL, INC** for Force Main Renewal and Replacement for Annunciation and Banner Road (Package 2) - 0.07% under the original contract amount - **DISTRICTS B - DAVIS and I - GALLEGOS**

PURCHASING AND TABULATION OF BIDS - NUMBERS 3 through 7

3. **LBS ENTERPRISES, LLC dba ALLSTATES COATINGS COMPANY** for the purchase of Airfield Marking Paint for the Houston Airport System - 3 Years with two one-year options - \$1,690,163.30 - Enterprise Fund
4. **DOGGETT HEAVY MACHINERY SERVICES, LLC** for approval of spending authority to purchase Various Trailers through the Interlocal Agreement for Cooperative Purchasing with the Houston-Galveston Area Council for the Fleet Management Department on behalf of Houston Public Works - \$282,500.00 - Enterprise and Other Funds
5. **LIFE TECHNOLOGIES CORPORATION** for sole source purchase of Maintenance and Repair Services of the 7500 Real Time PCR System for the Houston Health Department - 3 Years - \$243,690.85 - Laboratory Services Fund
6. **GT DISTRIBUTORS, INC** for approval of spending authority for purchase of Tactical Equipment Supplies through the Texas Local Government Purchasing Cooperative (BuyBoard) for the Houston Police Department - \$166,159.46 - Grant Fund
7. **STAPLES CONTRACT & COMMERCIAL LLC** for purchase of Office Supplies through the Cooperative Purchasing Agreement with Sourcwell for Various Departments - 4 Years with one one-year option - \$17,750,318.81 - General, Enterprise and Other Funds

RESOLUTIONS - NUMBERS 8 and 9

8. RESOLUTION receiving the 2020 Appraisal Roll Information, Certifying the Anticipated Collection Rate, appointing Melissa Dubowski and Alma Tamborello to calculate and publish the City's No-New Revenue and Voter-Approval Tax Rates, and directing these designees to calculate the voter-approval tax rate in the manner provided for a special taxing unit
9. RESOLUTION submitting the name of **MAYOR PRO TEM DAVE MARTIN** for election to the **BOARD OF TRUSTEES OF THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL**

ORDINANCES - NUMBERS 10 through 33

10. **ORDINANCE AMENDING THE CITY OF HOUSTON SIGN CODE**(Chapter 46 of that Volume of the City of Houston Construction Code known as the City of Houston Building Code) relating to the regulation of signs by the City
11. **ORDINANCE** approving and authorizing a contract between the City of Houston and **HOUSTON BUSINESS DEVELOPMENT, INC.** for administration and related services for the Office of Business Opportunity in connection with the City's Small Business Economic Relief Program for small businesses who have been affected by COVID-19; providing a maximum contract amount; containing provisions relating to the subject; and declaring an emergency.
12. **ORDINANCE** approving and authorizing Subcontractor Grant Agreement between City and **NATIONAL FOUNDATION FOR THE CENTERS FOR DISEASE CONTROL AND PREVENTION, INC ("CDC FOUNDATION")** for COVID-19 Public Health Crisis Response Project; authorizing the Director of the Houston Health Department to accept all subsequent awards, if any, pertaining to this Grant project - \$500,000.00 - Grant Fund
13. **ORDINANCE** appropriating \$1,000,000.00 out of Equipment Acquisition Consolidated Fund for Citywide PC Replacement Project for Houston Information Technology Services
14. **ORDINANCE** approving and authorizing submission of an application for and acceptance of the **U.S. DEPARTMENT OF JUSTICE BJA FY2020 INNOVATIONS IN COMMUNITY-BASED CRIME REDUCTION PROGRAM FOR WESTSIDE COMMUNITY GRANT** ("Grant"); declaring the City's eligibility for such Grant; authorizing the Police Chief of the City of Houston Police Department to act as the City's representative in the application process, to apply for, accept, and expend the Grant Funds if awarded, and to apply for, accept, and expend all subsequent awards, if any, pertaining to the Grant and to extend the budget period
15. **ORDINANCE** approving and authorizing execution of a Subaward Agreement between City of Houston and **DELIVERFUND** related to the Human Trafficking Rescue Alliance Task Force
16. **ORDINANCE** approving and authorizing Interlocal Agreement between City of Houston and **CITY OF MISSOURI CITY, TEXAS**, for the Human Trafficking Task Force - Houston Metropolitan Area (Approved by Ordinance No. 2019-703)
17. **ORDINANCE** appropriating \$99,830,323.84 out of City of Houston, Texas Tax Increment Funds for **REINVESTMENT ZONE NUMBERS TWO (MIDTOWN ZONE), THREE (MAIN STREET/MARKET SQUARE ZONE), FIVE (MEMORIAL HEIGHTS ZONE), SIX (EASTSIDE ZONE), SEVEN (OLD SPANISH TRAIL/ALMEDA CORRIDORS ZONE), EIGHT (GULFGATE ZONE), TEN (LAKE HOUSTON ZONE), TWELVE (CITY PARK ZONE), THIRTEEN (OLD SIXTH WARD ZONE), FOURTEEN (FOURTH WARD ZONE), SIXTEEN (UPTOWN ZONE), EIGHTEEN (FIFTH WARD ZONE), TWENTY (SOUTHWEST HOUSTON ZONE), TWENTY-THREE (HARRISBURG ZONE), TWENTY-FIVE (HIRAM**

CLARKE FORT BEND ZONE) TWENTY-SIX (SUNNYSIDE ZONE) AND TWENTY-SEVEN (MONTROSE ZONE), for payment of Affordable Housing Costs, payment of Administrative Expenses, payment of Project Costs, and payments to certain Redevelopment Authorities as provided herein

18. ORDINANCE approving and authorizing first amendment to Grant Agreement among City of Houston, **CITIES FOR FINANCIAL EMPOWERMENT FUND**, and **GREATER HOUSTON COMMUNITY FOUNDATION** for the Implementation of Financial Empowerment Centers (Approved by Ordinance No. 2019-923) - **DISTRICTS B - DAVIS and I - GALLEGOS**
19. ORDINANCE appropriating \$1,035,000.00 out of Equipment Acquisition Consolidated Fund for Professional Services Supporting the 311 Replacement Project for Houston Information Technology Services and various departments
20. ORDINANCE approving and authorizing contract between City of Houston and **ACCENTURE LLP** for IT Professional Services for Houston Information Technology Services and Various Departments; providing a maximum contract amount - 3 Years with two one-year options - \$3,154,000.00 - Equipment Acquisition Consolidated, Central Service Revolving and Other Funds
This item should only be considered after passage of Item 19 above
21. ORDINANCE approving and authorizing an End User Agreement to **TETRA TECH, INC** through Houston-Galveston Area Council of Governments for all Hazards Preparedness, Planning, Consulting & Recovery Services for Solid Waste Management Department; providing a maximum contract amount - 1 Year - \$292,916.00 - Grant Fund
22. ORDINANCE awarding contract to **SABER POWER SERVICES, LLC** for Electrical Maintenance, Repair, Automation Support and Technical Services for Houston Public Works; providing a maximum contract amount - 3 Years with two one-year options - \$9,341,477.37 - Enterprise Fund
23. ORDINANCE appropriating \$1,403,641.25 out of Police Consolidated Construction Fund; approving and authorizing Professional Architectural Services Contract between City of Houston and **PERKINS & WILL, INC** for Design and Construction Phase Services for the new North Belt Police Station Project; providing funding for Civic Art financed by the Police Consolidated Construction Fund - **DISTRICT B - DAVIS**
24. ORDINANCE appropriating \$150,000.00 out of Police Consolidated Construction Fund; approving and authorizing Construction Manager at Risk Contract between City of Houston and **CHRISTENSEN BUILDING GROUP, LLC** for Pre-Construction and Construction Phase Services for the new North Belt Police Station Project - **DISTRICT B - DAVIS**
25. ORDINANCE de-appropriating \$430,392.00 from Equipment Acquisition Consolidated Fund previously appropriated for Task Order and Job Order Contracting Program for FY2020 (Approved by Ordinance No. 2020-376); appropriating \$430,392.00 out of Equipment Acquisition Consolidated Fund; awarding contract to **STAR SERVICE, INC** for HVAC Improvements at

Kashmere Multi-Service Center; setting a deadline for the bidder's execution of the contract and delivery of all bonds, insurance, and other required contract documents to the City; holding the bidder in default if it fails to meet the deadlines; providing funding for contingencies relating to construction of facilities financed by the Equipment Acquisition Consolidated Fund -

DISTRICT B - DAVIS

26. ORDINANCE de-appropriating \$872,080.00 from Equipment Acquisition Consolidated Fund previously appropriated for Task Order and Job Order Contracting Program for FY2020 (Approved by Ordinance No. 2020-376); appropriating \$872,080.00 out of Equipment Acquisition Consolidated Fund, awarding contract to **RINCON AIR & HEAT COMPANY, LLC** for HVAC Improvements at Denver Harbor Multi-Service Center; setting a deadline for the bidder's execution of the contract and delivery of all bonds, insurance, and other required contract documents to the City; holding the bidder in default if it fails to meet the deadlines; providing funding for contingencies relating to construction of facilities financed by the Equipment Acquisition Consolidated Fund - **DISTRICT H - CISNEROS**
27. ORDINANCE appropriating \$71,949.59 out of Miscellaneous Capital Projects/Acquisitions CP Series E, awarding contract to **ERC ENVIRONMENTAL & CONSTRUCTION SERVICES, INC** for Midwest Police Station Restoration Hurricane Harvey Project; setting a deadline for the bidder's execution of the contract and delivery of all bonds, insurance, and other required contract documents to the City; holding the bidder in default if it fails to meet the deadlines; providing funding for contingencies financed by the Miscellaneous Capital Projects/Acquisitions CP Series E - **DISTRICT J - POLLARD**
28. ORDINANCE consenting to the creation of **SUN LAKE IMPROVEMENT DISTRICT** within the extraterritorial jurisdiction of the City of Houston, Texas, and the inclusion of 139.104 acres of land into the district
29. ORDINANCE consenting to the addition of 856.27 acres of land to **HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 165**, for inclusion in its district
30. ORDINANCE consenting to the creation of **HARRIS-WALLER COUNTIES MUNICIPAL UTILITY DISTRICT NO. 4**, containing approximately 1,039.679 acres of land within the extraterritorial jurisdiction of the City of Houston, Texas; authorizing the district to exercise road powers and to issue bonds for road facilities, subject to certain conditions
31. ORDINANCE consenting to the addition of 36.9543 acres of land to **HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 460**, for inclusion in its district; granting consent to exercise road powers and authorizing the district to issue bonds for road facilities within the City of Houston, Texas, subject to certain conditions - **DISTRICT D - EVANS-SHABAZZ**
32. ****PULLED – Will not be considered on 7/29**
ORDINANCE appropriating \$26,400.00 out of Dedicated Drainage and Street Renewal Capital Fund – Drainage Charge; \$26,400.00 out of Dedicated Drainage and Street Renewal Capital Fund – Ad Valorem Tax; approving and authorizing Professional Construction Management and

- Inspection Services Contract between City of Houston and **ARKK ENGINEERS, LLC** for Paving and Drainage Projects; providing funding for CIP Cost Recovery financed by the Dedicated Drainage and Street Renewal Capital Fund – Drainage Charge and the Dedicated Drainage and Street Renewal Capital Fund - Ad Valorem Tax
33. ORDINANCE appropriating \$1,657,700.00 out of Water & Sewer System Consolidated Construction Fund; approving and authorizing Professional Engineering Services Contract between City of Houston and **AURORA TECHNICAL SERVICES, LLC** for Large Diameter Waterline Technical Services - Package 1 to City of Houston's Drinking Water Operations Branch; providing funding for CIP Cost Recovery financed by the Water & Sewer System Consolidated Construction Fund; providing a maximum contract amount

END OF CONSENT AGENDA

CONSIDERATION OF MATTERS REMOVED FROM CONSENT AGENDA

MATTERS TO BE PRESENTED BY COUNCIL - Council Member Travis first

ALL ORDINANCES ARE TO BE CONSIDERED ON AN EMERGENCY BASIS AND TO BE PASSED ON ONE READING UNLESS OTHERWISE NOTED, ARTICLE VII, SECTION 7, CITY CHARTER

NOTE WHENEVER ANY AGENDA ITEM, WHETHER OR NOT ON THE
- CONSENT AGENDA, IS NOT READY FOR COUNCIL ACTION AT THE TIME IT IS REACHED ON THE AGENDA, THAT ITEM SHALL BE PLACED AT THE END OF THE AGENDA FOR ACTION BY COUNCIL WHEN ALL OTHER AGENDA ITEMS HAVE BEEN CONSIDERED.

CITY COUNCIL RESERVES THE RIGHT TO TAKE UP AGENDA ITEMS OUT OF THE ORDER IN WHICH THEY ARE POSITIONED IN THIS AGENDA. ALSO, AN ITEM THAT HAS BEEN TAGGED UNDER CITY COUNCIL RULE (HOUSTON CITY CODE 2-2) OR DELAYED TO ANOTHER DAY MAY BE NEVERTHELESS CONSIDERED LATER AT THE SAME CITY COUNCIL MEETING.



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

District D

Item Creation Date: 5/22/2020

HPW - 20KFH07 Accept Work / JFT Construction, Inc.

Agenda Item#: 1.

Summary:

****PULLED – Will not be considered on 7/29**

RECOMMENDATION from Director Houston Public Works for approval of final contract amount of \$4,553,637.50 and acceptance of work on contract with **JFT CONSTRUCTION, INC** for Open Ditch Improvements - Calhoun Area - 5.20% over the revised contract amount - **DISTRICT D - EVANS-SHABAZZ**

Background:

SUBJECT: Accept Work for Open Ditch Improvements – Calhoun Area.

RECOMMENDATION: (SUMMARY) Pass a motion to approve the final Contract Amount of \$4,553,637.50 or 5.20% over the revised Contract Amount, accept the Work and authorize final payment.

PROJECT NOTICE/JUSTIFICATION: This project was part of The Texas General Land Office (GLO) program and was required to reconstruct inadequate drainage systems and reduce the potential for structural flooding. This project represented how the City used its grant allocation to support recovery in the most impacted and distressed areas included in the 2008 Hurricane Ike event. This project demonstrated the City's commitment to recover, rebuild and focus on resilience for its citizens.

DESCRIPTION/SCOPE: The Scope of the project was for the improvements to the roadside ditches including the replacement of culverts and driveways. RPS designed the project with 120 calendar days allowed for construction. The project was awarded to JFT Construction, Inc. with an original Contract Amount of \$4,315,031.56 and an additional allocation of \$13,637.50 for a revised total contract amount of \$4,328,669.06.

LOCATION: The project area is generally bound by Old Spanish Trail on the north, Branch Street on the south, Weston Street on the east and Cullen Blvd. on the west.

CONTRACT COMPLETION AND COST: The Contractor, JFT Construction, Inc., has completed the work under the subject Contract. The project was completed beyond the established completion date with an additional 135 days approved by Change Order Nos. 2 and 6. The final cost of the project, including overrun and underrun of estimated unit price quantities and previously approved Change Order Nos. 1, and 3 -7, is \$4,553,637.50, an increase of \$224,968.44 or 5.20% over the revised Contract Amount. The increased cost is a result of the difference between planned and measured quantities.

M/WSBE PARTICIPATION: The M/WBE participation goal for this project was 18.00%. According to Office of Housing and Community Development, the participation was 19.42%. Contractor's M/WBE performance evaluation was rated Outstanding.

Carol Ellinger Haddock, P.E., Director
Houston Public Works

Tom McCasland, Director
Housing and Community Development

WBS No. M-420GLO-0002-4

Prior Council Action:

Ordinance No. 2019-0104, dated 02-20-2019

Ordinance No. 2020-0140, dated 02-19-2020

Motion No. 2020-0089, dated 02-19-2020

Amount of Funding:

No additional funding required.

Total (original) allocation of \$4,540,000.00 from Fund 5030 - Federal State Local – Pass Through Fund

Additional Allocation of \$13,637.50 from Fund No. 5030 - Federal State Local – Pass Through Fund

Contact Information:

Juan Chavira, PE, PMP, CEM
Assistant Director, Capital Projects
Phone: (832) 395-2441

ATTACHMENTS:

Description

Signed Coversheet
Maps

Type

Signed Cover sheet
Backup Material



CITY OF HOUSTON - CITY COUNCIL

Meeting Date:

District D

Item Creation Date: 5/22/2020

HPW - 20KFH07 Accept Work / JFT Construction, Inc.

Agenda Item#:

Background:

SUBJECT: Accept Work for Open Ditch Improvements – Calhoun Area.

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7/8/2020

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Carol Ellinger Haddock, P.E., Director
Houston Public Works

DocuSigned by:

884243846705495
Tom McCasland, Director

Housing and Community Development

WBS No. M-420GLO-0002-4

Prior Council Action:

Ordinance No. 2019-0104, dated 02-20-2019

Ordinance No. 2020-0140, dated 02-19-2020

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Contact Information:

Juan Chavira, PE, PMP, CEM
Assistant Director, Capital Projects
Phone: (832) 395-2441

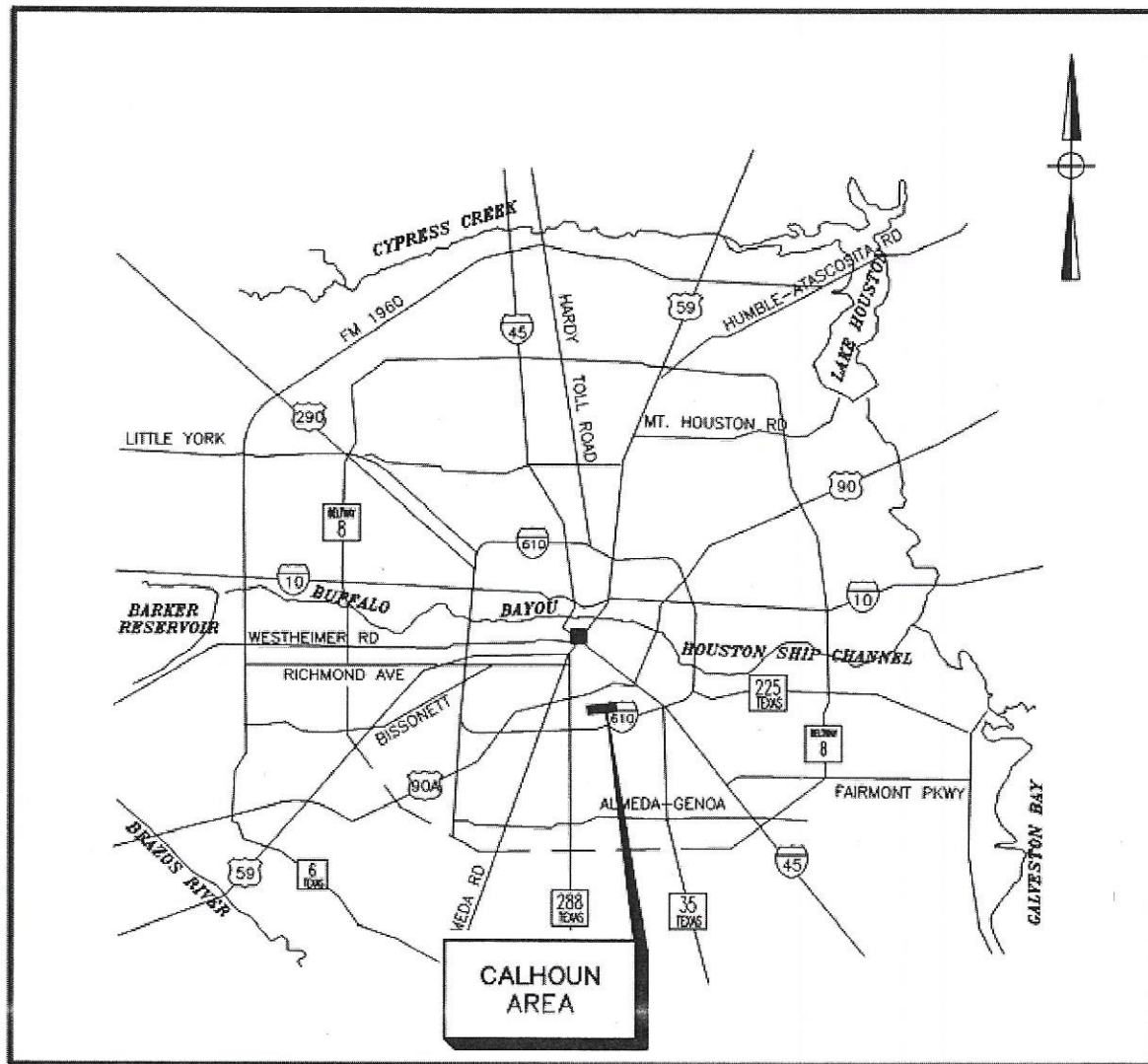
ATTACHMENTS:**Description**

Maps
OBO
Prior Council Action
Ownership Information Form and Tax Report
Change Orders 1 - 7
Final Estimate

Type

Backup Material
Backup Material
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Backup Material

Open Ditch Improvements
Calhoun Area
WBS No. M-420GLO-0002-4



VICINITY MAP

NTS

Key Map No. 533M, 533R, 534J, 534N

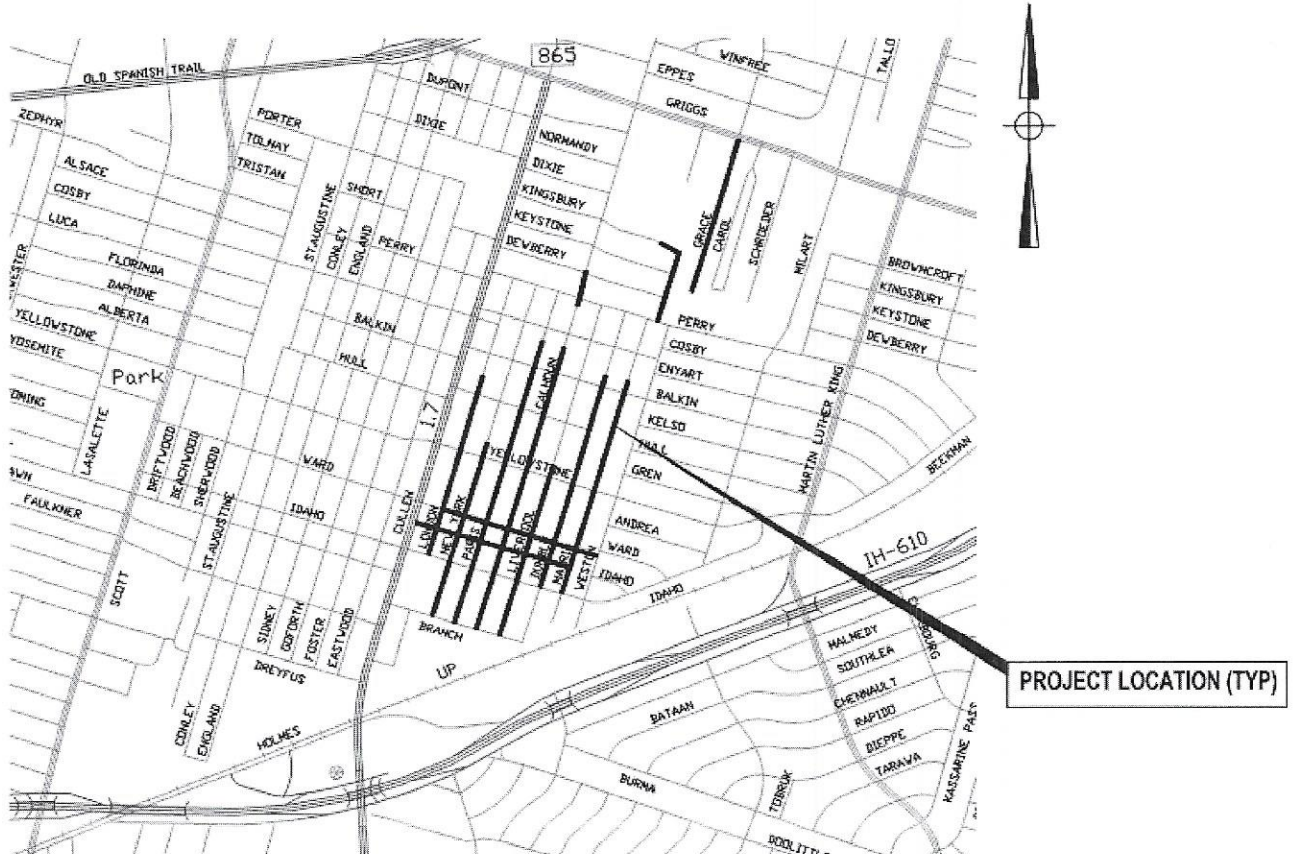
GIMS MAP No. 5454A, 5454B, 5454C, & 5454D

COUNCIL DISTRICT D



1160 N Dairy Ashford, Suite 500
Houston, TX 77079
T +1 281 589 7257

Open Ditch Improvements
Calhoun Area
WBS No.: M-420GLO-0002-4



CALHOUN AREA

SCALE: 1"=100'

Key Map No. 533M, 533R, 534J, 534N
GIMS MAP No. 5454a, 5454b, 5454c, & 5454d
COUNCIL DISTRICT D



1160 N Dairy Ashford, Suite 500
Houston, TX 77079
T +1 281 589 7257



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

District B, District I

Item Creation Date: 5/7/2020

HPW – 20MEM32 Accept Work / CYMI Industrial, Inc.

Agenda Item#: 2.

Summary:

RECOMMENDATION from the Director Houston Public Works for approval of final contract amount of \$3,668,891.14 and acceptance of work on contract with **CYMI INDUSTRIAL, INC** for Force Main Renewal and Replacement for Annunciation and Banner Road (Package 2) - 0.07% under the original contract amount - **DISTRICTS B - DAVIS and I - GALLEGOS**

Background:

SUBJECT: Accept Work for Force Main Renewal and Replacement for Annunciation and Banner Road (Package 2).

RECOMMENDATION: (SUMMARY) Pass a motion to approve the final Contract Amount of \$3,668,891.14 or 0.07% under the original Contract Amount, accept the Work and authorize final payment.

PROJECT NOTICE/JUSTIFICATION: This project was part of the City's ongoing force main renewal and replacement program.

DESCRIPTION/SCOPE: This project consisted of the force main renewal and /or replacement associated with various lift stations. KIT Professionals, Inc. designed the project with 300 calendar days allowed for construction. The project was awarded to CYMI Industrial, Inc. with an original Contract Amount of \$3,671,445.00.

LOCATION: The project area is generally bound by: Liberty Banner Road Section: North McCarty Street on the north, North Loop East Freeway on the west, Wallisville Road on the south and Manitou Drive on the east. Annunciation Section: East Mount Road on the north, Homestead Road on the west, Little York Road on the south, Mesa Road on the east.

CONTRACT COMPLETION AND COST: The Contractor, CYMI Industrial, Inc. has completed the work under the subject Contract. The project was completed beyond the established completion date with an additional 354 days approved by Change Order Nos. 1-4. The final cost of the project, including overrun and underrun of estimated unit price quantities and previously approved Change Order Nos. 1-4 is \$3,668,891.14 a decrease of \$2,553.86 or 0.07% under the original Contract Amount. The decreased cost is a result of the difference between planned and measured quantities.

MWSBE PARTICIPATION: The advertised M/WBE contract goal for this project was 20.00%. The M/WBE plan established for this project was 19.43%. According to Office of Business Opportunity, the participation was 22.16%. Contractor's M/WBE performance evaluation was rated Outstanding.

Carol Ellinger Haddock, P.E., Director
Houston Public Works

WBS No. R-000035-011A-4

Prior Council Action:

Ordinance No. 2017-0600, dated 08-09-2017

Amount of Funding:

No additional funding required.

Total (original) appropriation of \$4,177,000.00 from Fund 8500 - Water and Sewer System Consolidated Construction Fund.

Contact Information:

R. Jeff Masek, P.E., CCM
Assistant Director, Capital Projects
Phone: (832) 395-2387

ATTACHMENTS:

Description

Signed Coversheet
Maps

Type

Signed Cover sheet
Backup Material



CITY OF HOUSTON - CITY COUNCIL

Meeting Date:
District B, District I
Item Creation Date: 5/7/2020

HPW – 20MEM32 Accept Work / CYMI Industrial, Inc.

Agenda Item#:

Background:

SUBJECT: Accept Work for Force Main Renewal and Replacement for Annunciation and Banner Road (Package 2).

RECOMMENDATION: (SUMMARY) Pass a motion to approve the final Contract Amount of \$3,668,891.14 or 0.07% under the original Contract Amount, accept the Work and authorize final payment.

PROJECT NOTICE/JUSTIFICATION: This project was part of the City's ongoing force main renewal and replacement program.

DESCRIPTION/SCOPE: This project consisted of the force main renewal and /or replacement associated with various lift stations. KIT Professionals, Inc. designed the project with 300 calendar days allowed for construction. The project was awarded to CYMI Industrial, Inc. with an original Contract Amount of \$3,671,445.00.

LOCATION: The project area is generally bound by: Liberty Banner Road Section: North McCarty Street on the north, North Loop East Freeway on the west, Wallisville Road on the south and Manitou Drive on the east. Annunciation Section: East Mount Road on the north, Homestead Road on the west, Little York Road on the south, Mesa Road on the east.

CONTRACT COMPLETION AND COST: The Contractor, CYMI Industrial, Inc. has completed the work under the subject Contract. The project was completed beyond the established completion date with an additional 354 days approved by Change Order Nos. 1-4. The final cost of the project, including overrun and underrun of estimated unit price quantities and previously approved Change Order Nos. 1-4 is \$3,668,891.14 a decrease of \$2,553.86 or 0.07% under the original Contract Amount. The decreased cost is a result of the difference between planned and measured quantities.

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DocuSigned by:

A blue ink signature of Carol Ellinger Haddock, written in a cursive style.

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7/9/2020

Carol Ellinger Haddock, P.E., Director
Houston Public Works

WBS No. R-000035-011A-4

Prior Council Action:

Ordinance No. 2017-0600, dated 08-09-2017

Amount of Funding:

No additional funding required.

Total (original) appropriation of \$4,177,000.00 from Fund 8500 - Water and Sewer System Consolidated Construction Fund.

Contact Information:

R. Jeff Masek, P.E., CCM
Assistant Director, Capital Projects
Phone: (832) 395-2387

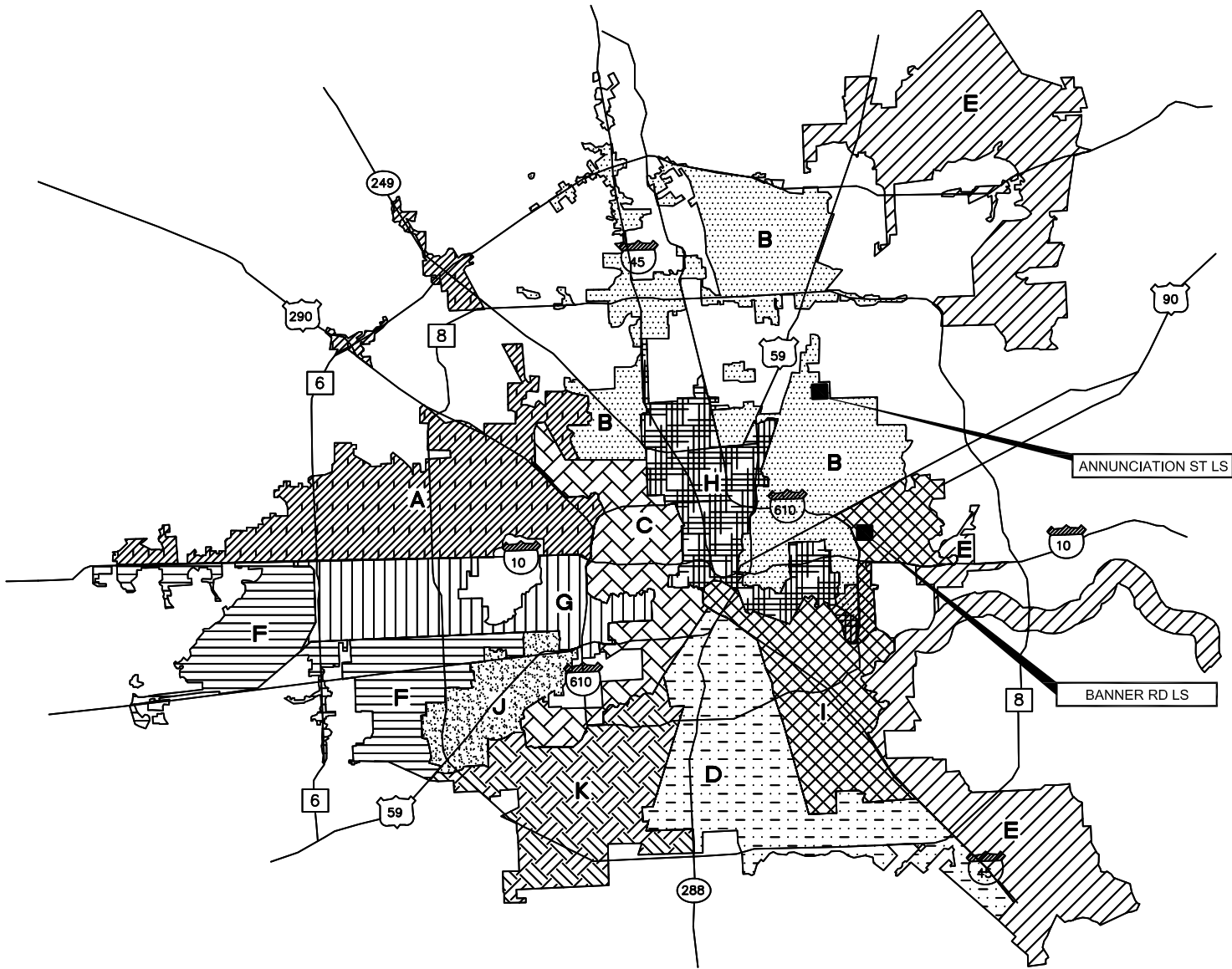
ATTACHMENTS:**Description**

Maps
OBO
Ownership form and Tax Report
Prior Council Action
Change Orders 1 - 4
Final Estimate

Type

Backup Material
Backup Material
Backup Material
Backup Material
Backup Material
Backup Material

HOUSTON PUBLIC WORKS



LEGEND:

- COUNCIL DISTRICT A
- COUNCIL DISTRICT B
- COUNCIL DISTRICT C
- COUNCIL DISTRICT D
- COUNCIL DISTRICT E
- COUNCIL DISTRICT F
- COUNCIL DISTRICT G
- COUNCIL DISTRICT H
- COUNCIL DISTRICT I
- COUNCIL DISTRICT J
- COUNCIL DISTRICT K

LIFT STATIONS

ANNUNCIATION ST
COUNCIL DISTRICT: B
KEY MAP No.: 415N, 415P, 415S
415W, 455A

BANNER RD
COUNCIL DISTRICT: I
KEY MAP No.: 455Y, 455Z

FY 14 WASTEWATER FORCE MAIN
RENEWAL AND REPLACEMENT
WBS NO. R-000035-11A-4

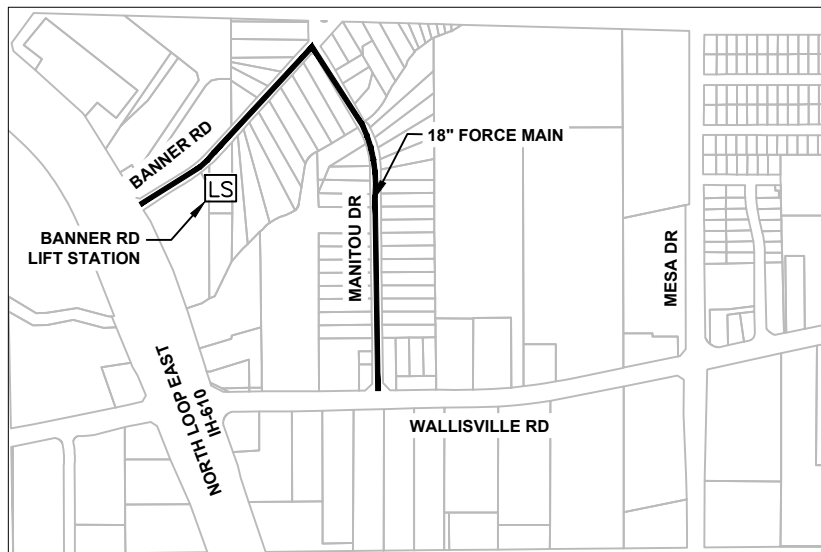
COUNCIL DISTRICT MAP



KIT Professionals, Inc.
Engineers • Planners • Construction Managers
2000 W. Sam Houston Pkwy S., Ste 1400
Houston, Texas 77042
Phone: (713) 783-8700; Fax: (713) 783-8747
TBPE Firm Registration No. F-4991

Date April 2020

EXHIBIT 'A'



BANNER RD
KEY MAP NO.: 455Y & 455Z



ANNUNCIATION
KEY MAP NO.: 415N, 415S, 415W & 455A

FY 14 WASTEWATER FORCE MAIN
RENEWAL AND REPLACEMENT
WBS NO. R-000035-11A-4

VICINITY MAP
BANNER RD AND ANNUNCIATION ST
FORCE MAINS



KIT Professionals, Inc.

Engineers • Planners • Construction Managers

2000 W. Sam Houston Pkwy S., Ste 1400

Houston, Texas 77042

Phone: (713) 783-8700; Fax: (713) 783-8747

TBPE Firm Registration No. F-4991

Date: April 2020

EXHIBIT 'B'



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 7/13/2020

S29187 - Airfield Marking Paint - MOTION

Agenda Item#: 3.

Summary:

LBS ENTERPRISES, LLC dba ALLSTATES COATINGS COMPANY for the purchase of Airfield Marking Paint for the Houston Airport System - 3 Years with two one-year options - \$1,690,163.30 - Enterprise Fund

Background:

Formal Bids Received April 16, 2020 for S93-S29187 – Approve an award to LBS Enterprises, LLC dba Allstates Coatings Company in the amount not to exceed \$1,690,163.30 for the purchase of airfield marking paint for the Houston Airport System.

Specific Explanation:

The Director of the Houston Airport System and the Chief Procurement Officer recommend that City Council approve an award to **LBS Enterprises, LLC dba Allstates Coatings Company** on its low bid in the amount not to exceed **\$1,690,163.30** for airfield marking paint for the Houston Airport System. It is further requested that authorization be given to make purchases, as needed, for a **36-month period with two one-year options**. This award consists of airfield marking paint to be used by the department for marking runways and taxiways at George Bush Intercontinental, William P. Hobby, and Ellington Field airports.

This project was advertised in accordance with the requirements of the State of Texas bid laws. Fourteen prospective bidders downloaded the solicitation document from SPD's e-bidding website, and four bids were received as outlined below.

LBS Enterprises, LLC dba Allstates Coatings Company: Award on its low bid for Group I, Line Item Nos. 1 through 7, 9 and 10 (white, yellow, black, red, and blue waterborne acrylic paint) in the amount not to exceed **\$1,690,163.30**.

<u>Company</u>	<u>Total Amount</u>
1. LBS Enterprises, LLC dba Allstates Coatings Company	\$1,690,163.30
2. Kinetic Motorwerks, LLC	\$2,071,996.67
3. PPG Architectural Finishes, Inc.	\$8,999,247.57
4. Environmental Sorbent, LLC	\$9,699,904.83

Item No. 8 will not be awarded. It is no longer required by the department.

MWBE Participation:

Zero percent goal-document approved by the Office of Business Opportunity.

Hire Houston First:

The proposed award requires compliance with the City's "Hire Houston First" ordinance that promotes economic opportunity for Houston businesses and supports job creation. In this case, **LBS Enterprises, LLC dba Allstates Coatings Company** does not meet the requirements for HHF designation; no HHF firms were within three percent.

Fiscal Note:

Funding for this item is included in the FY2021 Adopted Budget. Therefore, no Fiscal Note is required as stated in the Financial Policies.

Jerry Adams, Chief Procurement Officer
Finance/Strategic Procurement Division

Department Approving Authority Signature

Estimated Spending Authority

Department	FY2021	Out Years	Total
Houston Airport System	\$300,000.00	\$1,390,163.30	\$1,690,163.30

Amount of Funding:

\$1,690,163.30

HAS - Revenue Fund

Fund No.: 8001

Contact Information:

Desiree Heath	FIN/SPD	832-393-8742
Amanda Joseph	FIN/SPD	832-393-8723
Todd Curry	HAS	281-233-1896

ATTACHMENTS:**Description**

Cover Sheet

Type

Signed Cover sheet



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 7/13/2020

S29187 - Airfield Marking Paint - MOTION

Agenda Item#: 7.

Background:

Formal Bids Received April 16, 2020 for S93-S29187 – Approve an award to LBS Enterprises, LLC dba Allstates Coatings Company in the amount not to exceed \$1,690,163.30 for the purchase of airfield marking paint for the Houston Airport System.

Specific Explanation:

The Director of the Houston Airport System and the Chief Procurement Officer recommend that City Council approve an award to **LBS Enterprises, LLC dba Allstates Coatings Company** on its low bid in the amount not to exceed **\$1,690,163.30** for airfield marking paint for the Houston Airport System. It is further requested that authorization be given to make purchases, as needed, for a **36-month period with two one-year options**. This award consists of airfield marking paint to be used by the department for marking runways and taxiways at George Bush Intercontinental, William P. Hobby, and Ellington Field airports.

This project was advertised in accordance with the requirements of the State of Texas bid laws. Fourteen prospective bidders downloaded the solicitation document from SPD's e-bidding website, and four bids were received as outlined below.

LBS Enterprises, LLC dba Allstates Coatings Company: Award on its low bid for Group I, Line Item Nos. 1 through 7, 9 and 10 (white, yellow, black, red, and blue waterborne acrylic paint) in the amount not to exceed **\$1,690,163.30**.

	Company	Total Amount
1.	LBS Enterprises, LLC dba Allstates Coatings Company	\$1,690,163.30
2.	Kinetic Motorwerks, LLC	\$2,071,996.67
3.	PPG Architectural Finishes, Inc.	\$8,999,247.57
4.	Environmental Sorbent, LLC	\$9,699,904.83

Item No. 8 will not be awarded. It is no longer required by the department.

MWBE Participation:

Zero percent goal-document approved by the Office of Business Opportunity.

Hire Houston First:

The proposed award requires compliance with the City's "Hire Houston First" ordinance that promotes economic opportunity for Houston businesses and supports job creation. In this case, **LBS Enterprises, LLC dba Allstates Coatings Company** does not meet the requirements for HHF designation; no HHF firms were within three percent.

Fiscal Note:

Funding for this item is included in the FY2021 Adopted Budget. Therefore, no Fiscal Note is required as stated in the Financial Policies.

DocuSigned by:

Jerry Adams

7/21/2020

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Jerry Adams, Chief Procurement Officer
Finance/Strategic Procurement Division

Department Approving Authority Signature

Estimated Spending Authority

Department	FY2021	Out Years	Total
Houston Airport System	\$300,000.00	\$1,390,163.30	\$1,690,163.30

Amount of Funding:

\$1,690,163.30

HAS - Revenue Fund

Fund No.: 8001

Contact Information:

Desiree Heath	FIN/SPD	832-393-8742
Amanda Joseph	FIN/SPD	832-393-8723
Todd Curry	HAS	281-233-1896

ATTACHMENTS:

Description

MWBE 0% Goal Document
Form A - Fair Campaign Ordinance
Form B - Fair Campaign Ordinance
Ownership Information Form
Delinquent Tax Report
Funding Information SAP - Fiscal Form A

Type

Backup Material
Backup Material
Backup Material
Backup Material
Backup Material
Financial Information



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 6/3/2020

E29523 - Various Trailers - MOTION

Agenda Item#: 4.

Summary:

DOGGETT HEAVY MACHINERY SERVICES, LLC for approval of spending authority to purchase Various Trailers through the Interlocal Agreement for Cooperative Purchasing with the Houston-Galveston Area Council for the Fleet Management Department on behalf of Houston Public Works - \$282,500.00 - Enterprise and Other Funds

Background:

S87-E29523 - Approve spending authority to purchase various trailers from Doggett Heavy Machinery Services, LLC in the total amount of \$282,500.00 through the Interlocal Agreement for Cooperative Purchasing with the Houston-Galveston Area Council (H-GAC) for the Fleet Management Department on behalf of Houston Public Works.

Specific Explanation:

The Director of the Fleet Management Department and the Chief Procurement Officer recommend that City Council approves spending authority to purchase twelve (12) trailers through the Interlocal Agreement for Cooperative Purchasing with the Houston-Galveston Area Council (H-GAC) in the total amount of **\$282,500.00** for Houston Public Works and that authorization be given to issue a purchase order to the H-GAC contractor **Doggett Heavy Machinery Services, LLC**. The Department will use these trailers to transport material and equipment to various job-sites throughout the city. **The funding for these trailers is included in the adopted FY2021 Capital Improvement Plan (CIP).**

These trailers come with warranties ranging from one (1) to ten (10) years on parts and manufacturer defects. These trailers will replace older units that have reached their life expectancy. The old trailers will be sent to auction for disposal.

MWBE Participation:

Zero-percent goal document approved by the Office of Business Opportunity.

Hire Houston First:

This procurement is exempt from the City's Hire Houston First Ordinance. Bids/proposals were not solicited because the department is utilizing an Interlocal or Cooperative Purchasing agreement for this purchase.

Fiscal Note:

Funding for this item is included in the FY2021 Adopted Budget. Therefore, no Fiscal Note is required as stated in the Financial Policies.

Jerry Adams, Chief Procurement Officer Finance/Strategic Procurement Division	Department Approval Authority

ESTIMATED SPENDING AUTHORITY			
DEPARTMENT	FY2021	OUT YEARS	TOTAL
Houston Public Works	\$282,500.00	\$0.00	\$282,500.00

Amount of Funding:

\$202,000.00 – Combined Utility System Gen Pur Fund – Fund 8305

\$ 53,130.00 – Dedicated Drainage & Street Renewal Fund (2310) – Metro

\$ 27,370.00 – Dedicated Drainage & Street Renewal (2310) – Ad Valorem

\$282,500.00 – Total

Contact Information:

Lena Farris SPD 832-393-8729

Coryie Gilmore SPD 832-393-8743

Marchelle Cain SPD 832-393-6910

ATTACHMENTS:

Description

Coversheet (revised)

Type

Signed Cover sheet



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/21/2020

ALL

Item Creation Date: 6/3/2020

E29523 - Various Trailers - MOTION

Agenda Item#: 5.

Background:

Background:

S87-E29523 - Approve spending authority to purchase various trailers from Doggett Heavy Machinery Services, LLC in the total amount of \$282,500.00 through the Interlocal Agreement for Cooperative Purchasing with the Houston-Galveston Area Council (H-GAC) for the Fleet Management Department on behalf of Houston Public Works.

Specific Explanation:

The Director of the Fleet Management Department and the Chief Procurement Officer recommend that City Council approves spending authority to purchase twelve (12) trailers through the Interlocal Agreement for Cooperative Purchasing with the Houston-Galveston Area Council (H-GAC) in the total amount of **\$282,500.00** for Houston Public Works and that authorization be given to issue a purchase order to the H-GAC contractor **Doggett Heavy Machinery Services, LLC**. The Department will use these trailers to transport material and equipment to various job-sites throughout the city. **The funding for these trailers is included in the adopted FY2021 Capital Improvement Plan (CIP).**

These trailers come with warranties ranging from one (1) to ten (10) years on parts and manufacturer defects. These trailers will replace older units that have reached their life expectancy. The old trailers will be sent to auction for disposal.

MWBE Participation:

Zero-percent goal document approved by the Office of Business Opportunity.

Hire Houston First:

This procurement is exempt from the City's Hire Houston First Ordinance. Bids/proposals were not solicited because the department is utilizing an Interlocal or Cooperative Purchasing agreement for this purchase.

Fiscal Note:

Funding for this item is included in the FY2021 Adopted Budget. Therefore, no Fiscal Note is required as in the Financial Policies.

DocuSigned by:

Jerry Adams

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**Jerry Adams, Chief Procurement Officer
Finance/Strategic Procurement Division**

DocuSigned by:

Carol Haddock

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Department Approval Authority Signature



Estimated Spending Authority

Department	FY2021	Out Years	Total
Houston Public Works	\$282,500.00	0	\$282,500.00

Amount of Funding:

\$202,000.00 - Combined Utility System Gen Pur Fund - Fund 8305

\$53,130.00 - Dedicated Drainage & Street Renewal Fund (2310) - Metro

\$27,370.00 - Dedicated Drainage & Street Renewal Fund (2310) - Ad Valorem

\$282,500.00 Total

Contact Information:

Lena Farris SPD 832-393-8729
Coryie Gilmore SPD 832-393-8743
Marchelle Cain SPD 832-393-6910

Description

Type

[illegible]



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

District D

Item Creation Date:

N29546 – Maintenance and Repair Services of the 7500
Real Time PCR System - MOTION

Agenda Item#: 5.

Summary:

LIFE TECHNOLOGIES CORPORATION for sole source purchase of Maintenance and Repair Services of the 7500 Real Time PCR System for the Houston Health Department - 3 Years - \$243,690.85 - Laboratory Services Fund

Background:

Sole Source for S78-N29546 – Approve the sole source purchase for maintenance and repair services of the 7500 Real Time PCR System from Life Technologies Corporation in the total amount not to exceed \$243,690.85 for the Houston Health Department.

Specific Explanation:

The Director of the Houston Health Department and the Chief Procurement Officer recommend that City Council approve the sole source purchase for maintenance and repair services of the model 7500 Real Time PCR System from **Life Technologies Corporation** in the total amount not to exceed **\$243,690.85** for the Houston Health Department. It is further requested that authorization be given to make purchase, as needed for a **thirty-six-month term**.

The scope of service requires the vendor to provide preventative maintenance services on the ABI 7500 FAST Real Time PCR Instruments and ABI 7500 FAST Dx Real Time PCR Instruments for the Houston Health Department that located at, 2252 Holcombe Blvd, Houston, TX 77030. These instruments are used for COVID scientific testing and for detection of other viruses. The preventative maintenance and repair service agreement are vital to the operation of the Houston Health Department's laboratory.

The Life Technologies Corporation is the sole authorized services provider for maintenance and repair of the ABI 7500 FAST Real Time PCR Instruments and ABI 7500 FAST Dx Real Time PCR Instruments.

This recommendation is made pursuant to Chapter 252, Section 252.022 (a) (7) (A) "a procurement of items that are available from only one source because of patents, copyrights, secrete processes, or natural monopolies" of the Texas Local Government Code for exempt procurement.

MWBE Participation:

Zero-percentage goal document approved by the Office of Business Opportunity

Hire Houston First:

This procurement is exempt from the City's Hire Houston First Ordinance. Bids/proposals were not solicited because the department is utilizing a sole source contractor for this purchase.

Pay or Play Program:

This procurement requires compliance with the City's 'Pay or Play' ordinance regarding health benefits for employees of City contractors. In this case, the contractor provides health benefits to eligible employees in compliance with City policy.

Fiscal Note:

Funding for this item is included in the FY2021 Adopted Budget. Therefore, no Fiscal Note is required as stated in the Financial Policies.

**Jerry Adams, Chief Procurement Officer
Finance/Strategic Procurement Division**

Department Approval Authority

Estimated Spending Authority			
Department	FY2021	Out-Years	Total
Houston Health	\$64,000.00	\$179,690.85	\$243,690.85

Amount of Funding:

\$243,690.85

Laboratory Services Fund
Fund No.: 2008

Contact Information:

NAME:	DEPARTMENT/DIVISIO	PHONE NO
Richard Morris, Division Manager	FIN/SPD	(832) 393-8705
Katie Moore, Sr Procurement Specialist	FIN/SPD	(832) 393-8710
Stephen Williams, Director	HHD	(832) 393-5001

ATTACHMENTS:

Description

Cover Sheet

Type

Signed Cover sheet



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

District D

Item Creation Date:

N29546 – Maintenance and Repair Services of the 7500 Real Time PCR System - MOTION

Agenda Item#:

Background:

Sole Source for S78-N29546 – Approve the sole source purchase for maintenance and repair services of the 7500 Real Time PCR System from Life Technologies Corporation in the total amount not to exceed \$243,690.85 for the Houston Health Department.

Specific Explanation:

The Director of the Houston Health Department and the Chief Procurement Officer recommend that City Council approve the sole source purchase for maintenance and repair services of the model 7500 Real Time PCR System from **Life Technologies Corporation** in the total amount not to exceed **\$243,690.85** for the Houston Health Department. It is further requested that authorization be given to make purchase, as needed for a **thirty-six-month term**.

The scope of service requires the vendor to provide preventative maintenance services on the ABI 7500 FAST Real Time PCR Instruments and ABI 7500 FAST Dx Real Time PCR Instruments for the Houston Health Department that located at, 2252 Holcombe Blvd, Houston, TX 77030. These instruments are used for COVID scientific testing and for detection of other viruses. The preventative maintenance and repair service agreement are vital to the operation of the Houston Health Department's laboratory.

The Life Technologies Corporation is the sole authorized services provider for maintenance and repair of the ABI 7500 FAST Real Time PCR Instruments and ABI 7500 FAST Dx Real Time PCR Instruments.

This recommendation is made pursuant to Chapter 252, Section 252.022 (a) (7) (A) "a procurement of items that are available from only one source because of patents, copyrights, secrete processes, or natural monopolies" of the Texas Local Government Code for exempt procurement.

MWBE Participation:

Zero-percentage goal document approved by the Office of Business Opportunity

Hire Houston First:

This procurement is exempt from the City's Hire Houston First Ordinance. Bids/proposals were not solicited because the department is utilizing a sole source contractor for this purchase.

Pay or Play Program:

This procurement requires compliance with the City's 'Pay or Play' ordinance regarding health benefits for employees of City contractors. In this case, the contractor provides health benefits to eligible employees in compliance with City policy.

Fiscal Note:

Funding for this item is included in the FY2021 Adopted Budget. Therefore, no Fiscal Note is required as stated in the Financial Policies.

DocuSigned by:

Jerry Adams

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DocuSigned by:

Stephen Williams

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7/19/2020

7/20/2020

**Jerry Adams, Chief Procurement Officer
Finance/Strategic Procurement Division**

Department Approval Authority

Estimated Spending Authority			
Department	FY2021	Out-Years	Total
Houston Health	\$64,000.00	\$179,690.85	\$243,690.85

Amount of Funding:

\$243,690.85

Laboratory Services Fund

Fund No.: 2008

Contact Information:

NAME:	DEPARTMENT/DIVISIO	PHONE NO
Richard Morris, Division Manager	FIN/SPD	(832) 393-8705
Katie Moore, Sr Procurement Specialist	FIN/SPD	(832) 393-8710
Stephen Williams, Director	HHD	(832) 393-5001

ATTACHMENTS:

Description	Type
Affidavit ownership	Backup Material
Form A - Campaign Ordinance	Backup Material
OBO Waiver	Backup Material
Sole Source Justification	Backup Material
Tax Report	Backup Material
Certificate of Fund	Backup Material
Form B - Campaign Ordinance	Backup Material
Price quotation-40530393	Backup Material
Funding Verification Information for HHD	Financial Information



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 6/3/2020

E29416 - Tactical Equipment Supplies- MOTION

Agenda Item#: 6.

Summary:

GT DISTRIBUTORS, INC for approval of spending authority for purchase of Tactical Equipment Supplies through the Texas Local Government Purchasing Cooperative (BuyBoard) for the Houston Police Department - \$166,159.46 - Grant Fund

Background:

S85-E29416 – Approve a spending authority for the purchase of tactical equipment supplies from GT Distributors, Inc. through the Texas Local Government Purchasing Cooperative (BuyBoard) in the total amount of \$166,159.46 for Public Safety and Homeland Security on behalf of Houston Police Department.

Specific Explanation:

The Director of Public Safety and Homeland Security and the Chief Procurement Officer recommend that City Council approve a spending authority for the purchase of tactical equipment supplies through the Texas Local Government Purchasing Cooperative (BuyBoard) in the total amount of **\$166,159.46** and that authorization be given to issue a purchase order to **GT Distributors, Inc.** for the Houston Police Department.

This purchase consists of four hundred and fifty-four ProTech Delta-4® IIIA ballistic helmets, ProTech® non-ballistic face shields, and ProTech® R2S Ratchet Retention suspension systems with mesh. The tactical equipment supplies are made from advanced aramid fibers that provide lightweight robust protection from fragmentation projectiles, as well as low odor chemicals and bio-hazardous threats. Houston Police Department's Crime Suppression Team will use the tactical equipment supplies for the protection of their officers while responding to active shooter situations, and during the enforcement of arrest warrant round-ups. The tactical equipment comes with a (5) five-year manufacturers warranty.

This recommendation is made pursuant to Chapter 252, Section 252.022 (a) (12) (D) "under an interlocal contractor for cooperative purchasing administered by a regional planning commission established under Chapter 391" of the Texas Local Government Code for exempted procurements.

MWBE Participation:

Zero-percentage goal document approved by the Office of Business Opportunity.

Hire Houston First:

This procurement is exempt from the City's Hire Houston First ordinance. Bids/proposals were not solicited because the department is utilizing an Interlocal/Cooperative Purchasing Agreement for this purchase.

Fiscal Note:

No Fiscal Note is required on grant items.

Jerry Adams, Chief Procurement Officer
Signature
Finance/Strategic Procurement Division

Department Approval Authority

Estimated Spending Authority			
DEPARTMENT	FY2021	OUT YEARS	TOTAL
Public Safety & Homeland Security	\$166,159.46	\$0	\$166,159.46

Amount of Funding:

\$166,159.46

Federal / Local / State Pass Through Fund

Fund: 5030

Contact Information:

<u>NAME:</u>	<u>DEPARTMENT/DIVISION</u>	<u>PHONE</u>
Laura Guthrie, Purchasing Manager	FIN/SPD	(832) 393-8735
Alejandro Velasquez-Auza, Procurement Specialist	FIN/SPD	(832) 393-8701
Kim House, Grants Manager	PSHS	(832) 393-0930

ATTACHMENTS:

Description

Type



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 7/9/2020

E29524 - Office Supplies - MOTION

Agenda Item#: 7.

Summary:

STAPLES CONTRACT & COMMERCIAL LLC for purchase of Office Supplies through the Cooperative Purchasing Agreement with Sourcwell for Various Departments - 4 Years with one one-year option - \$17,750,318.81 - General, Enterprise and Other Funds

Background:

S05-E29524 – Approve the purchase of office supplies in the amount not to exceed \$17,252,318.81 through the Cooperative Purchasing Agreement with Sourcwell for various departments.

Specific Explanation:

The Chief Procurement Officer recommends that City Council approve the purchase of office supplies in the amount not to exceed **\$17,252,318.81** for a **four-year term with one additional option year period** through the Cooperative Purchasing Agreement with Sourcwell for various departments and that authorization be given to make purchases using purchase orders and the City's purchasing card, as needed, to the Sourcwell awarded contractor **Staples Contract & Commercial LLC**.

The Cooperative Purchasing Agreement (CPA) with Sourcwell's awarded contractor will provide office supplies, furniture, and equipment for the Mayor's Office, Controller's Office and all City of Houston Departments. The use of the CPA allows the City to save time and money by combining the buying power of more than 50,000 government, education, and nonprofit organizations with an estimated purchasing power value of \$3 billion annually. By participating in the CPA, the City will be able to (1) receive the best supplier government pricing (2) obtain volume discounts and (3) shop at retail stores across the U.S. and receive its custom pricing or in-store sale price, whichever is lowest at the time of purchase.

The City is eligible to participate in the Sourcwell Cooperative Purchasing Agreement as set out in Section 791.011 of the Government Code and such purchases satisfy State bid laws as set out in Section 791.025 of the Government Code.

M/WBE Participation:

This contract will have an 11% participation level and **Staples Contract & Commercial LLC** has identified the below-named company as its certified M/WBE subcontractor.

<u>Company</u>	<u>Type of Work</u>	<u>Dollar Amount</u>	<u>Percentage</u>
Tejas Office Products, Inc.	Delivery of Office Products and Related Goods and Services	\$1,897,755.07	11%

Hire Houston First:

This procurement is exempt from the City's Hire Houston First Ordinance. Bids/Proposals were not solicited because the department is utilizing an Interlocal or Cooperative Purchasing Agreement for this purchase.

Fiscal Note:

Funding for this item is included in the FY2021 Adopted Budget. Therefore, no Fiscal Note is required as stated in the Financial Policies.

No Fiscal Note is required on grant items.

Jerry Adams, Chief Procurement Officer
Finance/Strategic Procurement Division

Department Approval Authority Signature

Estimated Spending Authority

DEPARTMENT	FY2021	OUT YEARS	TOTAL
HOUSTON POLICE	\$ 500,000.00	\$ 2,100,000.00	\$ 2,600,000.00
HOUSTON FIRE	\$ 150,175.00	\$ 600,700.00	\$ 750,875.00
HOUSTON PUBLIC WORKS	\$ 610,350.00	\$ 2,247,510.00	\$ 2,857,860.00
SOLID WASTE MANAGEMENT	\$ 32,000.00	\$ 96,000.00	\$ 128,000.00
GENERAL SERVICES	\$ 59,144.00	\$ 247,809.65	\$ 306,953.65
HOUSTON AIRPORT SYSTEM	\$ 215,000.00	\$ 1,285,000.00	\$ 1,500,000.00
LEGAL	\$ 50,000.00	\$ 200,000.00	\$ 250,000.00
HOUSING	\$ 80,000.00	\$ 120,000.00	\$ 200,000.00
PARKS & RECREATION	\$ 19,000.00	\$ 1,159,900.00	\$ 1,178,900.00
HOUSTON HEALTH	\$ 650,000.00	\$ 2,960,000.00	\$ 3,610,000.00
ADMINISTRATION & REGULATORY AFFAIRS	\$ 59,120.00	\$ 254,756.00	\$ 313,876.00
FLEET MANAGEMENT	\$ 35,751.16	\$ 178,755.79	\$ 214,506.95
MUNICIPAL COURTS	\$ 83,991.00	\$ 335,964.00	\$ 419,955.00
HOUSTON INFORMATION TECHNOLOGY SERVICES	\$ 54,000.00	\$ 216,000.00	\$ 270,000.00
CITY SECRETARY	\$ 1,400.00	\$ 5,600.00	\$ 7,000.00
CONTROLLER'S OFFICE	\$ 20,765.17	\$ 103,825.85	\$ 124,591.02
HUMAN RESOURCES	\$ 77,337.00	\$ 245,663.00	\$ 323,000.00
FINANCE	\$ 88,137.19	\$ 575,000.00	\$ 663,137.19
HOUSTON EMERGENCY CENTER	\$ 50,000.00	\$ 200,000.00	\$ 250,000.00
PLANNING & COMMUNITY DEVELOPMENT	\$ 46,021.00	\$ 126,350.00	\$ 172,371.00
OFFICE OF BUSINESS OPPORTUNITY	\$ 12,425.00	\$ 53,700.00	\$ 66,125.00
MAYOR'S OFFICE	\$ 35,021.00	\$ 166,218.00	\$ 201,239.00
LIBRARY	\$ 101,786.00	\$ 407,143.00	\$ 508,929.00
DEPARTMENT OF NEIGHBORHOODS	\$ 30,000.00	\$ 120,000.00	\$ 150,000.00
CITY COUNCIL	\$ 85,000.00	\$ 100,000.00	\$ 185,000.00
TOTAL AMOUNT	\$3,146,423.52	\$14,105,895.29	\$17,252,318.81

Amount of Funding:

\$ 8,329,498.86 General Fund (1000)

\$ 434,742.20 Central Service Fund (1002)

\$ 7,316.00 Property & Casualty Fund (1004)

\$ 58,002.60 Workers Compensation Fund (1011)

\$ 910,000.00 Federal Government – Grant Fund (5000)

\$ 432,000.00 State – Grant Fund (5010)

\$ 108,000.00 Health Special Fund (2002)

\$ 540,000.00 Essential Public Health Services Fund (2010)

\$ 232,000.00 Park Special Revenue Fund (2100)

\$ 131,900.00 Parks Golf Special Fund (2104)

\$ 59,000.00 Local Truancy Prevention and Diversion Fund (2211)

\$ 50,000.00 Municipal Court Technology Fund (2207)

\$ 114,304.00 Parking Management Operating Fund (8700)

\$ 1,500,000.00 HAS – Revenue Fund (8001)

\$ 250,000.00 Houston Emergency Center Fund (2205)

\$ 1,184,500.00 Building Inspection Fund (2301)

\$ 78,100.00 Stormwater Fund (2302)

\$ 112,000.00 Planning & Development Special Revenue Fund (2308)

\$ 240,400.00 Dedicated Drainage and Street Renewal Fund – Metro et al Fund (2312)

\$ 56,235.00 BARC Special Revenue Fund (2427)

\$ 214,506.95 Fleet Management Fund (1005)

\$ 111,450.00 Project Cost Recover Fund (1001)

\$ 650,000.00	Federal State Local – Pass Through Fund (5030)
\$ 800.00	Dedicated Drainage and Street Renewal Fund – Drainage Charge Fund (2310)
\$ 22,950.00	State Cable TV Fund (2428)
\$ 50,128.00	Tourism Promotion Special Revenue Fund (2429)
\$ 1,242,610.00	HPW – Water & Sewer System Operating Fund (8300)
\$ 131,875.20	Health Benefits Fund (9000)
\$17,252,318.81	Total

Contact Information:

Desiree Heath	SPD	832-393-8742
Porfirio Villarreal	HHD	832-393-5041

ATTACHMENTS:

Description	Type
Revised Cover sheet	Signed Cover sheet



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 7/9/2020

E29524 - Office Supplies - MOTION

Agenda Item#: 7.

Summary:

STAPLES CONTRACT & COMMERCIAL LLC for purchase of Office Supplies through the Cooperative Purchasing Agreement with Sourcewell for Various Departments - 4 Years with one one-year option - \$17,750,318.81 - General, Enterprise and Other Funds

Background:

S05-E29524 – Approve the purchase of office supplies in the amount not to exceed \$17,252,318.81 through the Cooperative Purchasing Agreement with Sourcewell for various departments.

Specific Explanation:

The Chief Procurement Officer recommends that City Council approve the purchase of office supplies in the amount not to exceed **\$17,252,318.81** for a **four-year term with one additional option year period** through the Cooperative Purchasing Agreement with Sourcewell for various departments and that authorization be given to make purchases using purchase orders and the City's purchasing card, as needed, to the Sourcewell awarded contractor **Staples Contract & Commercial LLC**.

The Cooperative Purchasing Agreement (CPA) with Sourcewell's awarded contractor will provide office supplies, furniture, and equipment for the Mayor's Office, Controller's Office and all City of Houston Departments. The use of the CPA allows the City to save time and money by combining the buying power of more than 50,000 government, education, and nonprofit organizations with an estimated purchasing power value of \$3 billion annually. By participating in the CPA, the City will be able to (1) receive the best supplier government pricing (2) obtain volume discounts and (3) shop at retail stores across the U.S. and receive its custom pricing or in-store sale price, whichever is lowest at the time of purchase.

The City is eligible to participate in the Sourcewell Cooperative Purchasing Agreement as set out in Section 791.011 of the Government Code and such purchases satisfy State bid laws as set out in Section 791.025 of the Government Code.

M/WBE Participation:

This contract will have an 11% participation level and **Staples Contract & Commercial LLC** has identified the below-named company as its certified M/WBE subcontractor.

<u>Company</u>	<u>Type of Work</u>	<u>Dollar Amount</u>	<u>Percentage</u>
Tejas Office Products, Inc.	Delivery of Office Products and Related Goods and Services	\$1,897,755.07	11%


Hire Houston First:

This procurement is exempt from the City's Hire Houston First Ordinance. Bids/Proposals were not solicited because the department is utilizing an Interlocal or Cooperative Purchasing Agreement for this purchase.

Fiscal Note:

Funding for this item is included in the FY2021 Adopted Budget. Therefore, no Fiscal Note is required as stated in the Financial Policies.

No Fiscal Note is required on grant items.

DocuSigned by:

 0DD350139A6F4C8...

Jerry Adams, Chief Procurement Officer
Finance/Strategic Procurement Division

Department Approval Authority Signature

7/24/2020

Estimated Spending Authority

<u>DEPARTMENT</u>	<u>FY2021</u>	<u>OUT YEARS</u>	<u>TOTAL</u>
HOUSTON POLICE	\$ 500,000.00	\$ 2,100,000.00	\$ 2,600,000.00

HOUSTON FIRE	\$ 150,175.00	\$ 600,700.00	\$ 750,875.00
HOUSTON PUBLIC WORKS	\$ 610,350.00	\$ 2,247,510.00	\$ 2,857,860.00
SOLID WASTE MANAGEMENT	\$ 32,000.00	\$ 96,000.00	\$ 128,000.00
GENERAL SERVICES	\$ 59,144.00	\$ 247,809.65	\$ 306,953.65
HOUSTON AIRPORT SYSTEM	\$ 215,000.00	\$ 1,285,000.00	\$ 1,500,000.00
LEGAL	\$ 50,000.00	\$ 200,000.00	\$ 250,000.00
HOUSING	\$ 80,000.00	\$ 120,000.00	\$ 200,000.00
PARKS & RECREATION	\$ 19,000.00	\$ 1,159,900.00	\$ 1,178,900.00
HOUSTON HEALTH	\$ 650,000.00	\$ 2,960,000.00	\$ 3,610,000.00
ADMINISTRATION & REGULATORY AFFAIRS	\$ 59,120.00	\$ 254,756.00	\$ 313,876.00
FLEET MANAGEMENT	\$ 35,751.16	\$ 178,755.79	\$ 214,506.95
MUNICIPAL COURTS	\$ 83,991.00	\$ 335,964.00	\$ 419,955.00
HOUSTON INFORMATION TECHNOLOGY SERVICES	\$ 54,000.00	\$ 216,000.00	\$ 270,000.00
CITY SECRETARY	\$ 1,400.00	\$ 5,600.00	\$ 7,000.00
CONTROLLER'S OFFICE	\$ 20,765.17	\$ 103,825.85	\$ 124,591.02
HUMAN RESOURCES	\$ 77,337.00	\$ 245,663.00	\$ 323,000.00
FINANCE	\$ 88,137.19	\$ 575,000.00	\$ 663,137.19
HOUSTON EMERGENCY CENTER	\$ 50,000.00	\$ 200,000.00	\$ 250,000.00
PLANNING & COMMUNITY DEVELOPMENT	\$ 46,021.00	\$ 126,350.00	\$ 172,371.00
OFFICE OF BUSINESS OPPORTUNITY	\$ 12,425.00	\$ 53,700.00	\$ 66,125.00
MAYOR'S OFFICE	\$ 35,021.00	\$ 166,218.00	\$ 201,239.00
LIBRARY	\$ 101,786.00	\$ 407,143.00	\$ 508,929.00
DEPARTMENT OF NEIGHBORHOODS	\$ 30,000.00	\$ 120,000.00	\$ 150,000.00
CITY COUNCIL	\$ 85,000.00	\$ 100,000.00	\$ 185,000.00
TOTAL AMOUNT	\$3,146,423.52	\$14,105,895.29	\$17,252,318.81

Amount of Funding:

\$ 8,329,498.86	General Fund (1000)
\$ 434,742.20	Central Service Fund (1002)
\$ 7,316.00	Property & Casualty Fund (1004)
\$ 58,002.60	Workers Compensation Fund (1011)
\$ 910,000.00	Federal Government – Grant Fund (5000)
\$ 432,000.00	State – Grant Fund (5010)
\$ 108,000.00	Health Special Fund (2002)
\$ 540,000.00	Essential Public Health Services Fund (2010)
\$ 232,000.00	Park Special Revenue Fund (2100)
\$ 131,900.00	Parks Golf Special Fund (2104)
\$ 59,000.00	Local Truancy Prevention and Diversion Fund (2211)
\$ 50,000.00	Municipal Court Technology Fund (2207)
\$ 114,304.00	Parking Management Operating Fund (8700)
\$ 1,500,000.00	HAS – Revenue Fund (8001)
\$ 250,000.00	Houston Emergency Center Fund (2205)
\$ 1,184,500.00	Building Inspection Fund (2301)
\$ 78,100.00	Stormwater Fund (2302)
\$ 112,000.00	Planning & Development Special Revenue Fund (2308)
\$ 240,400.00	Dedicated Drainage and Street Renewal Fund – Metro et al Fund (2312)
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\$ 214,506.95	Fleet Management Fund (1005)
\$ 111,450.00	Project Cost Recover Fund (1001)
\$ 650,000.00	Federal State Local – Pass Through Fund (5030)
\$ 800.00	Dedicated Drainage and Street Renewal Fund – Drainage Charge Fund (2310)
\$ 22,950.00	State Cable TV Fund (2428)
\$ 50,128.00	Tourism Promotion Special Revenue Fund (2429)
\$ 1,242,610.00	HPW – Water & Sewer System Operating Fund (8300)
\$ 131,875.20	Health Benefits Fund (9000)
\$17,252,318.81	Total

Contact Information:

Desiree Heath	SPD	832-393-8742
Porfirio Villarreal	HHD	832-393-5041

ATTACHMENTS:

Description	Type
MWBE Letter of Intent	Backup Material

Form B	Backup Material
Ownership Information Form	Backup Material
Tax Report	Backup Material
Fiscal Form A - HPD	Financial Information
Fiscal Form A - DON	Financial Information
Fiscal Form A - HFD	Financial Information
Fiscal Form A - GSD	Financial Information
Fiscal Form A - HPL	Financial Information
Fiscal Form A - Parks	Financial Information
Fiscal Form A - OBO	Financial Information
Fiscal Form A - Mayor's Office	Financial Information
Fiscal Form A - Finance	Financial Information
Fiscal Form A - City Council	Financial Information
Fiscal Form A - Controller's Office	Financial Information
Fiscal Form A - Legal	Financial Information
Fiscal Form A - City Secretary	Financial Information
Fiscal Form A - MCD	Financial Information
Fiscal Form A - HITS	Financial Information
Fiscal Form A - Planning	Financial Information
Fiscal Form A - FMD	Financial Information
Fiscal Form A - HCD	Financial Information
Fiscal Form A - HEC	Financial Information
Fiscal Form A - HAS	Financial Information
Fiscal Form A - ARA	Financial Information
Fiscal Form A - HPW	Financial Information
Fiscal Form A - HHD	Financial Information
Fiscal Form A - HR	Financial Information
HHD Operating fund SAP Screenshot	Financial Information
Fiscal Form A - SWM	Financial Information
Funding Verification Information-PDD	Financial Information
Funding Verification Information-HPL	Financial Information
Funding Verification City Council	Backup Material
Funding Verification-OBO, LGL, HR 1011, HPW 2301, 2302, 2310 & 2312	Financial Information
Funding Verification for SWD, PRD, HPW Fund 8300, HR Fund 9000	Financial Information
Budget v Actuals	Financial Information
Funding Verification 1500, 2000, 6000, 7000, 7500	Financial Information
HPW Sign Off	Backup Material
Grant Funding Verification - CB	Backup Material
Funding Verification Information-DON	Financial Information



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date:

FIN Truth in Taxation 2020 #1

Agenda Item#: 8.

Summary:

RESOLUTION receiving the 2020 Appraisal Roll Information, Certifying the Anticipated Collection Rate, appointing Melissa Dubowski and Alma Tamborello to calculate and publish the City's No-New Revenue and Voter-Approval Tax Rates, and directing these designees to calculate the voter-approval tax rate in the manner provided for a special taxing unit

Background:

RECOMMENDATION: (Summary) from the Director of the Finance Department that the City Council (1) receive the Tax Year 2020 appraisal roll information, (2) certify the anticipated collection rate, (3) designate Melissa Dubowski and Alma Tamborello to calculate and publish the City's No-New Revenue and Voter-Approval Tax Rates in accordance with the "Truth-In-Taxation" provisions of the State Tax Code, and (4) direct those designees to calculate the Voter-Approval Tax Rate in the manner provided for a Special Taxing Unit under the State Tax Code.

The Truth-In-Taxation provisions of the State Tax Code require the City to take certain steps before adopting its ad valorem tax rate each year. The first of these steps is to (1) submit the City's Tax Year 2020 appraisal roll information to City Council, (2) certify an anticipated collection rate to City Council, (3) appoint representatives to calculate and publish the No-New Revenue and Voter-Approval Tax Rates, and (4) direct the designated officer to calculate the Voter-Approval Tax Rate in the manner provided for a Special Taxing Unit - i.e. using an 8% multiplier in place of a 3.5% multiplier - if any part of the taxing unit is located in an area declared a disaster area during the current tax year by the governor or by the president of the United States.

Attached are the required reports of the Tax Year 2020 appraisal roll and certified estimate information and the certification of anticipated collection rate.

It is recommended that the City Council receive the Tax Year 2020 appraisal roll information, certify the anticipated collection rate, appoint Melissa Dubowski and Alma Tamobrello to calculate and publish the City's No-New Revenue and Voter-Approval Tax Rates in accordance with the "Truth-In-Taxation" provisions of the State Tax Code, and direct those designees to calculate the Voter-Approval Tax Rate in the manner provided for a Special Taxing Unit.

Tantri Emo, Chief Business Officer/Director of Finance

Prior Council Action:

August 21, 2019

Motion No. 2019 0425

Contact Information:

Melissa Dubowski, Deputy Director

Alma Tamborello, Division Manager

Phone: 832-393-9101

Phone: 832-393-9099

ATTACHMENTS:**Description**

Signed Coversheet

2020-34 Executed Resolution

Type

Signed Cover sheet

Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date:

FIN Truth in Taxation 2020 #1

Agenda Item#: 1.

Summary:

NOT A REAL CAPTION

RECOMMENDATION from the Director of the Finance Department that the City Council (1) receive the Tax Year 2020 appraisal roll information, (2) certify the anticipated collection rate, (3) designate Melissa Dubowski and Alma Tamborello to calculate and publish the City's No-New Revenue and Voter-Approval Tax Rates in accordance with the "Truth-In-Taxation" provisions of the State Tax Code, and (4) direct those designees to calculate the Voter-Approval Tax Rate in the manner provided for a Special Taxing Unit under the State Tax Code.

Background:

RECOMMENDATION: (Summary) from the Director of the Finance Department that the City Council (1) receive the Tax Year 2020 appraisal roll information, (2) certify the anticipated collection rate, (3) designate Melissa Dubowski and Alma Tamborello to calculate and publish the City's No-New Revenue and Voter-Approval Tax Rates in accordance with the "Truth-In-Taxation" provisions of the State Tax Code, and (4) direct those designees to calculate the Voter-Approval Tax Rate in the manner provided for a Special Taxing Unit under the State Tax Code.

The Truth-In-Taxation provisions of the State Tax Code require the City to take certain steps before adopting its ad valorem tax rate each year. The first of these steps is to (1) submit the City's Tax Year 2020 appraisal roll information to City Council, (2) certify an anticipated collection rate to City Council, (3) appoint representatives to calculate and publish the No-New Revenue and Voter-Approval Tax Rates, and (4) direct the designated officer to calculate the Voter-Approval Tax Rate in the manner provided for a Special Taxing Unit - i.e. using an 8% multiplier in place of a 3.5% multiplier - if any part of the taxing unit is located in an area declared a disaster area during the current tax year by the governor or by the president of the United States.

Attached are the required reports of the Tax Year 2020 appraisal roll and certified estimate information and the certification of anticipated collection rate.

It is recommended that the City Council receive the Tax Year 2020 appraisal roll information, certify the anticipated collection rate, appoint Melissa Dubowski and Alma Tamborello to calculate and publish the City's No-New Revenue and Voter-Approval Tax Rates in accordance with the "Truth-In-Taxation" provisions of the State Tax Code, and direct those designees to calculate the Voter-Approval Tax Rate in the manner provided for a Special Taxing Unit.

DocuSigned by:

Tantri Emo

Tantri Emo, Chief Business Officer/Director of Finance

Prior Council Action:

August 21, 2019

Motion No. 2019 0425

Contact Information:

Melissa Dubowski, Deputy Director
Alma Tamborello, Division Manager

Phone: 832-393-9101
Phone: 832-393-9099

DS
MD

City of Houston, Texas, Resolution No. 2020- 34

A RESOLUTION RECEIVING THE 2020 APPRAISAL ROLL INFORMATION, CERTIFYING THE ANTICIPATED COLLECTION RATE, APPOINTING MELISSA DUBOWSKI AND ALMA TAMBORELLO TO CALCULATE AND PUBLISH THE CITY'S NO-NEW-REVENUE AND VOTER-APPROVAL TAX RATES, AND DIRECTING THESE DESIGNEES TO CALCULATE THE VOTER-APPROVAL TAX RATE IN THE MANNER PROVIDED FOR A SPECIAL TAXING UNIT.

* * * * *

WHEREAS, in accordance with the procedural requirements in Chapter 26 of the Texas Tax Code ("Chapter 26"), the City of Houston (the "City") adopts an ad valorem tax rate each year; and

WHEREAS, the 86th Texas Legislature made several amendments to Chapter 26; and

WHEREAS, Chapter 26 provides that City Council may direct the designated officer or employee to calculate the voter-approval tax rate of the City in the manner provided for a special taxing unit if any part of the City is located in an area declared a disaster area during the current tax year by the governor or by the president of the United States; and

WHEREAS, as required by Chapter 26, the City has received appraisal roll information from the Harris, Fort Bend, and Montgomery County Appraisal Districts; and

WHEREAS, as required by Chapter 26, the City's Finance Department has certified the anticipated collection rate; and

WHEREAS, the governor issued a disaster proclamation on March 13, 2020 certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas and declaring a disaster in all Texas counties; and

WHEREAS, the Finance Department recommends that City Council direct the designees to calculate the voter-approval tax rate of the City in the manner provided for a special taxing unit for tax year 2020.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Resolution are determined to be true and correct and are hereby adopted as part of this Resolution.

Section 2. That the City Council hereby designates Melissa Dubowski and Alma Tamborello to calculate and publish the City's no-new-revenue and voter-approval tax rates.

Section 3. That the City Council directs these designees to calculate the voter-approval tax rate in the manner provided for a special taxing unit.

Section 4. That this Resolution shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Resolution within

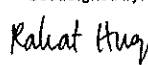
five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 29th day of July, 2020.

APPROVED this 29th day of July, 2020.


Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Resolution is _____.

DocuSigned by:

22C36920076E4C0
Assistant City Attorney
Prepared by Legal Dept.
RH:JRC:jmb 7/28/2020
Requested by Tantri Emo, Director, Finance Department
L.D. No. 0342000048001

City Secretary

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	

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: AUG - 4 2020

Rev. 5/16



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 7/17/2020

LGL A resolution submitting the name of Mayor Pro Tem Dave Martin for election to the Board of Trustees of the Texas Municipal League Intergovernmental Risk Pool

Agenda Item#: 9.

Summary:

RESOLUTION submitting the name of **MAYOR PRO TEM DAVE MARTIN** for election to the **BOARD OF TRUSTEES OF THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL**

Background:

The Texas Municipal League Intergovernmental Risk Pool (TMLIRP) is a local government investment pool that provides Texas municipalities and other units of local government workers compensation coverages, as well as a wide range of comprehensive liability and property coverage, to nearly 3,000 local government members; additionally, it has established a loss prevention program that includes training for local governments that is designed to limit losses and ultimately make coverage more affordable.

TMLIRP Board of Trustees is comprised of fifteen voting members, twelve of whom are elected by TMLIRP's membership to serve staggered, six-year terms. Every even-numbered year, the term of office for one-third of the elected trustees of TMLIRP expires and an election is held to fill those designated places. Terms for Trustees in Places 1-4 will expire on October 1, 2020.

The City, as an Employer Member of the TMLIRP, can and wishes to nominate Mayor Pro Tem Dave Martin, Council Member, District E, to the TMLIRP Board of Trustees to serve a six-year term beginning on October 1, 2020 and ending on October 1, 2026, or earlier as provided in the TMLIRP bylaws. Mayor Pro Tem Dave Martin has indicated his desire to serve as a member of the TMLIRP Board of Trustees. Contingent on a letter from the City of Houston nominating Mayor Pro Tem Dave Martin, his name will be placed on a ballot to be voted on by the members of the TMLIRP.

It is recommended that the City Council adopt a resolution supporting the candidacy of Mayor Pro Tem Dave Martin for the position of Trustee, Place 4 of the Texas Municipal League Intergovernmental Risk Pool.

Contact Information:

Deidra Penny, 832-393-6246

Tyrone Lin, 832-393-6446

ATTACHMENTS:**Description**

Coversheet

2020-35 Executed Resolution

Type

Signed Cover sheet

Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 7/17/2020

LGL A resolution submitting the name of Mayor Pro Tem Dave Martin for election to the Board of Trustees of the Texas Municipal League Intergovernmental Risk Pool

Agenda Item#: 10.

Summary:

A RESOLUTION SUBMITTING THE NAME OF MAYOR PRO TEM DAVE MARTIN FOR ELECTION TO THE BOARD OF TRUSTEES OF THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL.

Background:

The Texas Municipal League Intergovernmental Risk Pool (TMLIRP) is a local government investment pool that provides Texas municipalities and other units of local government workers compensation coverages, as well as a wide range of comprehensive liability and property coverage, to nearly 3,000 local government members; additionally, it has established a loss prevention program that includes training for local governments that is designed to limit losses and ultimately make coverage more affordable.

TMLIRP Board of Trustees is comprised of fifteen voting members, twelve of whom are elected by TMLIRP's membership to serve staggered, six-year terms. Every even-numbered year, the term of office for one-third of the elected trustees of TMLIRP expires and an election is held to fill those designated places. Terms for Trustees in Places 1-4 will expire on October 1, 2020.

The City, as an Employer Member of the TMLIRP, can and wishes to nominate Mayor Pro Tem Dave Martin, Council Member, District E, to the TMLIRP Board of Trustees to serve a six-year term beginning on October 1, 2020 and ending on October 1, 2026, or earlier as provided in the TMLIRP bylaws. Mayor Pro Tem Dave Martin has indicated his desire to serve as a member of the TMLIRP Board of Trustees. Contingent on a letter from the City of Houston nominating Mayor Pro Tem Dave Martin, his name will be placed on a ballot to be voted on by the members of the TMLIRP.

It is recommended that the City Council adopt a resolution supporting the candidacy of Mayor Pro Tem Dave Martin for the position of Trustee, Place 4 of the Texas Municipal League Intergovernmental Risk Pool.

DocuSigned by:

Ronald C. Lewis

01B8EE0AC120491...

Ronald C. Lewis, City Attorney

Prior Council Action:

N/A

Amount of Funding:

N/A

Contact Information:

Deidra Penny, 832-393-6246

Tyrone Lin, 832-393-6446

City of Houston, Texas, Resolution No. 2020- 35

A RESOLUTION SUBMITTING THE NAME OF MAYOR PRO TEM DAVE MARTIN FOR ELECTION TO THE BOARD OF TRUSTEES OF THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL.

* * * * *

WHEREAS, the City of Houston, an Employer Member of the Texas Municipal League Intergovernmental Risk Pool ("TMLIRP"), wishes to nominate Mayor Pro Tem Dave Martin (Council Member, District E), an official of the City of Houston, to the TMLIRP Board of Trustees; and

WHEREAS, Mayor Pro Tem Dave Martin has indicated his desire to serve as a member of the TMLIRP Board of Trustees; and

WHEREAS, contingent upon receipt of a letter from the City of Houston nominating Mayor Pro Tem Dave Martin, Mayor Pro Tem Dave Martin's name will be placed on a ballot to be voted on by the members of the TMLIRP; and

WHEREAS, if elected to the TMLIRP Board of Trustees, Mayor Pro Tem Dave Martin will serve in that role for a six-year term beginning on October 1, 2020 and ending as provided under the bylaws of the TMLIRP; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Resolution are determined to be true and correct and are hereby adopted as part of this Resolution.

Section 2. That the City Council supports the candidacy of Mayor Pro Tem Dave Martin for the position of Trustee, Place 4 of the TMLIRP and hereby authorizes the submission of this Resolution and any other required documentation as necessary to complete the nomination.

Section 3. That this Resolution shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Resolution 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 29th day of July, 2020.

APPROVED this 29th day of July, 2020.


Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Resolution is _____.

City Secretary

Prepared by Legal Dept.
 TKL:jmb 07/20/2020
 Requested by Ronald C. Lewis, City Attorney
 L.D. No. 0392000211001

[Signature]

Assistant City Attorney

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



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

Item Creation Date:

MYR – Airport Corridor District Ordinance

Agenda Item#: 10.

Summary:

ORDINANCE AMENDING THE CITY OF HOUSTON SIGN CODE (Chapter 46 of that Volume of the City of Houston Construction Code known as the City of Houston Building Code) relating to the regulation of signs by the City

Background:

The Office of the Mayor recommends that City Council adopt an ordinance amending the Sign Code to (1) create an Airport Corridor District, (2) define “abandoned signs” and “signs not in use,” and (3) allow for the refurbishment of and upgrades to on-premise signs, including upgrading to LED lights, that are grandfathered from the application of Section 4611(i) of the Sign Code while retaining their grandfathered status.

The purpose of the change is to reduce distraction to drivers, improve the quality of life for area residents, and improve the first impression of travelers driving into the City from the City’s airports by reducing the height and size of on premise signs along the freeways between the City’s airports and its central business district.

The Airport Corridor District will be designated on routes from George Bush Intercontinental Airport, Hobby Airport and Ellington Airport into Downtown and will provide a focus for coordinated efforts by public and private entities to enhance beautification in the District.

This ordinance was originally proposed in November 2017 by Scenic Houston but is ultimately the product of months of negotiations by a task force led by industry leaders Tommy Friedlander and Philip Schneidau, who agreed to pull together all sign industry groups and Scenic Houston.

The Ordinance is supported by:

Houston First

Scenic Houston

Houston Real Estate Council (HREC)

Institute of Real Estate Management (IREM)

Building Owners & Managers Association (BOMA)

National Association of Industrial & Office Parks

Houston Hotel Association

Greater Houston Restaurant Association

The ordinance was presented to the Quality of Life Committee on July 22, 2020

Andy Icken
Deputy Director

Contact Information:

Deidra Penny, Deputy City Attorney – (832) 393-6246

ATTACHMENTS:

Description

Signed coversheet

Map

Redline

2020-669 Executed Ordinance

Type

Signed Cover sheet

Backup Material

Backup Material

Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

Item Creation Date:

MYR – Airport Corridor District Ordinance

Agenda Item#: 10.

DS
ML

Summary:

ORDINANCE **AMENDING THE CITY OF HOUSTON SIGN CODE** (Chapter 46 of that Volume of the City of Houston Construction Code known as the City of Houston Building Code) relating to the regulation of signs by the City

Background:

The Office of the Mayor recommends that City Council adopt an ordinance amending the Sign Code to (1) create an Airport Corridor District, (2) define “abandoned signs” and “signs not in use,” and (3) allow for the refurbishment of and upgrades to on-premise signs, including upgrading to LED lights, that are grandfathered from the application of Section 4611(i) of the Sign Code while retaining their grandfathered status.

The purpose of the change is to reduce distraction to drivers, improve the quality of life for area residents, and improve the first impression of travelers driving into the City from the City’s airports by reducing the height and size of on premise signs along the freeways between the City’s airports and its central business district.

The Airport Corridor District will be designated on routes from George Bush Intercontinental Airport, Hobby Airport and Ellington Airport into Downtown and will provide a focus for coordinated efforts by public and private entities to enhance beautification in the District.

This ordinance was originally proposed in November 2017 by Scenic Houston but is ultimately the product of months of negotiations by a task force led by industry leaders Tommy Friedlander and Philip Schneidau, who agreed to pull together all sign industry groups and Scenic Houston.

The Ordinance is supported by:

Houston First
Scenic Houston
Houston Real Estate Council (HREC)
Institute of Real Estate Management (IREM)
Building Owners & Managers Association (BOMA)
National Association of Industrial & Office Parks
Houston Hotel Association
Greater Houston Restaurant Association

The ordinance was presented to the Quality of Life Committee on July 22, 2020

DocuSigned by:

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Andy Icken

Deputy Director

Contact Information:

Deidra Penny, Deputy City Attorney – (832) 393-6246

ATTACHMENTS:

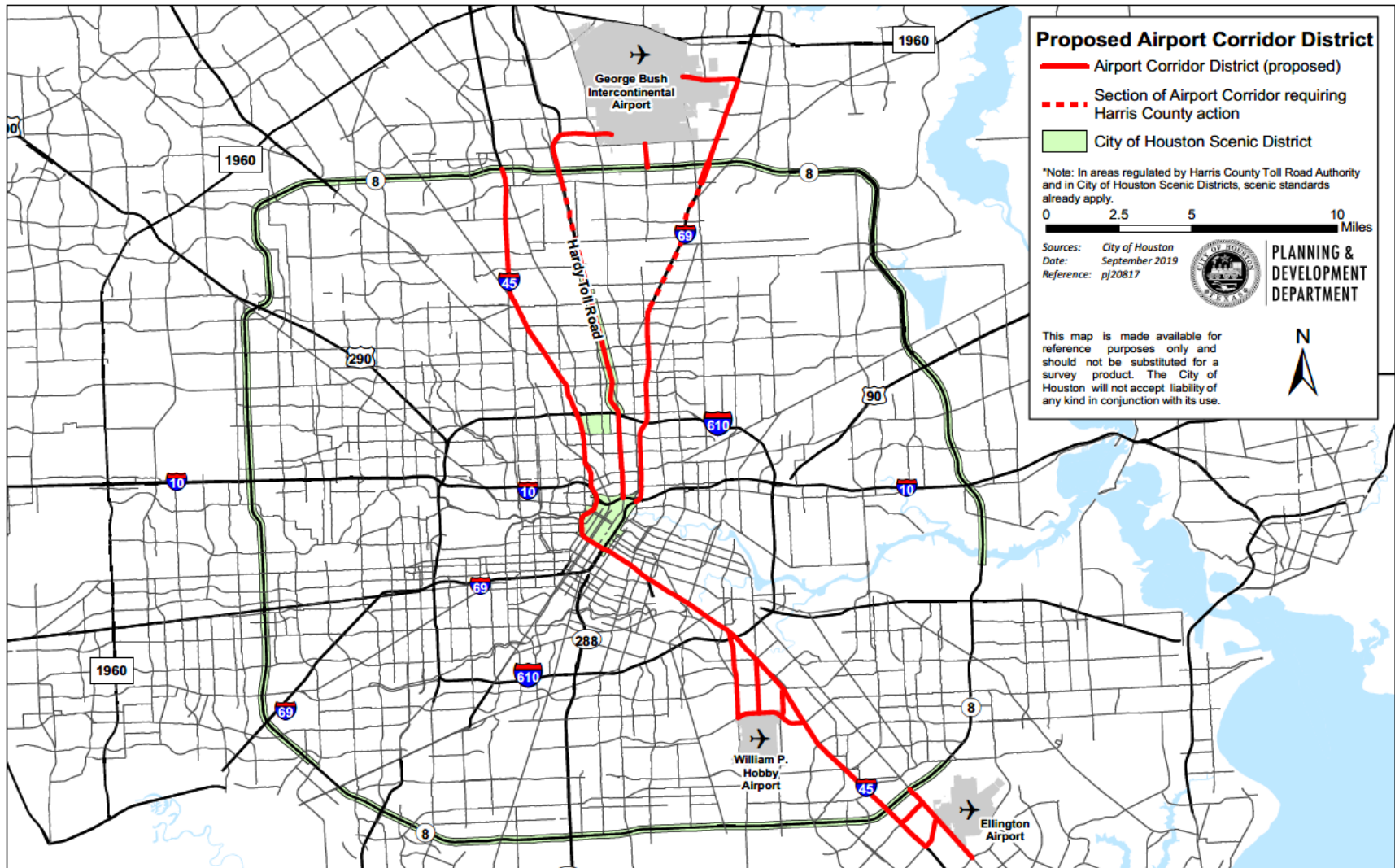
Description

Map
Quality of Life presentation

Type

Backup Material
Backup Material

Airport Corridor District



CITY OF HOUSTON BUILDING CODE CHAPTER 46 HOUSTON SIGN CODE

* * *

SECTION 4602--DEFINITIONS

In this chapter, the following terms shall have the meanings herein ascribed to them, unless the context of their usage clearly indicates another meaning:

* * *

ABANDONED SIGN shall mean an on-premise sign that has been without a permit for a period of two years. A multi-tenant sign shall be deemed an abandoned sign only after no cabinet on the sign structure has been permitted for a period of two years.

* * *

AIRPORT CORRIDOR DISTRICT shall mean the areas described in Appendix B to this chapter.

* * *

SIGN NOT IN USE shall mean an on-premise sign that does not identify, advertise, or provide information about at least one existing business, person, activity, good, product or service at the premises. A multi-tenant sign shall be deemed a sign not in use when no cabinet on the sign structure identifies, advertises, or provides information about an existing business, person, activity, goods, products or services at the premises.

* * *

SECTION 4605--SIGN PERMITS AND FEES

* * *

(d) ~~Operating Permit Effectiveness--Renewal of Operating Permit.~~ Each operating permit issued shall be effective for a period of one year. Not less than 30 days nor more than 60 days prior to the conclusion of each permit year, applications may be made for a one-year ~~extension-renewal~~ of the permit. Such application shall be submitted in such form as the Sign Administrator may prescribe, accompanied by payment of applicable fees, and shall be executed, verified and contain the sworn affidavit described

in Section 4605(c)(2). If the application for ~~extension permit renewal of permit~~ fully meets the requirements of applicable law in effect at the time of such application, the Sign Administrator shall ~~issue a renewal the~~ permit for an additional one-year period or such other time as may be required by law.

(e) Existing Signs--Operating Permits.

* * *

(2) In order to receive operating permits, all signs existing on the effective date must conform to the requirements of Section 4607 and Section 4608(a) through (l) when an operating permit is issued; with reference to the remainder of this chapter, all signs existing on the effective date must conform to the requirements of this chapter as follows:

- a. Existing portable signs must conform when an operating permit is issued.
- b. Existing spectacular signs must conform with the provisions of Section 4608(m)(4) when an operating permit is issued; otherwise, existing spectacular signs must conform six years after the effective date.

(3) The owner of an existing, previously permitted sign must apply for all appropriate permits to make changes to advertising display features. The following advertising display changes to a previously permitted sign shall not trigger compliance with the requirements in Section 4611(i), so long as they remain within the existing cabinet:

- a. Ornamental features.
- b. Channel letters.
- c. Symbols.
- d. Flex face, Lexan or other similar elements or materials.
- e. Conversion of an illuminated sign to a high technology sign.
- f. Conversion between the types of advertising display listed in a through d.

(4) No existing sign may be converted to an electrical sign, high technology sign, or changeable message sign without also fully complying with the requirements described in Section 4611(i), except as allowed in Section 4605(e)(3).

- (35) When any sign or a substantial part thereof is blown down or otherwise destroyed, or taken down or removed for any purpose other than maintenance operations or for changing the letters, symbols or other matter on such sign, the advertising display pursuant to Section 4605(e)(3), it shall not be re-erected, reconstructed, repaired or rebuilt, except in full conformance with this chapter. For purposes of this subsection, a sign or substantial part thereof is considered to have been destroyed if the cost of re-erecting, reconstructing, repairing or rebuilding the sign is more than 60 percent of the cost of erecting a new sign of the same size, type and equivalent construction at the same location.
- (46) For purposes of Section 4605(e)(3), as to on-premise signs only, the phrase "changing the letters, symbols or other matter on such sign" shall not include replacing the sign cabinet. Any on-premise sign cabinet replacement shall remain the same size and shape as previously permitted and shall meet the structural requirements of this chapter, provided that the voluntary replacement of an on-premise sign cabinet, not incident to the sign structure being blown down or destroyed, shall not be permitted unless the sign structure is re-erected, reconstructed, repaired or rebuilt in full conformance with this chapter.

* * *

SECTION 4607--MAINTENANCE, SAFETY, REMOVAL

* * *

(e) Non-use of On-premise Sign Structure Signs Not in Use and Abandoned Signs.

- (1) No on-premise sign structure shall be erected or maintained on any premises on which there is no business currently in operation that would require the use of such on-premise sign for advertising. A sign not in use shall require a permit designated for such signs.
- (2) The sign owner, property owner or permittee shall keep such sign all signs not in use in good repair as required under this section, and shall, in addition, paint over, blank out or otherwise obliterate any existing advertising message on the existing sign face or faces that by virtue of any cessation of business operations on the premises no longer applies to those premises. Provided, further, that any such on-premise sign structure composed of a face or faces circumscribed by one or more cabinets of metal or other material shall at all times have a blank sign face contained within each such cabinet.
- (3) Abandoned signs are prohibited.

SECTION 4608--MISCELLANEOUS SIGN PROVISIONS

* * *

~~(j) **Change of Ornamental Features or Advertising Display.** No sign permit is required for the change of any of the ornamental features or the advertising display of a sign previously permitted. This provision shall not apply to signs under new ownership, to spectacular signs with respect to advertising display, or to converting existing signs to electronic signs, high technology signs, or changeable message signs, nor shall it release a person from complying with all other applicable permitting requirements of the City, including those of the Construction Code.~~

* * *

SECTION 4611--ON-PREMISE SIGNS

* * *

(b) On-Premise Sign Limitations.

- (1) No business shall have more than a total of five on-premise signs, provided, however, that each business may select any combination of the signs described below in this subsection to reach that total:

* * *

- c. Roof signs, shall be designed to be architecturally compatible with the building. Wall signs shall not occupy more than 50 percent of the total wall surface. Wall signs shall not extend above the roofline of the building to which they are attached, except for portions of the signs that are used solely for support or to anchor the signs to the building to which they are attached.

* * *

(e) Relocation of Certain On-premise Signs. Notwithstanding the provisions of Section 4605(e)(53), any on-premise sign that has a valid operating permit and that exceeds the height and size limitations contained in Section 4609 may be relocated on the same premises without having to conform with such height and size limitations, if the sign meets the following requirements and conditions:

* * *

(j) **Airport Corridor District.** All new on-premise signs located in the Airport Corridor District for which a sign permit is issued after ¹ shall conform to all requirements relating to on-premise signs in the Code, with the exception

¹ City Secretary shall insert date of passage and approval of this Ordinance.

that ground signs located on major thoroughfares shall comply with the height and size provisions of Category A of Table 4611 and ground signs located on freeways shall comply with the height and size provisions of Category E of Table 4611.

* * *

TABLE 4611
ALLOWABLE ON-PREMISE GROUND SIGN HEIGHTS AND SIZES
BY SIGN TYPE AND CATEGORY OF RIGHT-OF-WAY

SIGN TYPE	CATEGORY A		CATEGORY B		CATEGORY C		CATEGORY D		CATEGORY E	
	Height	Size	Height	Size	Height	Size	Height	Size	Height	Size
	(Ft.)	(SFt.)	(Ft.)	(SFt.)	(Ft.)	(SFt.)	(Ft.)	(SFt.)	(Ft.)	(SFt.)
SINGLE BUSINESS	14	100	20	150	42½	225	8	60	<u>31</u>	<u>150</u>
MULTI-TENANT 2 OR 3 BUSINESSES	19	200	26	300	42½	450	10	120	<u>31</u>	<u>300</u>
MULTI-TENANT 4 OR MORE BUSINESSES	24	300	31	450	42½	600	12	180	<u>31</u>	<u>450</u>
FLAG	20	—	35	—	50	—	—	—	—	—

CATEGORY A shall mean visible from and located on premises with frontage on scenic and historical rights-of-way and districts and major thoroughfares in the Airport Corridor District.

CATEGORY B shall mean visible from and located on premises with frontage on major thoroughfares including collector streets other than scenic and historical rights-of-way and districts.

CATEGORY C shall mean visible from and located on premises with frontage on freeways and highways other than scenic and historical rights-of-way and districts.

CATEGORY D shall mean visible from and located on premises with frontage on local streets.

CATEGORY E shall mean visible from and located on premises with frontage on freeways in the Airport Corridor District.

* * *

SECTION 4617--SPECIAL PERMIT

(a) A special permit shall be issued for the alteration or relocation of an existing off-premise sign situated within the Sign Code application area under the following limited circumstances:

* * *

- (11) Notwithstanding Section 4605(e)(~~53~~), a sign lawfully erected under a special permit that is blown down or otherwise destroyed by any casualty may be replaced for the remainder of the ten-year period during which the special permit is in effect, provided that it is rebuilt at the same location,

height, size and dimensions, and with the same materials and configuration as originally altered or relocated pursuant to the special permit.

* * *

(b) Fees for special permits shall be as otherwise provided in Section 117 of this Code and the city fee schedule. The operating permit for a sign altered or relocated pursuant to a special permit issued under this section shall transfer to the sign as altered or relocated. During the period that the special permit is in effect, operating permits for signs altered or relocated pursuant to this section shall be extended for three-year periods in accordance with Section 4605(d), provided that, notwithstanding any language to the contrary contained in any operating permit ~~extension-renewal~~ issued for a sign altered or relocated under a special permit, no operating permit ~~extension-renewal~~ shall be construed to authorize the continued existence, operation or maintenance of any such sign for any period in excess of ten years following the date of issuance of the special permit. The provisions of this section shall not be deemed to authorize any practice otherwise prohibited under this chapter, except to the limited extent and under the limited circumstances enumerated in this section. Nothing contained in this section shall be construed to abrogate the right of a sign owner or underlying property owner to refuse to accept the proposal by the governmental unit for the alteration or relocation of a sign under this section and to choose instead to seek monetary compensation.

* * *

SECTION 4620--SPECIAL DISPLAY SIGNS AT CERTAIN FACILITIES

* * *

(f) Provisions for special display signs at certain facilities. No provision of Section 4611(j) relating to the regulation of on-premise signs in the Airport Corridor District shall apply to or restrict the rights of owners for special display signs at facilities included under Section 4620 of the Code.

* * *

APPENDIX B

AIRPORT CORRIDOR **DISTRICT**

The AIRPORT CORRIDOR DISTRICT of the City shall include the following areas:

- (1) The Interstate 45 corridor including the right-of-way and frontage roads, and extending 660 feet beyond each boundary of the right-of-way and frontage roads of Interstate Highway 45 from its intersection with Dixie Farm Road (Highway 1959) [the southern-most entrance to Ellington Airport] on the south to its intersection with Beltway 8 on the north;
- (2) The George Bush Intercontinental Airport Entrance corridor including the right-of-way and frontage roads and extending 300 feet beyond each boundary of the right-of-way and frontage roads of John F Kennedy Boulevard from its intersection with Beltway 8 on the south to the entrance to George Bush Intercontinental Airport on the north;
- (3) The Hobby Airport Entrance corridor including the rights-of-way and extending 300 feet beyond each boundary of the rights-of-way of each of (a) Broadway and Monroe from their intersections with Interstate Highway 45 on the north to their intersections with Airport Boulevard on the south and (b) Airport Boulevard from its intersection with Telephone Road on the west to its intersection with Interstate 45 on the east and (c) Telephone Road from its intersection with Loop 610 on the north to its intersection with Airport Boulevard on the south [being the primary entrances to William P. Hobby Airport from Interstate 45];
- (4) The Ellington Airport Entrance corridor including the right-of-way and extending 300 feet beyond each boundary of (a) the right-of-way of Dixie Farm Road (Highway 1959) from its intersection with Interstate Highway 45 on the south to its intersection with Galveston Road (Highway 3) on the north and (b) the right-of-way of Scarsdale Boulevard from its intersection with Interstate Highway 45 on the south to its intersection with Galveston Road (Highway 3) on the north (c) the right-of-way of Galveston Road (Highway 3) from its intersection with Beltway 8 to its intersection with Clear Lake City Boulevard (Highway 2351 [being the primary entrances to Ellington Airport from Interstate 45];
- (5) The Highway 59 corridor including (a) the right-of-way and frontage roads and extending 660 feet beyond each boundary of the right-of-way and frontage roads of Highway 59 from its intersection with the Downtown Scenic District at Jensen Drive on the south to its intersection with Langley Road on the north;
- (6) The Highway 59 corridor including (a) the right-of-way and frontage roads and extending 660 feet beyond each boundary of the right-of-way and frontage roads of Highway 59 from its intersection with Aldine Bender Road on the south to its intersection with Will Clayton Parkway on the north and (b) continuing to the west along Will Clayton Parkway, including the right-

of-way and extending 300 feet beyond the right-of-way of Will Clayton Parkway to its intersection with Lee Road; and

- (7) The Hardy Toll Road corridor including the right-of-way and frontage roads and extending 660 feet beyond each boundary of the right-of-way and frontage roads of Hardy Toll Road, both as it currently exists and as it may be extended in the future south of Loop 610 into Downtown Houston on the south, and to its intersection with Halls Bayou on the north;
- (8) The Hardy Toll Road corridor including the right-of-way and frontage roads and extending 660 feet beyond each boundary of the right-of-way and frontage roads of Hardy Toll Road from its intersection with Aldine Bender Road on the south through its intersection with and continuing along the Hardy Toll Road Airport Connector to its intersection with Hoods Bayou at the boundary of George Bush Intercontinental Airport; and
- (9) The principal exits from the foregoing corridors into their intersecting streets in Downtown Houston, specifically (a) the Pease/St. Joseph Parkway exit from Interstate Highway 45 north-bound, (b) the Milam, McKinney, and Pierce-Jefferson exits from Interstate Highway 45 south-bound, (c) the North Hamilton Street exit from Highway 59 south-bound, and (d) the exit from and entrance to Hardy Toll Road, both as it currently exists and as it may be extended in the future, to their intersections with the intersecting streets in Downtown Houston.

City of Houston, Texas, Ordinance No. 2020- 669

AN ORDINANCE AMENDING THE CITY OF HOUSTON SIGN CODE (CHAPTER 46 OF THAT VOLUME OF THE CITY OF HOUSTON CONSTRUCTION CODE KNOWN AS THE CITY OF HOUSTON BUILDING CODE) RELATING TO THE REGULATION OF SIGNS BY THE CITY; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, abandoned on-premise signs constitute a public safety hazard due to deterioration of signs and confusion to pedestrians and the traveling public; and

WHEREAS, amending Chapter 46 of the City of Houston Building Code (the "Sign Code") to require the removal of abandoned on-premise signs will enhance the physical appearance and safety of the City; and

WHEREAS, the City Council of the City of Houston finds and determines that:

- (1) The unsightly condition of Houston's principal airport corridors creates an unfavorable first impression of the City; and
- (2) The creation of an Airport Corridor District ("District"), designated as routes from George Bush Intercontinental Airport, Hobby Airport and Ellington Airport into Downtown, will provide a focus for coordinated efforts by public and private entities to enhance beautification in the District; and
- (3) The extension of the existing standards for on-premise signage in scenic districts to on-premise signs in the District will improve first impressions of our City; and
- (4) With the creation of the District, the various management districts, TIRZs, TxDOT, the City of Houston and private businesses that have a stake in the District's beautification will have a focused area in which to undertake a coordinated long-term effort to improve these gateways to the City; and

WHEREAS, to further the goals and objectives of the District, additional restrictions on size, power, and number of signs per premise should be imposed on new on-premise signs constructed in the District; and

WHEREAS, it is in the interest of the City to allow owners of existing, previously permitted on-premise signs to make certain upgrades, including upgrading to energy-efficient lighting technology, without triggering compliance with more recent Sign Code provisions regarding size and height; and

WHEREAS, it is reasonable and appropriate for the City to allow wall signs to be anchored above the roofline of buildings; and

WHEREAS, this Ordinance applies exclusively to the regulation of on-premise signs, and nothing in this ordinance is intended to affect in any way the City's regulation of off-premise signs pursuant to the Sign Code, and the existing rights of owners of off-premise signs, including rights of relocation under the Sign Code, and specifically, but not limited to, rights granted in Sections 4612 and 4617 of the Code; **NOW THEREFORE**,

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

Section 1. That the findings and provisions contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

Section 2. That Section 4602 of Chapter 46 of that volume of the City of Houston Construction Code known as the City of Houston Building Code (the "City of Houston Sign Code") is hereby amended to add, in alphabetical order, the following definitions:

"ABANDONED SIGN shall mean an on-premise sign that has been without a permit for a period of two years. A multi-tenant sign shall be deemed an abandoned sign only after no cabinet on the sign structure has been permitted for a period of two years."

"AIRPORT CORRIDOR shall mean the areas described in Appendix B to this chapter."

"SIGN NOT IN USE shall mean an on-premise sign that does not identify, advertise, or provide information about at least one existing business, person, activity, good, product or service at the premises. A multi-tenant sign shall be deemed a sign not in use when no cabinet on the sign structure identifies, advertises, or provides information about an existing business, person, activity, goods, products or services at the premises."

Section 3. That Subsection (d) of Section 4605 of the City of Houston Sign Code is hereby amended to read as follows:

"(d) Renewal of Operating Permit. Each operating permit issued shall be effective for a period of one year. Not less than 30 days nor more than 60 days prior to the conclusion of each permit year, applications may be made for a one-year extension of the permit. Such application shall be submitted in such form as the Sign Administrator may prescribe, accompanied by payment of applicable fees, and shall be executed, verified and contain the sworn affidavit described in Section 4605(c)(2). If the

application for permit renewal fully meets the requirements of applicable law in effect at the time of such application, the Sign Administrator shall renew the permit for an additional one-year period or such other time as may be required by law.”

Section 4. That Section 4605(e)(2) of the City of Houston Sign Code is hereby amended by replacing the term “4608(m)(1)” with the term “4608(m).”

Section 5. That Section 4605(e) of the City of Houston Sign Code is hereby further amended by inserting new Items (3) and (4) and renumbering and amending the subsequent Items so that Items (3) through (6) read as follows:

- “(3) The owner of an existing, previously permitted sign must apply for all appropriate permits to make changes to advertising display features. The following advertising display changes to a previously permitted sign shall not trigger compliance with the requirements in Section 4611(i), so long as they remain within the existing cabinet:
 - a. Ornamental features.
 - b. Channel letters.
 - c. Symbols.
 - d. Flex face, Lexan or other similar elements or materials.
 - e. Conversion of an illuminated sign to a high technology sign.
 - f. Conversion between the types of advertising display listed in a through d.
- (4) No existing sign may be converted to an electrical sign, high technology sign, or changeable message sign without also fully complying with the requirements described in Section 4611(i), except as allowed in Section 4605(e)(3).
- (5) When any sign or a substantial part thereof is blown down or otherwise destroyed, or taken down or removed for any purpose other than maintenance operations or for changing the advertising display pursuant to Section 4605(e)(3), it shall not be re-erected, reconstructed, repaired or rebuilt, except in full conformance with this chapter. For purposes of this subsection, a sign or substantial part thereof is considered to have been destroyed if the cost of re-erecting, reconstructing, repairing or rebuilding the sign is more than

60 percent of the cost of erecting a new sign of the same size, type and equivalent construction at the same location.

- (6) Any on-premise sign replacement shall remain the same size and shape as previously permitted and shall meet the structural requirements of this chapter, provided that the voluntary replacement of an on-premise sign, not incident to the sign structure being blown down or destroyed, shall not be permitted unless the sign structure is re-erected, reconstructed, repaired or rebuilt in full conformance with this chapter.”

Section 6. That Subsection (e) of Section 4607 of the City of Houston Sign Code is hereby amended to read as follows:

“(e) Signs Not in Use and Abandoned Signs.

- (1) A sign not in use shall require a permit designated for such signs.
- (2) The sign owner, property owner or permittee shall keep all signs not in use in good repair as required under this section, and shall, in addition, paint over, blank out or otherwise obliterate any existing advertising message on the existing sign face or faces that by virtue of any cessation of business operations on the premises no longer applies to those premises. Provided, further, that any such on-premise sign structure composed of a face or faces circumscribed by one or more cabinets of metal or other material shall at all times have a blank sign face contained within each such cabinet.
- (3) Abandoned signs are prohibited.”

Section 7. That Section 4608 of the City of Houston Sign Code is hereby amended by deleting Subsection (j) in its entirety and reserving it for future use.

Section 8. That Subsection (b)(1)c of Section 4611 of the City of Houston Sign Code is amended to read as follows:

- “c. Roof signs shall be designed to be architecturally compatible with the building. Wall signs shall not occupy more than 50 percent of the total wall surface. Wall signs shall not extend above the roofline of the building to which they are attached, except for portions of the signs

that are used solely for support or to anchor the signs to the building to which they are attached.”

Section 9. That Section 4611 of the City of Houston Sign Code is amended by adding a new Subsection (j) that reads as follows:

“(j) Airport Corridor District. All new on-premise signs located in the Airport Corridor District for which a sign permit is issued after _____¹ shall conform to all requirements relating to on-premise signs in the Code, with the exception that ground signs located on major thoroughfares shall comply with the height and size provisions of Category A of Table 4611 and ground signs located on freeways shall comply with the height and size provisions of Category E of Table 4611.”

Section 10. That Subsection (a)(11) of Section 4617 of the City of Houston Sign Code is amended to read as follows:

“(11) Notwithstanding Section 4605(e)(5), a sign lawfully erected under a special permit that is blown down or otherwise destroyed by any casualty may be replaced for the remainder of the ten-year period during which the special permit is in effect, provided that it is rebuilt at the same location, height, size and dimensions, and with the same materials and configuration as originally altered or relocated pursuant to the special permit.”

Section 11. That Subsection (b) of Section 4617 of the City of Houston Sign Code is hereby amended by replacing the term “extension” wherever it appears therein with the term “renewal.”

Section 12. That Section 4620 of the City of Houston Sign Code is hereby amended by adding a new Subsection (f) that reads as follows:

“(f) Provisions for special display signs at certain facilities. No provision of Section 4611(j) relating to the regulation of on-premise signs in the Airport Corridor District shall apply to or restrict the rights of owners for special display signs at facilities included under Section 4620 of the Code.”

¹ City Secretary shall insert date of passage and approval of this Ordinance.

Section 13. That Table 4611 of the City of Houston Sign Code is hereby amended by adding the following new column:

CATEGORY E	
Height	Size
(Ft.)	(SFt.)
31	150
31	300
31	450
—	—

Section 14. That the caption to Table 4611 of the City of Houston Sign Code is hereby amended to read as follows:

"CATEGORY A shall mean visible from and located on premises with frontage on scenic and historical rights-of-way and districts and major thoroughfares in the Airport Corridor District.

CATEGORY B shall mean visible from and located on premises with frontage on major thoroughfares including collector streets other than scenic and historical rights-of-way and districts.

CATEGORY C shall mean visible from and located on premises with frontage on freeways and highways other than scenic and historical rights-of-way and districts.

CATEGORY D shall mean visible from and located on premises with frontage on local streets.

CATEGORY E shall mean visible from and located on premises with frontage on freeways in the Airport Corridor District."

Section 15. That the City of Houston Sign Code is hereby amended by adding a new Appendix B that reads as set forth in Exhibit A attached hereto and incorporated herein.

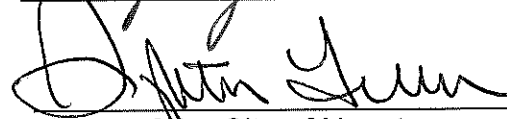
Section 16. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of

the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Counsel in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, vainness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 17. That 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.

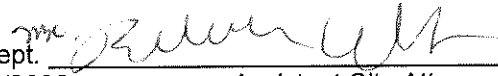
PASSED AND ADOPTED this 29th day of July, 2020.

APPROVED this 29th day of July, 2020.


Mayor of the City of Houston

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

City Secretary

Prepared by Legal Dept. 
JWG:RAW:asw 7/23/2020 Assistant City Attorney
Requested by Andy Icken, Chief Development Officer, Office of the Mayor
L.D. File No. 0041900260001

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	

EXHIBIT A

APPENDIX B

AIRPORT CORRIDOR DISTRICT

The **AIRPORT CORRIDOR DISTRICT** of the City shall include the following areas:

- (1) The Interstate 45 corridor including the right-of-way and frontage roads, and extending 660 feet beyond each boundary of the right-of-way and frontage roads of Interstate Highway 45 from its intersection with Dixie Farm Road (Highway 1959) [the southern-most entrance to Ellington Airport] on the south to its intersection with Beltway 8 on the north;
- (2) The George Bush Intercontinental Airport Entrance corridor including the right-of-way and frontage roads and extending 300 feet beyond each boundary of the right-of-way and frontage roads of John F Kennedy Boulevard from its intersection with Beltway 8 on the south to the entrance to George Bush Intercontinental Airport on the north;
- (3) The Hobby Airport Entrance corridor including the rights-of-way and extending 300 feet beyond each boundary of the rights-of-way of each of (a) Broadway and Monroe from their intersections with Interstate Highway 45 on the north to their intersections with Airport Boulevard on the south and (b) Airport Boulevard from its intersection with Telephone Road on the west to its intersection with Interstate 45 on the east and (c) Telephone Road from its intersection with Loop 610 on the north to its intersection with Airport Boulevard on the south [being the primary entrances to William P. Hobby Airport from Interstate 45];
- (4) The Ellington Airport Entrance corridor including the right-of-way and extending 300 feet beyond each boundary of (a) the right-of-way of Dixie Farm Road (Highway 1959) from its intersection with Interstate Highway 45 on the south to its intersection with Galveston Road (Highway 3) on the north and (b) the right-of-way of Scarsdale Boulevard from its intersection with Interstate Highway 45 on the south to its intersection with Galveston Road (Highway 3) on the north (c) the right-of-way of Galveston Road (Highway 3) from its intersection with Beltway 8 to its intersection with Clear Lake City Boulevard (Highway 2351 [being the primary entrances to Ellington Airport from Interstate 45];
- (5) The Highway 59 corridor including (a) the right-of-way and frontage roads and extending 660 feet beyond each boundary of the right-of-way and frontage roads of Highway 59 from its intersection with the Downtown Scenic District at Jensen Drive on the south to its intersection with Langley Road on the north;
- (6) The Highway 59 corridor including (a) the right-of-way and frontage roads and extending 660 feet beyond each boundary of the right-of-way and frontage roads of Highway 59 from its intersection with Aldine Bender Road on the south to its intersection with Will Clayton Parkway on the north and (b) continuing to the west along Will Clayton Parkway, including the right-

of-way and extending 300 feet beyond the right-of-way of Will Clayton Parkway to its intersection with Lee Road; and

- (7) The Hardy Toll Road corridor including the right-of-way and frontage roads and extending 660 feet beyond each boundary of the right-of-way and frontage roads of Hardy Toll Road, both as it currently exists and as it may be extended in the future south of Loop 610 into Downtown Houston on the south, and to its intersection with Halls Bayou on the north;
- (8) The Hardy Toll Road corridor including the right-of-way and frontage roads and extending 660 feet beyond each boundary of the right-of-way and frontage roads of Hardy Toll Road from its intersection with Aldine Bender Road on the south through its intersection with and continuing along the Hardy Toll Road Airport Connector to its intersection with Hoods Bayou at the boundary of George Bush Intercontinental Airport; and
- (9) The principal exits from the foregoing corridors into their intersecting streets in Downtown Houston, specifically (a) the Pease/St. Joseph Parkway exit from Interstate Highway 45 north-bound, (b) the Milam, McKinney, and Pierce-Jefferson exits from Interstate Highway 45 south-bound, (c) the North Hamilton Street exit from Highway 59 south-bound, and (d) the exit from and entrance to Hardy Toll Road, both as it currently exists and as it may be extended in the future, to their intersections with the intersecting streets in Downtown Houston.



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 7/22/2020

OBO/MYR - Small Business Economic Relief Program

Agenda Item#: 11.

Summary:

ORDINANCE approving and authorizing a contract between the City of Houston and **HOUSTON BUSINESS DEVELOPMENT, INC.** for administration and related services for the Office of Business Opportunity in connection with the City's Small Business Economic Relief Program for small businesses who have been affected by COVID-19; providing a maximum contract amount; containing provisions relating to the subject; and declaring an emergency.

Background:

The Director of the Office of Business Opportunity Department is requesting Council approval of an Ordinance authorizing a contract between the City of Houston and Houston Business Development, Inc. providing up to \$15,000,000.00 from the City's CARES Act 2020 Fund, as authorized by City Council via Ordinances 2020-361 and 2020-362, to provide immediate and short-term grant assistance to small businesses that were and are continuing to be severely and negatively impacted economically as a result of the COVID-19 Pandemic during the period of March 1, 2020, and ends December 30, 2020.

The Small Business Economic Relief Program creates a mechanism to alleviate economic distress of small businesses and to promote and retain economic development, small businesses, jobs, and employment opportunities in Houston. The Program will allocate funds across all of Houston's communities, to for-profit businesses, unless expressly excluded, and chambers of commerce. The goal is to be a resource that businesses economically impacted by COVID-19 may leverage to sustain their operations during and after the pandemic.

The grant criteria are outlined below.

Available Funds

- Individual grants up to \$50,000.00.

Eligibility

- Must be a business whose principal place of business is located within city limits of the City of Houston.
- Must have been in business for at least one (1) year for the last year.
- Must provide evidence of how business revenue has significantly decreased because of government restrictions or other challenges due to COVID-19.

- A business qualifies if it generates \$2 million or less in gross annual revenue pre-COVID-19.
- Must be in good standing regarding City requirements, e.g. property taxes, personal property, grounds for debarment, etc.
- Must commit to completing the technical assistance component of this program provided via Contractor.
- These eligibility standards may be modified for applicants who are chambers of commerce with Director approval.

MWBE Participation:

An 11% MWBE goal has been assigned to the contract. The vendor is working to obtain Letters of Intent to satisfy the stated goal.

Pay or Play:

The contract requires compliance with the City's Pay or Play Ordinance regarding health benefits for employees of City contractors. In this case, the Contractor provides health benefits for eligible employees in compliance with City policy.

Hire Houston First:

The proposed procurement may be funded by a federal grant; therefore, exempt from the "Hire Houston First (HHF)" Ordinance that promotes economic opportunity for Houston businesses and supports job creation.

Disaster Note:

This item is related to the impact of COVID-19 and expenditures eligible to be paid under the federal funding source are subject to applicable requirements of the Federal Government related to the funding source.

Marsha E. Murray, Director
Office of Business Opportunity

Prior Council Action:

Ordinances 2020-361 & 2020-362 - April 29, 2020

Amount of Funding:

\$15,000,000.00 - CARES Act 2020 Fund (5307)

Contact Information:

Marsha E. Murray - 832.393.0615
Gwendolyn Tillotson - 832.393.0937

ATTACHMENTS:

Description

Revised Cover Sheet
2020-670 Executed Ordinance

Type

Signed Cover sheet
Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 8/4/2020

ALL

Item Creation Date: 7/22/2020

OBO/MYR - Small Business Economic Relief Program

Agenda Item#: 42.

DS
MC

Summary:

ORDINANCE approving and authorizing a contract between the City of Houston and **HOUSTON BUSINESS DEVELOPMENT, INC.** for administration and related services for the Office of Business Opportunity in connection with the City's Small Business Economic Relief Program for small businesses who have been affected by COVID-19; providing a maximum contract amount; containing provisions relating to the subject; and declaring an emergency.

Background:

The Director of the Office of Business Opportunity Department is requesting Council approval of an Ordinance authorizing a contract between the City of Houston and Houston Business Development, Inc. providing up to \$15,000,000.00 from the City's CARES Act 2020 Fund, as authorized by City Council via Ordinances 2020-361 and 2020-362, to provide immediate and short-term grant assistance to small businesses that were and are continuing to be severely and negatively impacted economically as a result of the COVID-19 Pandemic during the period of March 1, 2020, and ends December 30, 2020.

The Small Business Economic Relief Program creates a mechanism to alleviate economic distress of small businesses and to promote and retain economic development, small businesses, jobs, and employment opportunities in Houston. The Program will allocate funds across all of Houston's communities, to for-profit businesses, unless expressly excluded, and chambers of commerce. The goal is to be a resource that businesses economically impacted by COVID-19 may leverage to sustain their operations during and after the pandemic.

The grant criteria are outlined below.

Available Funds

- Individual grants up to \$50,000.00.

Eligibility

- Must be a business whose principal place of business is located within city limits of the City of Houston.
- Must have been in business for at least one (1) year for the last year.
- Must provide evidence of how business revenue has significantly decreased because of government restrictions or other challenges due to COVID-19.
- A business qualifies if it generates \$2 million or less in gross annual revenue pre-COVID-19.
- Must be in good standing regarding City requirements, e.g. property taxes, personal property, grounds for debarment, etc.
- Must commit to completing the technical assistance component of this program provided via Contractor.
- These eligibility standards may be modified for applicants who are chambers of commerce with Director approval.

MWBE Participation:

An 11% MWBE goal has been assigned to the contract. The vendor is working to obtain Letters of Intent to satisfy the stated goal.

Pay or Play:

The contract requires compliance with the City's Pay or Play Ordinance regarding health benefits for employees of City contractors. In this case, the Contractor provides health benefits for eligible employees in compliance with City policy.

Hire Houston First:

The proposed procurement may be funded by a federal grant; therefore, exempt from the "Hire Houston First (HHF)" Ordinance that promotes economic opportunity for Houston businesses and supports job creation.

Disaster Note:

This item is related to the impact of COVID-19 and expenditures eligible to be paid under the federal funding source are subject to applicable requirements of the Federal Government related to the funding source.

DocuSigned by:

Marsha Murray

8C55EFED61E44B1...

Marsha E. Murray, Director
Office of Business Opportunity

Prior Council Action:

Ordinances 2020-361 & 2020-362 - April 29, 2020

Amount of Funding:

\$15,000,000.00 - CARES Act 2020 Fund (5307)

Contact Information:

Marsha E. Murray - 832.393.0615
Gwendolyn Tillotson - 832.393.0937

ATTACHMENTS:

Description

Coversheet
Ownership Fund
Ordinance (revised)
Grant Funding Verification-CB

Type

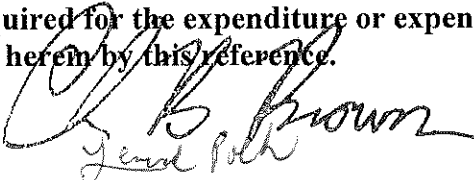
Signed Cover sheet
Backup Material
Ordinance/Resolution/Motion
Backup Material

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 herein by this reference.
- (✓) Other - Grant Funds Available


Gerald Brown


City Controller of the City of Houston, Texas

Date: 7-28, 2020

 FUND REF: 5307 5100 520110 AMOUNT: 15,000,000 ENCUMB. NO.: PR 1027816

OA # 46-16232

City of Houston, Texas Ordinance No. 2020-670

 AN ORDINANCE APPROVING AND AUTHORIZING A CONTRACT BETWEEN THE CITY OF HOUSTON AND HOUSTON BUSINESS DEVELOPMENT INC. FOR ADMINISTRATION AND RELATED SERVICES FOR THE OFFICE OF BUSINESS OPPORTUNITY IN CONNECTION WITH THE CITY'S SMALL BUSINESS ECONOMIC RELIEF PROGRAM FOR SMALL BUSINESSES WHO HAVE BEEN AFFECTED BY COVID-19; PROVIDING A MAXIMUM CONTRACT AMOUNT; CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

* * * *

WHEREAS, on January 27, 2020, as a result of confirmed cases of Coronavirus Disease 2019 ("COVID-19"), Alex M. Azar II, Secretary of U.S. Health and Human Services, pursuant to section 319 of the Public Health Service Act, determined and declared that a public health emergency exists and has existed since January 27, 2020, nationwide; and

WHEREAS, the President of the United States, the Governor of the State of Texas, the County Judge of Harris County, and the Mayor of the City of Houston have issued emergency declarations and executive orders in response to the COVID-19 pandemic (“Executive Orders”); and

WHEREAS, on March 27, 2020, the President signed into federal law the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which established the Coronavirus Relief Fund (“Fund”) and appropriated \$150 billion out of the Fund for the Department of Treasury to make payments to, among other governmental entities, certain local governments to cover costs that (1) are necessary expenditures incurred due to the public health emergency with respect to COVID-19; (2) were not accounted for in the City’s budget most recently approved as of March 27, 2020; and (3) were incurred on March 1, 2020, through and including December 30, 2020; and

WHEREAS, Section 5001(d) of the CARES Act states payments by governmental entities from the Fund may only be used to cover costs that are necessary expenditures incurred due to the public health emergency with respect to COVID-19; were not accounted for in the budget most recently approved as of March 27, 2020, for the governmental entity; and were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020; and

WHEREAS, the Texas Commissioner of the Department of State Health Services has declared a state of public health disaster due to COVID-19 and certified that to prevent community spread of COVID-19, businesses should adopt additional sanitation practices and people under investigation or monitoring for COVID-19 would be subject to involuntary quarantine or isolation (“Health Services Orders”); and

WHEREAS, pursuant to the Executive Orders and Health Services Orders, government officials ordered or recommended certain businesses to close to protect life and property, enhance public safety, and to slow the spread of COVID-19 and have also ordered or recommended that businesses implement certain safety measures, such as the installation of hand sanitizing stations and Plexiglass shields and other protective barriers to prevent the spread of COVID-19, provision of enhanced cleaning, disinfecting and sanitation, and placement of signage regarding face coverings and other health measures, the implementation of which may have imposed or increased costs for businesses;

WHEREAS, certain businesses voluntarily closed to promote social distancing to slow the spread of COVID-19 or have experienced a decrease in customer demand due to the issuance of the Executive Orders regarding occupancy and operational restrictions and public safety measures and recommendations to reduce the possibility of exposure to COVID-19;

WHEREAS, Houston small businesses have and are continuing to experience substantial health, economic, and financial impacts due to the COVID-19 pandemic, which impacts include business closures that have caused business and employment interruptions;

WHEREAS, the employment interruptions to businesses caused by COVID-19 have and are continuing to have a severe, negative economic impact on small businesses; and

WHEREAS, on April 21, 2020, the Department of Treasury provided an estimated \$405M to the City from the Fund and pursuant to the CARES Act; and

WHEREAS, pursuant to Ordinance No. 2020-361, the City Council created the CARES Act 2020 Fund for the purpose of receiving funds from any source, including the Coronavirus Relief Fund, for the purpose of providing economic relief pertaining to the COVID-19 pandemic; and

WHEREAS, there is a need for the creation of the City of Houston COVID-19 Small Business Economic Relief Program to provide, among other services, small business grant assistance by disbursing payments received from the Fund, and pursuant to the CARES Act, to provide immediate and short-term business stability and economic support for small businesses suffering business interruptions due to COVID-19 ("Program"); and

WHEREAS, the City seeks to implement Program guidelines to establish and maintain control over the disbursement of funds under the Program, ensure the public purpose is accomplished and that the City receives a return benefit, and to protect the public's investment, which guidelines include setting a maximum amount of allowable funds to be provided as small business grant assistance, the criteria for eligibility of a business eligible to receive a grant under the Program, and the requirements to be met by each small business to receive economic support from Program funds; and

WHEREAS, the creation of the Program and providing grants to small businesses benefits the City by, among other things, creating a mechanism to alleviate economic distress of small businesses and to promote and retain economic development, small businesses, jobs, and employment opportunities in Houston; and

WHEREAS, it furthers the City's interests to execute the Agreement for Small Business Economic Relief Program Management Services ("Agreement") with Houston Business Development, Inc. to efficiently disburse funds and quickly provide economic support to small businesses impacted by COVID-19, in accordance with the Program guidelines; and

WHEREAS, the activities under the Agreement and the above-referenced creation of the Program serve a public purpose and are in the best interest of the City and its residents; **NOW THEREFORE**;

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

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

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 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 agreement, agreements or other undertaking described in the title of this ordinance, 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 **\$15,000,000.00**, unless and until this sum is increased by ordinance of City Council.

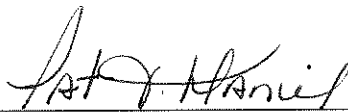
Section 6. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; 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 29th day of July, 2020.

APPROVED this _____ day of _____, 2020.

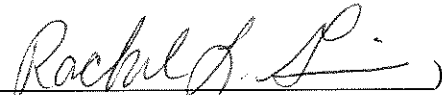
Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.


City Secretary

FUNDING SOURCE:

\$15,000,000.00 – CARES Act 2020 Fund (5307)

(Prepared by Legal Dept. )

(RLG:bt 7/22/2020)

Assistant City Attorney II

(Requested by Marsha E. Murray, Director of Office of Business Opportunity)

(L.D. File No 001-2000020-001)

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: **AUG - 4 2020**

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	

**PROFESSIONAL SERVICES AGREEMENT FOR SMALL BUSINESS
ECONOMIC RELIEF PROGRAM MANAGEMENT SERVICES**

THIS PROFESSIONAL SERVICES AGREEMENT FOR SMALL BUSINESS ECONOMIC RELIEF PROGRAM MANAGEMENT SERVICES ("Agreement") is made on the date countersigned by the City Controller, by and between the **CITY OF HOUSTON, TEXAS** (the "City"), a Texas Home Rule City of the State of Texas principally situated in Harris County, and **HOUSTON BUSINESS DEVELOPMENT, INC.** (the "Contractor"), a Texas nonprofit corporation doing business in Texas. The City and Contractor are referred to in this Agreement individually as the "Party" or collectively as the "Parties."

ARTICLE 1. PREAMBLE

1.1. ADDRESSES OF PARTIES

- 1.1.1. The initial addresses of the Parties, which one Party may change by giving written notice of its changed address to the other Party, are as follows:

City

Director or Designee
Office of Business Opportunity
City of Houston
611 Walker Street, 7th Floor
Houston, Texas 77002

Contractor

Houston Business Development, Inc.
5330 Griggs Road
Houston, Texas 77021

The Parties agree as follows:

1.2. TABLE OF CONTENTS

- 1.2.1. This Agreement consists of the following articles and exhibits:

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EXHIBITS	
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F	Drug Policy Compliance Declaration

1.3. PARTS INCORPORATED

1.3.1. The above described exhibits are incorporated into this Agreement.

1.4. CONTROLLING PARTS

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

[SIGNATURE PAGE FOLLOWS]

1.5. SIGNATURES

- 1.5.1. 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.

CONTRACTOR:
HOUSTON BUSINESS DEVELOPMENT,
INC.

DocuSigned by:
Marlon D. Mitchell
By: 334D367BC6A4A0
Name: Marlon D. Mitchell
Title: President/CEO 76216784
Federal Tax ID No.: _____

ATTEST/SEAL:

City Secretary

CITY:
CITY OF HOUSTON, TEXAS

Mayor

APPROVED:

DocuSigned by:
Marsha E. Murray

6C35FED07E45B1...
Director, Office of Business Opportunity

COUNTERSIGNED BY:

City Controller

DATE COUNTERSIGNED:

APPROVED AS TO FORM:

DocuSigned by:
Rachel Grier

6649081A261241A...
Assistant City Attorney
L.D. File No.: 001-2000020-001

ARTICLE 2. RECITALS

- 2.1 The President of the United States, the Governor of the State of Texas, the County Judge of Harris County, and the Mayor of the City of Houston have issued emergency declarations and executive orders in response to the Coronavirus Disease 2019 (“COVID-19”) pandemic.
- 2.2. On March 27, 2020, the President signed into federal law the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which established the Coronavirus Relief Fund (“Fund”).
- 2.3. Pursuant to the CARES Act, the United States Department of Treasury has provided the City with a direct payment from the Fund for the City to cover costs that are necessary expenditures incurred due to the public health emergency with respect to COVID-19; were not accounted for in the City’s budget most recently approved as of March 27, 2020; and were incurred on March 1, 2020, through and including December 30, 2020.
- 2.4. The City will establish and provide for the administration of a Small Business Economic Relief Program (“Program”) to promote local economic development by providing grants to small businesses within the City affected by COVID-19 and retaining employment within the City.
- 2.4. The primary goal of this Agreement is for the City to provide to Contractor certain funds received from the Fund pursuant to the CARES Act so that Contractor may administer and operate the City’s Program.
- 2.5. The City has determined the funds the City is providing to Contractor under this Agreement are reasonable and necessary expenditures to address the COVID-19 public health emergency and such funds were not included in the City’s approved budget as of March 27, 2020.

ARTICLE 3. DEFINITIONS

- 3.1. In addition to the words and terms defined elsewhere in this Agreement, the following terms have the meanings set out below:
 - 3.1.1. “Agreement” means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
 - 3.1.2. “Business Day(s)” mean(s) any day that is not a Saturday, Sunday, or City Holiday. In the event that any deadline set forth in this Agreement falls on a Saturday, Sunday, or City Holiday, the deadline shall automatically be extended to the next day that is not a Saturday, Sunday, or City Holiday.

- 3.1.3. “Chief Procurement Officer” or “CPO” means the City’s Chief Procurement Officer, or any person designated by the CPO to perform one or more of the CPO’s duties under this Agreement.
- 3.1.4. “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 3.1.5. “City Attorney” means the City Attorney of the City or any person designated by the City Attorney to perform one or more of the duties of the City Attorney under this Agreement.
- 3.1.6. “City Holiday” means any official City of Houston holiday as determined each year by the City Council.
- 3.1.7. “City Personnel” means all City employees, but not elected officials.
- 3.1.8. “Contractor” is defined in the preamble of this Agreement and includes its successors and assigns.
- 3.1.9. “Countersignature Date” means the date the City Controller countersigns the signature page of this Agreement and the Agreement becomes effective and binding.
- 3.1.10. “Director” means the Director of the City’s Office of Business Opportunity or any person designated by the Director to perform one or more of the Director’s duties under this Agreement.
- 3.1.11. “Documents” means all original and non-identical copy of any written, typed, or printed matter, or electronically stored information, of any kind or description.
- 3.1.11.1. The word “documents” includes, but is not limited to, the following: agendas, analyses, audio or video recordings, bulletins, charts, circulars, communications (including any interoffice, social media, and other communications), computations, computer programs, copies, correspondence, data, databases, data compilations, data prototypes, designs, diagrams, diskettes, documents, drafts, drawings, electronic mail (email), electronically stored information, exhibits, facsimiles, forms, graphs, guides, images, information, inventions, items, letters, logs, manuals, maps, materials, memoranda, metadata, microfilm, minutes or meeting minutes, models, notes, notations, notebooks, operating manuals, original tracings of all drawings and plans, other graphic matter (however produced or reproduced), pamphlets, photographs (including any digital or film photographs), plans, printouts, policies, procedures, records, recordings (including any audio, video, digital, film, tape,

and other recordings), reports, social media communications, software, specifications, tabulations, telegrams, underlying data, works, worksheets, work products, writings, and any other writings or recordings of any type or nature (and any revisions, modifications, or improvements to them).

- 3.1.12. "Information" means all information, data, facts, or knowledge of any kind or description whether in tangible or intangible form.
 - 3.1.13. "Include" and "including", and words of similar import, shall be deemed to be followed by the words "without limitation."
 - 3.1.14. "Party" or "Parties" means City and Contractor who are bound by this Agreement, individually or collectively as indicated in the context by which it appears.
 - 3.1.15. "Small Business" means a for-profit small business or chamber of commerce within the City affected by COVID-19 and eligible under the Program Guidelines as set forth in **Exhibit C**.
 - 3.1.16. "Writing" or "written" shall mean a written communication from one Party to the other, including an electronic communication or e-mail.
- 3.2. 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.
- 3.3. The word "*shall*" is always mandatory and not merely permissive.

ARTICLE 4. DUTIES OF CONTRACTOR

4.1. SCOPE OF SERVICES

- 4.1.1. In consideration of the payments specified in Section 5.1 of this Agreement and in **Exhibit B (Deliverables)**, Contractor shall provide all labor, material, and supervision necessary to perform the Services described in **Exhibit A (Scope of Services)** and in accordance with **Exhibit C (Program Guidelines)**, which may be amended as needed and shall not require an amendment of this Agreement, provided the Director and Contractor execute a signed, revised **Exhibit C**.

4.2. COORDINATE PERFORMANCE

- 4.2.1. Contractor shall coordinate its performance with the Director and other person(s) 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.

4.3. REPORTS

4.3.1. Contractor shall submit all reports and progress updates required by the Director, including but not limited to the following reports:

4.3.1.1. Biweekly Progress Report. Contractor shall submit a Biweekly Progress Report on the second and fourth Friday of each calendar month for the preceding calendar month. For each Biweekly Progress Report, Contractor shall provide to the Director information and data concerning how Contractor spent funds disbursed by the City, including a breakdown of how much was spent on Small Business grants and administrative fees, how many Small Businesses were assisted, output measures, demographic data, including but not limited to race and gender, if available, on Program participants, and any other type of information requested by the Director. The information provided to the Director may be used to measure the progress of the Program, evaluate the Program's impact, and exercise general monitoring of the Program. Contractor shall provide the Director with copies of all supporting documentation and materials to substantiate reports.

4.3.1.2. Other Reports. Contractor, in addition to the BiWeekly Progress Reports, shall provide any other reports requested in writing by the Director.

4.3.2. Failure to comply with the reporting requirements of this Section shall be a material breach of this Agreement and compensation to Contractor may be withheld until such time as Contractor is in compliance with this Section and the reports and back-up materials are submitted.

4.3.3. Contractor shall promptly report to the Director any conditions, transactions, situations or circumstances, encountered by Contractor which would warrant a special report in more detail than that which is necessary to perform the Project Scope specified in **Exhibit A** to this Agreement, including but not limited to, notices from cognizant federal agencies, and grievances and lawsuits, real or threatened.

4.4. PROGRAM MONITORING

4.4.1. Contractor agrees to attend meetings as may be scheduled by the Director during the term of this Agreement in order to discuss any reports as required under Section 4.3 or Contractor's general progress in performing its obligations under this

Agreement.

- 4.4.2. Contractor agrees to periodic monitoring visits and desk reviews conducted by the City to allow the City immediate access to and the right to examine, copy or reproduce all records, books, papers and documentation of any nature regarding the Program and this Agreement.
- 4.4.3. Program monitoring may be carried out by the Director through a comprehensive review during the term of the Agreement, including any extension of the Agreement, and as often as necessary to ensure compliance with this Agreement, including for the three years after this Agreement expires during which Contractor must maintain all books and records as required by Section 7.10.

4.5. SCHEDULE OF PERFORMANCE

4.5.1. Time of Performance

- 4.5.1.1. Contractor shall begin performance of the Agreement upon execution of the Agreement.

4.5.2. Time Extensions

- 4.5.2.1. If Contractor requests an extension of time to complete Contractor's performance, the Director may, in his or her sole discretion, extend the time so long as the extension does not exceed 30 days and does not extend beyond November 15, 2020. 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).

4.6 SUBCONTRACTORS AND PROMPT PAYMENT OF SUBCONTRACTORS

- 4.6.1. Contractor shall not enter into a subcontract for any of the services performed under this Agreement without obtaining the prior written approval of the Director, which approval shall not be unreasonably withheld. Notwithstanding the use of subcontractors approved in accordance with this paragraph, Contractor is responsible for all services performed under this Agreement.
- 4.6.2. Contractor shall provide the Director with an updated list of all subcontractors including phone numbers of contact personnel 30 days after the Countersignature Date of this Agreement and whenever Contractor obtains approval of the use of a subcontractor throughout the Term of this Agreement.
- 4.6.3. For any subcontractors that Contractor engages to perform any part of this Agreement, Contractor shall promptly provide to the City a full and complete copy of each subcontract, each subcontractor's subcontract, and any amendments, renewals, terminations, and notices of default. Contractor shall provide these documents to

the Director and City Attorney no later than ten (10) Business Days after the earlier of the effective date of the subcontract or related document or the date Contractor executes the document or subcontract.

4.6.4. The Director may, at his or her discretion, limit the number of subcontract firms working under Contractor or its subcontractors at the Director's sole discretion to ensure safety and quality of work provided.

4.6.5. In accordance with the Texas Prompt Payment Act, Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.**

4.7. PERSONNEL OF CONTRACTOR

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

4.8. RELEASE

4.8.1. **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 OR THE OPERATION OF THE PROPERTY BY THE CITY OR THE OCCUPANCY OF THE LICENSED AREA BY CONTRACTOR OR ITS EMPLOYEES, AGENTS, CONTRACTORS, VISITORS AND INVITEES, 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 OR ANY USE OR CONDITION OF CITY'S TANGIBLE PERSONAL OR REAL PROPERTY. 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.**

4.9. INDEMNIFICATION

4.9.1. INDEMNIFICATION OF CITY:

4.9.1.1. **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:

4.9.1.1.1. CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 4.9.1.1.1.-4.9.1.1.3., "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

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

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

4.9.1.2. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

4.9.2. INTELLECTUAL PROPERTY RELEASE AND INDEMNIFICATION

4.9.2.1. CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT,

SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, SERVICE MARK, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

4.9.2.2. CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

4.9.2.3. WITHIN SIXTY (60) DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

4.10. SUBCONTRACTOR'S INDEMNITY

4.10.1. 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.

4.11. INDEMNIFICATION PROCEDURES

4.11.1. *Notice of Claims.*

4.11.1.1. If the City or Contractor receives notice of any claim or circumstances, which could give rise to an indemnified loss, the receiving party (i.e., the City or Contractor) shall give written notice to the other party within 30 days. The notice must include the following:

- a. a description of the indemnification event in reasonable detail,
- b. the basis on which indemnification may be due, and

c. the anticipated amount of the indemnified loss.

4.11.1.2. 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.

4.11.2. *Defense of Claims.*

4.11.2.1. *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.

4.11.2.2. *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.

4.12. INSURANCE

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

COVERAGE	LIMIT OF LIABILITY
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
Professional Liability Coverage	\$1,000,000 per occurrence; \$2,000,000 aggregate
Cyber Liability Insurance	\$1,000,000 per occurrence; \$1,000,000 annual aggregate

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

4.12.2. *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 (a) all premiums and (b) 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.

4.12.3. *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 (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) 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.

4.12.4. *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.

4.12.5. *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 sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

4.13. PROFESSIONAL STANDARDS

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

4.14. USE OF WORK PRODUCTS

- 4.14.1. The City may use all notes, plans, computations, databases, tabulations, exhibits, photographs, reports, underlying data and other work products (collectively, the "Documents") that Contractor prepares or obtains under this Agreement.
- 4.14.2. Contractor warrants that it owns the copyright to the Documents.
- 4.14.3. Contractor shall deliver the original Documents to the Director on request. Within five Business 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.

4.15. CONFIDENTIALITY

- 4.15.1. 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.
- 4.15.2. Notwithstanding any other provision of this agreement, the Parties also acknowledge that the City is subject to the Texas Public Information Act (Tex. Gov't Code Chapter 552) ("TPIA") and that Confidential Information under this Agreement may be subject to the TPIA. The City will cooperate in good faith with the Contractor to protect the Confidential Information being produced to the extent such cooperation is consistent with the City's obligations under the TPIA.

- 4.15.3. "Confidential Information" comprises, but is not limited to, any non-public proprietary information or technology used in each party's respective business. Confidential Information includes, but is not limited to, all communications between the Parties in any form whatsoever including oral, written, and machine-readable form, video, audio, phonorecord, recorded media, technical data, economic, financial, marketing, customer or supplier information, engineering, employee and human relations, environmental, computer programs (regardless of the medium on which they are stored or written), computer software, computer data, computer source and object programs or codes, flow charts, operations and installation instructions, report samples, data files, printouts, or any other information which is not common knowledge among competitors or other companies who might like to possess such Confidential Information or might find it useful, and personally-identifiable information, which is any data that could potentially identify a specific individual, including but not limited to social security numbers, full names, telephone numbers, addresses, email addresses, dates of birth, and financial account numbers, that is provided by Small Businesses using the services provided by Contractor.

4.16. LICENSES AND PERMITS

- 4.16.1. Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. All Contractor personnel shall be fully qualified and shall have any licenses or permits required under law to perform the Services under this Agreement. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license.

4.17. COMPLIANCE WITH LAWS

- 4.17.1. Contractor shall comply with all applicable state and federal laws and regulations, including but not limited to Coronavirus Aid, Relief, and Economic Security (CARES) Act, the City Charter and Code of Ordinances, and the Program Guidelines described in **Exhibit C**.

4.18. COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE

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

4.19. MWBE COMPLIANCE

- 4.19.1. 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 in at least 11% of the value of the compensation set forth in this Agreement in accordance with Section 5.1 to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity ("OBO"), and will comply with them.

4.20. DRUG ABUSE DETECTION AND DETERRENCE

- 4.20.1. It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- 4.20.2. Before the City signs this Agreement, Contractor shall file with the City Contract Compliance Officer for Drug Testing ("CCODT"):
 - 4.20.2.1. a copy of its drug-free workplace policy,
 - 4.20.2.2. the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit D**, together with a written designation of all safety impact positions and,
 - 4.20.2.3. if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit E**.
- 4.20.3. If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance of this Agreement (or on completion of this Agreement if performance is less than six (6) months), a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit F**. Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within thirty (30) days of the expiration of each six-month period of performance and within thirty (30) days of completion of this Agreement. The first six-month period begins to run on the date the City issues its Notice to Proceed or, if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.
- 4.20.4. 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.

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

4.21. CONTRACTOR'S PERFORMANCE

- 4.21.1. Contractor shall make resident 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 residents 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 residents, he or she shall direct Contractor to take all remedial steps to conform to these standards.

4.22. CONFLICTS OF INTEREST

- 4.22.1. If an actual or potential conflict arises between the City's interests and the interests of other clients Contractor represents, Contractor shall immediately notify the Director by electronic mail ("e-mail"), fax transmission or telephone. If the Director consents to Contractor's continued representation of the other clients, he or she shall notify Contractor in writing. If the Director does not issue written consent within three Business Days after receipt of Contractor's notice, Contractor shall immediately terminate its representation of the other client whose interests are or may be in conflict with those of the City.

4.23. PAY OR PLAY

- 4.23.1. 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.

4.24. ANTI-BOYCOTT OF ISRAEL

- 4.24.1. 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.

4.25. ZERO-TOLERANCE FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES

- 4.25.1. 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 this Agreement's Effective Date. Contractor shall notify the City's Chief Procurement Officer, 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.

4.26. PRESERVATION OF CONTRACTING INFORMATION

4.26.1. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and Contractor agrees that this Agreement can be terminated if 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 (5) 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.

4.26.2. 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 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 5. DUTIES OF CITY

5.1. PAYMENT TERMS

- 5.1.1. The City shall pay Contractor for the services and Deliverables it renders under this Agreement in accordance with the terms set forth in **Exhibit B**, the amount of which shall never exceed **\$1,500,000.00**.
- 5.1.2. The City shall not be liable for any expenses that are not allowable under the terms of this Agreement.

5.2. TAXES

- 5.2.1. 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.

5.3. DISBURSEMENTS

- 5.3.1. Within 15 business days of the Countersignature Date, the City shall send to Contractor an initial payment amount, not to exceed **\$2,500,000.00** ("Initial Disbursement") to set up the Contractor-administered Program Fund from which to draw disbursements to Small Businesses, for Contractor to perform the Services in accordance with **Exhibits A, B and C**.
- 5.3.2. The City shall send Contractor an additional disbursement in an amount to bring the total Contractor-administered Program Fund amount to \$2,500,000.00 once the Initial Disbursement balance reaches \$625,000.00 subject to the approval of the Director and upon request by Contractor. To receive the additional disbursement, Contractor shall submit a disbursement request to the Director detailing the amount Contractor requests. The City shall continue in this manner until all the remaining funds are disbursed or the Contract is terminated in accordance with Article 6.
- 5.3.3. Contractor understands and agrees that the Coronavirus Relief Funds awarded to the City are the exclusive funding of the Agreement. In order to be eligible for payments under the Coronavirus Relief Funds, Contractor agrees to comply with all of the applicable terms and requirements of the Coronavirus Relief Funds as supplied by the City and the terms and requirements of this Agreement. Contractor further agrees to reimburse the City, within thirty (30) days after written notice, for any Coronavirus Relief Funds received from the

City under this Agreement for which the City is denied reimbursement under the Coronavirus Relief Funds or which are otherwise determined to be ineligible for reimbursement under the Coronavirus Relief Funds.

5.4. METHOD OF PAYMENT OF CONTRACTOR

5.4.1. The City shall pay Contractor the fee set forth in Section 5.1.1 for Contractor's services rendered under this Agreement in accordance with the schedule set forth in **Exhibit B**. The City shall pay on the basis of invoices submitted by Contractor and approved by the Director, showing the services performed and the attendant fee. The City shall pay Contractor within 30 days of the receipt and approval of the invoices. The documentation for the invoice for Services shall reference the provided documentation for Small Businesses and shall not require an individual accounting of expenses.

5.4.2. Disputed Payments.

5.4.2.1. If the Director disputes any items in an invoice for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice within 30 days. The Director shall notify Contractor of the payment dispute within 30 days of receipt of the invoice, and request remedial action. After the dispute is settled, Contractor shall include the disputed amount in a subsequent monthly invoice or on a special invoice for the disputed item only, together with a notation that the dispute is settled. The City will then pay the invoiced amount within 30 days of receipt.

5.4.2.2. If the City fails to pay any undisputed amounts due and owing to Contractor and such failure continues for more than 30 days after the due date for such payment, then Contractor may suspend performance of the services under this Agreement until Contractor receives such undisputed amounts. Prior to any such suspension, Contractor shall provide the Director with at least ten 10 days' prior written notice of its intent to suspend performance of the services under this Agreement. In the event of such delay payments or suspension of the services under this Agreement, the provisions of Tex. Gov't Code §§ 2251.025 and 2251.051 shall apply.

5.4.2.3. If the Director disputes an invoice Contractor submits for any reason, including lack of supporting documentation (as may be required by the Director in his or her sole discretion), the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled,

Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

5.5. LIMIT OF APPROPRIATION

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

5.5.2. 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 \$15,000,000.00 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the Parties have agreed to the following procedures and remedies:

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

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the 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.

\$_____.

5.5.2.2. 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.

5.6. DEOBLIGATION AND REALLOCATION OF FUNDS

5.6.1. The City reserves the right to deobligate or reallocate the federal funds for the Program. In the event the cumulative expenditures committed under this Agreement for any particular time period fall substantially below the budgeted expenditures for the same period, Contractor agrees to re-budget the estimated cost of the remaining Services of this Agreement. Notwithstanding the foregoing, Contractor shall not re-budget the estimated cost of the remaining Services that would result in either (1) an increase to the amount of Contractor's Allowable Fee, which shall not exceed ten percent of the amount of funds the City has disbursed to Contractor within the preceding month in each invoice; or (2) decrease the amount of Small Business Grant Assistance, defined as the amount from each disbursement from the City to Contractor, minus the Allowable Fee, to provide payments to each Small Business participating in the Program to grant funds to qualified Small Businesses pursuant to this Agreement and **Exhibit C**, as may be amended from time to time. Any re-budgeting of the estimated cost of the remaining Services that results in either an increase to Contractor's Allowable Fee or decrease to the amount of Small Business Grant Assistance shall be subject to Contractor reimbursing to the City the disallowed amount pursuant to Section 5.3. Such re-budgeting for decreased expenditures shall not require a formal amendment of this Agreement and shall be evidenced by a revised budget approved by Contractor and by the Director. Any excess funds remaining after said re-budgeting will be subject to reallocation at the sole discretion of the City.

5.6.2. Contractor's approval of any revised budget shall not unreasonably be withheld, and failure of Contractor to approve any revised budget shall be a default of Contractor's obligations under this Agreement

5.7. ACCESS TO DATA

5.7.1. 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.

5.7.2. 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.

5.7.3. For any raw data created, assembled, used, maintained, collected, or stored by the 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 6. TERM AND TERMINATION

6.1. TERM

- 6.1.1. This Agreement is effective on the date of the Countersignature Date and expires on December 30, 2020 ("Term"), unless sooner terminated in accordance with the terms and conditions of this Agreement.
- 6.1.2. The services to be performed under this Agreement shall be completed by October 30, 2020. The Director may, in his or her sole discretion, extend the time as provided in Section 4.5.2.

6.2. TERMINATION FOR CONVENIENCE

- 6.2.1. 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.
- 6.2.2. 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 to the Director an invoice showing in detail the Services actually performed, but not already paid for, in the same manner as prescribed in Section 5.4 of this Agreement.
- 6.2.3. TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED, IF ANY, 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.
- 6.2.4. The Contractor may terminate this Agreement at any time by giving 30 days written notice to City. The Contractor's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future. Upon termination, Contractor shall, immediately discontinue all Services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement, and refund any amount of the disbursement that has not been paid to a Small Business.

6.3. TERMINATION FOR CAUSE BY THE CITY

6.3.1. If Contractor defaults under this Agreement, the Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

6.3.1.1. Contractor fails to perform any of its material duties under this Agreement, including the duties associated with the City's grant of the use of the Licensed Area;

6.3.1.2. Contractor becomes insolvent;

6.3.1.3. All or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or

6.3.1.4. A receiver or trustee is appointed for Contractor.

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

6.3.3. 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.

6.4. SUSPENSION OF SERVICES

6.4.1. The Director may, by written notice to Contractor, suspend at any time the performance of any or all portions of the services to be performed under this Agreement. Upon receipt of such notice, Contractor shall, unless the notice requires otherwise:

6.4.1.1. Immediately discontinue services on the date and to the extent specified in the notice;

6.4.1.2. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to the City of all subcontracts, orders and other agreements to the extent that they relate to the performance of suspended work;

6.4.1.3. Continue to protect and maintain the services including those parts of the services which have been suspended; and

6.4.1.4. Take any other reasonable steps to minimize costs associated with such suspension.

6.5. REVERSION OF ASSETS

6.5.1. Contractor agrees that upon the expiration of this Agreement, Contractor shall, no later than three (3) business days prior to either the Termination Date or the end of any extension date transfer to the City any funds on hand at the time of expiration and any accounts receivable attributable to the use of any disbursement funds, including any of the Initial Disbursement or subsequent disbursement.

ARTICLE 7. MISCELLANEOUS

7.1. INDEPENDENT CONTRACTOR

7.1.1. Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City. The City has no control or supervisory powers over the manner or method of Contractor's performance under this Contract. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

7.2. FORCE MAJEURE

7.2.1. Timely performance by the Parties is essential to this Agreement. However, neither the Parties 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 Parties. The event of Force Majeure may permit a reasonable delay in performance but does not excuse the Parties' 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 Parties, riots, 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.

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

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

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

7.2.3. The Director will review claims that a Force Majeure that directly impacts the Parties has occurred and render a written decision within fourteen (14) days. The decision of the Director is final.

7.2.4. 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.

7.2.5. If the Force Majeure continues for more than five days from the date performance is affected, the Director may terminate this Agreement by giving seven (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.**

7.2.6. Contractor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Contractor shall employ only fully trained and qualified personnel during a strike.

7.3. SEVERABILITY

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

7.4. ENTIRE AGREEMENT

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

7.5. WRITTEN AMENDMENT

7.5.1. 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.

7.6. GOVERNING LAW AND VENUE

7.6.1. 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.

7.7. NOTICES

7.7.1. All notices to any 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.

7.8. CAPTIONS

7.8.1. 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.

7.9. NON-WAIVER

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

7.9.2. 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.

7.10. INSPECTIONS AND AUDITS

- 7.10.1. Contractor shall maintain any financial records as may be required and as may be necessary to document compliance with applicable laws, regulations, and rules.
- 7.10.2. City representatives or any representative of a federal agency, including but not limited to the Department of Treasury, to audit the usage of federal funds expended under the CARES Act or other program in connection with the scope of services as set forth in this Agreement 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 be required to retain all books and records, including without limitation any documentation for five (5) years after expiration of the Agreement. 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.

7.11. ENFORCEMENT

- 7.11.1. The City Attorney 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.

7.12. AMBIGUITIES

- 7.12.1. 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.

7.13. SURVIVAL

- 7.13.1. 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.

7.14. PUBLICITY

- 7.14.1. 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.

7.15. PARTIES IN INTEREST

- 7.15.1. This Agreement does not bestow any rights upon any third party, but binds and benefits the Parties only.

7.16. SUCCESSORS AND ASSIGNS

- 7.16.1. 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 Article 7.18. This Agreement does not create any personal liability on the part of any officer or agent of the City.

7.17. BUSINESS STRUCTURE AND ASSIGNMENTS

- 7.17.1. 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 as described in Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.
- 7.17.2. Contractor shall not delegate any portion of its performance under this Agreement without the Director's prior written.

7.18. REMEDIES CUMULATIVE

- 7.18.1. 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 which exist now or in the future. No Party may terminate its duties under this Agreement except in accordance with its provisions.

7.19. CONTRACTOR DEBT

- 7.19.1. 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/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.

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EXHIBIT A SCOPE OF SERVICES

A. Program Goals:

1. Rapidly serve Small Businesses as defined in this Agreement economically impacted by COVID-19 may leverage to sustain their operations during and after the pandemic.
2. Achieve immediate and short-term business stability for Small Businesses by providing short-term grant assistance to qualified Small Businesses.
3. Provide economic support for Small Businesses suffering business interruptions due to COVID-19.
4. Provide funding of adaptations to help Small Businesses succeed and grow in a post-COVID-19 world.

B. Program Objective:

In order to serve its clients and comply with governmental regulations, Contractor will use funds as follows:

1. Administer and provide COVID-19 disaster financial assistance funds.
2. Administer Small Business grant assistance to Small Businesses who qualify for assistance due to an interruption of business operations as a result of COVID-19, such as stay-at-home orders and other economic impacts of COVID-19.
3. Provide grants to Small Businesses as economic support in light of business interruptions connected with COVID-19.

C. Operations

Contractor shall provide the following services:

1. Administration of the City's COVID-19 Small Business Economic Relief Program, including managing the application and approval process for Small Businesses within the City of Houston city limits and who qualify under the Program Guidelines set forth in **Exhibit C**.
 - a. Contractor shall obtain, at its sole expense, all personnel required to undertake and carry out the Services under this Agreement and this **Exhibit A**.
 - b. Contractor shall conduct marketing and outreach, or otherwise publicize and disseminate information, concerning the availability and the nature of the Program by using a variety of resources, such as Contractor's website. Contractor shall ensure its marketing and outreach includes information in languages used by the targeted audience, where appropriate.
 - i. Contractor shall provide a two-week marketing and outreach campaign to precede the launch of the Program.

- ii. Contractor will coordinate with the City to announce the Program through a press release/conference to include elected officials and City employees.
 - iii. Contractor shall engage local chambers of commerce, small business organizations, community groups, resource partners and subcontractors to announce the Program via shared databases and social media platforms.
 - iv. Contractor shall also use the public service announcements, advertisements in community newspapers and business journals, television and radio station appearances and distribution of Program flyers to advertise the Program preceding the launch of the Program.
 - v. Contractor shall conduct three Program orientation webinars announcing the Program and covering the application process, which shall be recorded and made available to resource partners before the Program launch.
 - c. Contractor shall design and utilize an application process for eligible Small Businesses to apply to the Program.
 - i. The application process shall be ways to complete and accessible to potential applicants.
 - ii. The application process shall provide for an automated, online application intake, including supporting documentation, via a website designed exclusively for the Program.
 - iii. To ensure the maximum number of potential applicants can participate in the Program, Contractor shall provide a phone number at which potential applicants can request a paper application with instructions for delivery.
 - iv. All incoming applications and supporting documents shall be reviewed for eligibility and completeness based upon the applicant eligibility criteria established by the City's Program Guidelines as set forth in **Exhibit C**. Contractor shall work with the Director to amend the Program Guidelines (**Exhibit C**) as needed and any such changes shall not require an amendment of this Agreement, provided the Director and Contractor execute a signed, revised **Exhibit C**.
 - v. Contractor shall score eligible applications based upon weighted metrics to determine the amount of funding.
 - vi. Contractor shall notify applicants of incomplete applications through an automated process of phone calls and applicants will be given a limited time to gather and submit missing information for further consideration.
 - vii. Contractor shall screen applicants to preclude a duplication of benefit related to other federal funds previously received by an applicant.
 - d. Pursuant to Contractor's established procedures, Contractor shall make and document eligibility determinations for Program applicants in accordance with the City's Program Guidelines as set forth in **Exhibit C** and shall be responsible for programmatic decision-making in collaboration with the Director.
2. Provide the Director with a detailed summary report every two weeks as set forth in Section 4.3 of this Agreement, including but not limited to documentation of number of employees, jobs retained, family household income levels, financial records, demographic information (such as race and gender) of owners, and any other information required by the Director.

- a. Contractor shall employ periodic reporting, monitoring and compliance measures to assure that grant recipients meet all Program, local and federal requirements and regulations.
 - b. Contractor shall maintain adequate records and documentation and utilize internal controls and maintain necessary source documentation for all costs incurred.
 - c. Contractor shall establish and maintain an accounting system to record expenditures in accordance with generally accepted accounting standards.
 - d. Contractor shall retain sufficient records, including but not limited to financial records, supporting documents, statistical records and other records pertinent to this Agreement to show compliance with this Agreement.
3. Services will be provided in accordance with applicable governmental orders and the Center for Disease Control Guidelines for safe operation during COVID-19. Contractor shall cooperate and coordinate with agencies of the relevant State and local governments responsible for services for eligible Small Businesses in the area served by the City and other public and private organizations and agencies providing services for such eligible Small Businesses.
4. Contractor shall not charge any fees to any Small Businesses participating in the Program.
5. Contractor shall maintain the confidentiality of application and supporting documentation of any Small Businesses that applies for assistance or is participating in the Program under this Agreement and shall store such information in a secure manner.
6. Contractor shall provide and/or facilitate the provision of technical assistance to grant recipients focusing on resiliency, financial health, and business development. This technical assistance shall include but is not limited to the following:
 - a. COVID-19 small business resource navigation and connection
 - b. General business education (labor regulations, legal requirements, financial document and record keeping, taxes, etc.)
 - c. Developing and updating a business to adapt to current conditions
 - d. Obtaining license, permit, or certification needed for business adaption or expansion
 - e. Marketing and social media coaching to keep customers engaged during crisis
 - f. Access to loans and other sources of capital to continue operating
7. Contractor shall support language request that are commonly used within the City of Houston city limit, including but not limited to English, Spanish, Vietnamese, and Chinese/Mandarin.

D. Method of Payment

Contractor shall provide invoices to the Director on forms provided by the City or in a format approved by the City as described in Section 5.4 of the Agreement.

**EXHIBIT B
DELIVERABLES**

1. Contractor shall provide the Services under this Agreement in accordance this Agreement.
2. The Deliverables Description Table below describes the Deliverables to be provided by Contractor to the City. The City shall pay Contractor for Deliverables and Professional Services generally in accordance with Section 5 of the Agreement and specifically in accordance with the Deliverable Description Table below. Upon completion of and acceptance by the Director of each of Deliverable listed in the Deliverable Description Table, the invoiced amount shall be payable by the City to the Contractor. Total cost for each Phase shall not exceed the amount set forth in the Deliverable Description Table. These Phases shall be achieved in the order listed below unless agreed to in writing by Contractor and the Director. These Phases shall be achieved as Contractor satisfies the acceptance criteria for that given phase and the Director shall provide his or her acceptance, which acceptance shall not be unreasonably withheld or delayed.

Deliverable Description Table

Phase	Description of Deliverable of Phase	Pricing
1	Contractor has disbursed to Small Businesses 25% of the total disbursement amount	City shall pay \$375,000.00
2	Contractor has disbursed to Small Businesses 50% of the total disbursement amount	City shall pay \$375,000.00
3	Contractor has disbursed to Small Businesses 75% of the total disbursement amount	City shall pay \$375,000.00
4	Contractor has disbursed to Small Businesses 100% of the total disbursement amount	City shall pay \$375,000.00

EXHIBIT C
CITY OF HOUSTON COVID-19 SMALL BUSINESS ECONOMIC RELIEF PROGRAM
GUIDELINES

A. Overview

The City will provide an amount not to exceed **\$15,000,00.00** to assist eligible Small Businesses as defined under this Agreement affected by the economic impact of COVID-19. The goal is to be a resource that businesses economically impacted by COVID-19 may leverage to sustain their operations during and after the pandemic. Upon the direction of the City, which direction may be given at any time and at the City's sole discretion, Contractor shall return any funds received to the City.

B. Available Funds

- **Grants Dollars Available**
 - Individual grants up to \$50,000.00 plus the value of the technical assistance

C. Eligibility

- Must be a business whose principal place of business located within city limits of the City of Houston.
- Must have been in business for at least one (1) year for the last year.
- Must provide evidence of how business revenue has significantly decreased because of government restrictions or other challenges due to COVID-19.
- A business qualifies if it generates \$2 million or less in gross annual revenue pre-COVID-19.
- Must be in good standing regarding City requirements, e.g. property taxes, personal property, grounds for debarment, etc.
- Must commit to completing the technical assistance component of this program provided via Contractor.
- These eligibility standards may be modified for applicants who are chambers of commerce with Director approval.

D. Application Requirements and Period

- Complete online application
 - Prescreening application
 - Full application with documentation
- Contractor shall establish a two- to four-week application period, reserving the right to open applications for a second round depending on fund availability.

E. Scoring and Prioritization (Additional Points will be allocated)

- To ensure equitable distribution of funds, grant applications will not be processed on a first come, first served basis, but instead will be scored using the following factors:
 - *Geography*- To ensure funds are allocated across the city to high need or highly impacted areas:
 - Businesses located in one of the City of Houston's Complete Communities **or**
 - Businesses located in low- or moderate-income (LMI) geographic areas
 - *Employee Makeup*- Businesses for whom at least 50% of their employees are LMI individuals.
 - *Job Retentions Impact* – Employs 10 or more employees
 - *Legacy Businesses* – Businesses in operation for 5 or more years
 - *Resiliency*- Businesses that demonstrate a strong chance of remaining open post-COVID-19 with a documented plan for recovery and resilience.
 - *Access to Capital Challenges/Financial Need*
 - Businesses with demonstrated challenges with obtaining business financing through traditional financial sources.
 - Businesses who did not receive funds via PPP, EIDL or local economic relief programs.
 - Business who received funds, but funds did not objectively meet their needs.
 - High level of revenue loss

F. Required Documentation

- Applicants should provide the following categories of documentation:
 - Business tax return for 2019 and/or Profit and Loss statement for 2019
 - If tax return or profit and loss statement is unavailable, additional documentation may be considered by Contractor as approved by the Director, provided that applicant provides a certification that documentation is true, complete and accurate
 - Profit and Loss statement for Second Quarter 2020 (April through June)
 - Reopening/Recovery Proposal
 - Any other documentation requested

G. Disbursement to Small Businesses

- Businesses will receive the grant in the following disbursements:
 - 50% upon approval
 - 50% once business establishes it has taken resiliency steps
 - If a grant recipient fails to complete required resiliency steps, the grant recipient will forfeit the remainder of funds, which will be made available to those applicants in the runner-up pool.

- Grant recipient shall be subject to a clawback provision requiring the recipient to return the grant if the recipient fails to comply with the terms of the grant and Program

H. Permitted Use of Funds by Grant Recipient

- The permitted use of funds by grant recipient include both of the following uses:
 - Operating Costs
 - Working capital
 - Payroll expenses
 - Accounts payable
 - Rent, lease, mortgage for real property used for business purposes
 - PPE for employees
 - Sourcing from alternative suppliers for supplies/materials that cost more
 - Other bills and expenses incurred prior to or due to economic injury.
 - Other reasonable uses will be considered where the business can demonstrate expenditures related to the costs of business interruption caused by required closures or an expense that qualifies as an eligible expenditure under section 601(d) of the Social Security Act.
 - Marketing and Retooling Costs
 - Marketing strategies and new measures (e.g., plastic sneeze guards, better ventilation, high-efficiency air filters, drive-up windows, implementing delivery services, etc.) to adapt to COVID-19 conditions.
- Grant recipient shall provide documentation of its use of funds as required by the Program.

I. Ineligible Use of Funds by Grant Recipient

- No new fixed asset purchases, expansions, renovations/ remodeling, or equipment unless required due to government restrictions pertaining to COVID-19.
- No Duplication of Benefits: Funds may not be used to cover costs that have been covered through receipt of funds through another federal, state or local program such as the PPP, EIDL or local economic relief programs.

J. Eligible business types

- All for-profit businesses that are currently open for business, unless expressly excluded.
- Chambers of Commerce that are currently open for business - An important part of the business development and support ecosystem.

K. Ineligible business types

- Ineligible businesses include, but are not limited to:
 - A business that is engaged in illegal activities; speculation; multi-level pyramid sales; gambling; investment or lending; and non-profit business, **unless expressly included.**

- A business that is required to have, but failed to obtain, a permit or license according to state or local permitting statutes or ordinances
- A business that has been notified by the City of a breach of its contract with the City or has been terminated by the City from a City contract within the past 2 years
- A business that has been found guilty by a court, pled guilty or paid a fine for violating a COVID-19 related order, whether an order from the City, County, or Governor
- A business that has been closed or ordered to close by a government official due to a violation related to a COVID-19 order, including shuttering ordered by the Texas Alcoholic Beverage Commission, City, County or other state official
- Private clubs and businesses which require a person to be a member, pay a membership fee to enter or join, or limit the number of memberships for reasons other than capacity
- Businesses where persons under 18 are prohibited from entering during all hours of the business' operation
- Businesses that owe funds to the City by way of damage claims, settlement agreements, contracts, judgment, taxes, or other extraordinary circumstances

EXHIBIT D
DRUG POLICY COMPLIANCE AGREEMENT

I, Marlon D. Mitchell President/CEO, as an owner or officer of
(Name) (Print/Type) (Title)

(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 City of Houston; and that by making this Contract, I affirm that 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 City issues a Notice to Proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for 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 City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with 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 City and may result in non-award or termination of the contract by City of Houston.

07/27/2020
Date

Houston Business Development, Inc.
(Contractor Name)
Marlon D. Mitchell
(Signature)
President/CEO
(Title)

**EXHIBIT E
CONTRACTOR'S CERTIFICATION
OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT**

I, Marlon D. Mitchell, President/CEO, (Contractor)
(Name) (Title)


as an owner or officer of Houston Business Development, Inc. have authority to bind
(Name of Company)

Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in Section 5.18 of Executive Order No. 1-31, that will be involved

in performing The Small Business Economic Relief Program. Contractor
(Project)

agrees and covenants that it shall immediately notify City of Houston Director of Human Resources if any safety impact positions are established to provide services in performing this City Contract.

07/27/2020
(Date)

marlon D. Mitchell
(Typed or Printed Name)

(Signature)

President/CEO
(Title)

**EXHIBIT F
DRUG POLICY COMPLIANCE DECLARATION**

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

_____ have personal knowledge and full
(Contractor - Name of Company)
authority to make the following declarations:

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

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

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

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

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

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

	<i>RANDOM</i>	<i>REASONABLE SUSPICION</i>	<i>POST ACCIDENT</i>	<i>TOTAL</i>
Number Employees Tested				
Number Employees Positive				
Percent Employees Positive				

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

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

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

(Date)

(Typed or Printed Name)

(Signature)

(Title)



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 6/15/2020

HHD - CDC Foundation

Agenda Item#: 12.

Summary:

ORDINANCE approving and authorizing Subcontractor Grant Agreement between City and **NATIONAL FOUNDATION FOR THE CENTERS FOR DISEASE CONTROL AND PREVENTION, INC ("CDC FOUNDATION")** for COVID-19 Public Health Crisis Response Project; authorizing the Director of the Houston Health Department to accept all subsequent awards, if any, pertaining to this Grant project - \$500,000.00 - Grant Fund

Background:

The Director of the Houston Health Department (HHD) recommends City Council approval of an ordinance approving and authorizing a Subcontractor Grant Agreement between the City and the National Foundation for the Centers for Disease Control and Prevention, Inc. ("CDC Foundation") for COVID-19 Public Health Crisis Response Project. The budget and project period are from the date of Countersignature by the City Controller through October 31, 2020, unless extended by the CDC Foundation by written notice of the new termination date to the Houston Health Department Director prior to the Termination Date.

The grant award amount is \$500,000.00. Cash matching funds are not required.

HHD also requests City Council authorize the Mayor to execute all related contracts, agreements and documents with the approval of the City Attorney in connection with the grant award and to authorize the Director or his designee to act as the City's representative with the authority to apply for, accept and expend the grant funds if and as awarded, and to accept and expend all subsequent supplemental awards, if any, and to extend the term and/or budget and project period not to exceed five years, if extended by the CDC Foundation during the project period without requirement of cash matching funds.

The grant will enhance HHD's ability to respond and support local response to the Coronavirus (COVID-19) pandemic for various activities including the following:

Wastewater Sampling: Currently HHD and Houston Water collect wastewater samples from 33 of 39 wastewater treatment plants located across the city and monitors the samples for SARS-CoV-2. The data will be used to track infection dynamics in near-real-time with geographic resolution, inform of additional testing efforts, policy on scaling back social distancing, and early detection of a subsequent outbreak. Funds will be used to purchase six additional samplers to sample all 39 wastewater treatment plants and support 2 employee positions for a combined total

of 720 hours.

Communications: Crisis communications requires effectively updating the public, staff and other stakeholders with regularity and immediacy. It is imperative that HHD communicates on a variety of platforms, including social media, to record local efforts and share vital information such as changes in service delivery operations, testing sites, COVID 19 dashboards, etc. Funds will be used to purchase a web application and additional equipment.

Emergency Telehealth and Navigation: ETHAN uses advanced video and voice conferencing technologies to bring 911 patients closer to physicians at a moment's notice. ETHAN provides an alternative to the emergency rooms by using an emergency physician dashboard (Real-Time Audio/Video, Patient On-Scene Electronic Patient Care Reporting, Transportation Application, Clinic Appointment Program) to help assess and schedule the patient for primary care clinic, home care, primary care physician and / or transportation by a taxi cab, self-transport or no-transport. Funds will assist with the cost of 4 part time physicians, which will enable the program to expand.

At Home and Mobile Testing: HHD utilizes donated Imaware at home test kits for the most vulnerable in the city: the infirmed, disabled, elderly, others unable to access the drive through sites and local testing events. Imaware's home-based solution for individuals at higher risk for COVID-19 consists of risk assessment, recommended next steps, testing eligibility and a healthcare professional collecting an at home swab sample to be tested for SARS-CoV-2. Funds will finance approximately 1,050 tests for the vulnerable disabled, advanced pregnancy, and first responders' populations. Also, funds will enable an upgrade on existing HHD laboratory equipment to accommodate both the drive-through and mobile testing.

HHD will work with SPD to ensure all procurement rules are followed for the purchase of any goods or services under this grant.

Fiscal Note:

No Fiscal Note is required on grant items

Stephen L. Williams, M.Ed., M.P.A.
Director, Houston Health Department

Amount of Funding:

\$500,000.00
Other Government - Fund
Fund 5040

Contact Information:

Porfirio Villarreal
Telephone: 832-393-5041
Cell: 713-826-5695

ATTACHMENTS:

Description

Signed coversheet

Type

Signed Cover sheet

2020-653 Executed Ordinance

Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 6/15/2020

HHD - CDC Foundation

Agenda Item#: 12.

Summary:

ORDINANCE approving and authorizing a subcontractor grant agreement between the City and **NATIONAL FOUNDATION FOR THE CENTERS FOR DISEASE CONTROL and PREVENTION, INC. ("CDC FOUNDATION")** for COVID-19 Public Health Crisis Response Project; authorizing the Director of the Houston Health Department to accept all subsequent awards, if any, pertaining to this grant project; containing provisions relating to the subject; and declaring an emergency.

Background:

The Director of the Houston Health Department (HHD) recommends City Council approval of an ordinance approving and authorizing a Subcontractor Grant Agreement between the City and the National Foundation for the Centers for Disease Control and Prevention, Inc. ("CDC Foundation") for COVID-19 Public Health Crisis Response Project. The budget and project period are from the date of Countersignature by the City Controller through October 31, 2020, unless extended by the CDC Foundation by written notice of the new termination date to the Houston Health Department Director prior to the Termination Date.

The grant award amount is \$500,000.00. Cash matching funds are not required.

HHD also requests City Council authorize the Mayor to execute all related contracts, agreements and documents with the approval of the City Attorney in connection with the grant award and to authorize the Director or his designee to act as the City's representative with the authority to apply for, accept and expend the grant funds if and as awarded, and to accept and expend all subsequent supplemental awards, if any, and to extend the term and/or budget and project period not to exceed five years, if extended by the CDC Foundation during the project period without requirement of cash matching funds.

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HHD will work with SPD to ensure all procurement rules are followed for the purchase of any goods or services under this grant.

Fiscal Note:

No Fiscal Note is required on grant items

DocuSigned by:

Stephen Williams

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Stephen L. Williams, M.Ed., M.P.A.
Director, Houston Health Department

Amount of Funding:

\$500,000.00

Other Government - Fund

Fund 5040

Contact Information:

Porfirio Villarreal

Telephone: 832-393-5041

Cell: 713-826-5695

ATTACHMENTS:

Description

Cover Sheet - Signed

Ordinance

Contract

Type

Signed Cover sheet

Signed Cover sheet

Signed Cover sheet

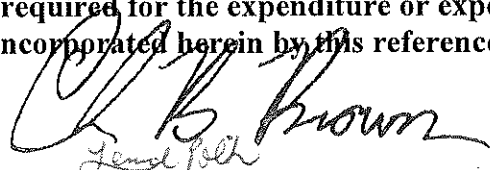
Controller's Office

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 herein by this reference.
- (✓) Other - Grant Funds Available

Date: 7-28, 2020



City Controller of the City of Houston, Texas

SC FUND REF: NA

AMOUNT: 0

ENCUMB. NO.: GIN382721

City of Houston, Texas Ordinance No. 2020-653

 AN ORDINANCE APPROVING AND AUTHORIZING A SUBCONTRACTOR GRANT AGREEMENT BETWEEN THE CITY AND NATIONAL FOUNDATION FOR THE CENTERS FOR DISEASE CONTROL AND PREVENTION, INC. ("CDC FOUNDATION") FOR COVID-19 PUBLIC HEALTH CRISIS RESPONSE PROJECT; AUTHORIZING THE DIRECTOR OF THE HOUSTON HEALTH DEPARTMENT TO

ACCEPT ALL SUBSEQUENT AWARDS, IF ANY, PERTAINING TO THIS GRANT PROJECT; 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. The City Council hereby approves and authorizes the contract, agreement, amendment 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 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 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements, amendment or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. 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 4. That the Director of the Houston Health Department is designated as the official authorized to accept and expend the funds, as awarded, for the purpose of this grant award and to apply for and accept all subsequent awards, if any, for subsequent renewal periods, not to exceed five years, pertaining to the COVID-19 Public Health Crisis Response Project. The Mayor is further authorized to execute all contracts, amendments and documents in connection with future grant funds for periods not to exceed five years without further City Council action, with the approval as to form of the City Attorney. The Mayor and the Director are authorized to execute all documents accepting current and future grant funds. 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 5. 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 29th day of July, 2020.

APPROVED this _____ day of _____, 2020.

Mayor of the City of Houston, Texas

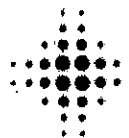
Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.

Pat J. Hanley
City Secretary

(Prepared by Legal Dept. *Lan P. Nguyen*)
(LPN:ln 7-7-2020) Sr. Assistant City Attorney
(Requested by Stephen L. Williams, Director, Houston Health Department)
L.D. File No. 038-20-00072-001)
G:\CONTRACT\LPN\Ordinances\CDC Foundation_Subcontractor Grant

AYE	NO	
<input checked="" type="checkbox"/>		MAYOR TURNER
....	....	COUNCIL MEMBERS
<input checked="" type="checkbox"/>		PECK
<input checked="" type="checkbox"/>		DAVIS
<input checked="" type="checkbox"/>		KAMIN
<input checked="" type="checkbox"/>		EVANS-SHABAZZ
<input checked="" type="checkbox"/>		MARTIN
<input checked="" type="checkbox"/>		THOMAS
<input checked="" type="checkbox"/>		TRAVIS
<input checked="" type="checkbox"/>		CISNEROS
<input checked="" type="checkbox"/>		GALLEGOS
<input checked="" type="checkbox"/>		POLLARD
<input checked="" type="checkbox"/>		MARTHA CASTEX-TATUM
<input checked="" type="checkbox"/>		KNOX
<input checked="" type="checkbox"/>		ROBINSON
<input checked="" type="checkbox"/>		KUBOSH
<input checked="" type="checkbox"/>		PLUMMER
<input checked="" type="checkbox"/>		ALCORN
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: AUG - 4 2020



CDC Foundation
Together our impact is greater

SUBCONTRACTOR AGREEMENT

<u>Subcontractor:</u>	Houston Health Department
<u>Project Number:</u>	1085.1
<u>Project Name:</u>	COVID-19 Response

This Agreement (the "Agreement") is entered into **on the date of countersignature by the City Controller herein** ("Effective Date") by and between the City of Houston, Texas, a home-rule city of the State of Texas, on behalf of the Houston Health Department and National Foundation for the Centers for Disease Control and Prevention, Inc. ("CDC Foundation").

WHEREAS, the CDC Foundation was established by P.L. 102 - 531, 42 U.S.C. § 280e-11, to carry out activities for the prevention and control of diseases, disorders, injuries, and disabilities, and for promotion of public health; and in carrying out these activities, the CDC Foundation engages the services of Houston Health Department to meet its obligations to the Centers for Disease Control and Prevention ("CDC") for the purpose of advancing scientific interests and capabilities in the field of public health and aiding or facilitating the work of CDC, as a CDC Foundation subcontractor; and

WHEREAS, the CDC Foundation desires to retain the services of Houston Health Department for this project; and

WHEREAS, Houston Health Department represents it possesses the requisite experience and expertise to provide CDC Foundation with the services it requires, as a subcontractor and on a non-exclusive basis;

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CDC Foundation and Houston Health Department hereby agree to the following terms, conditions, standards, and provisions of the contract as follows:

AGREEMENT:

ARTICLE 1 RELATIONSHIP

1.1 **Term.** Unless otherwise terminated as provided herein, this Agreement will commence on the Effective Date and end on **October 31, 2020** ("Termination Date"), unless extended by the CDC Foundation by written notice of the new termination date to the Houston Health Department Director prior to the Termination Date.

1.2 **Relationship.** It is expressly understood that Houston Health Department is not an employee or agent of the CDC Foundation or a federal employee, but is an independent contractor to the CDC Foundation. Houston Health Department may not exercise administrative or managerial control over any federal employee or employee of the CDC Foundation. Houston Health Department is not eligible to participate as the primary beneficiary in federal health insurance, life insurance, retirement, and sick and annual leave programs of the CDC Foundation.

1.3 **Taxes.** Houston Health Department understands and agrees that it will be treated as an independent contractor for federal and state tax filing purposes and will be issued a Form 1099.

Houston
[Signature]

Subcontractor Agreement
Houston Health Department

Health Department will be responsible for paying all income taxes, including estimated taxes, incurred as a result of the compensation paid to Houston Health Department under this Agreement.

1.4 **Regular Business Expenses.** Houston Health Department is responsible for all expenses incurred by it in connection with the performance of its duties and obligations under this Agreement, including but not limited to, all payroll expenses for its employees; insurance premiums, licenses, fees and permits; all costs and expenses associated with establishing and maintaining its place of business; and any and all taxes, duties, tariffs or charges which may be imposed on Houston Health Department by any governmental agency or entity. Due to the sensitive and highly technical nature of Houston Health Department's Services, where required by the Project, CDC Foundation may furnish facilities, materials, equipment, and other support required.

1.5 **Non-Exclusive Relationship.** Houston Health Department's relationship with CDC Foundation is non-exclusive and Houston Health Department may perform services for other entities, so long as such actions do not unduly interfere with Houston Health Department's ability to satisfy its obligations hereunder. CDC Foundation may also retain the services of other entities or individuals to provide the same or comparable services to those provided by Houston Health Department during the term of this Agreement.

1.6 **Foreign Nationals.** Houston Health Department represents and warrants that if this Agreement requires the Services be performed in the United States, then Houston Health Department and/or its staff will comply with all rules and requirements to perform the Services within the United States.

1.7 **Travel.** If Houston Health Department will be traveling on CDC Foundation sponsored travel, then Houston Health Department will be required to comply with the CDC Foundation Travel Policy. If Houston Health Department has a formal written travel policy, the CDC Foundation may, in its sole discretion, defer to Houston Health Department's policy.

ARTICLE 2

SERVICES & OBLIGATIONS

2.1 **Services.** Houston Health Department is responsible for performing the services listed in Attachment 1 (the "Services").

2.2 **Performance of Services.** Houston Health Department represents and warrants that all Services shall be performed: (a) in a diligent, efficient and trustworthy manner; (b) for the purpose of advancing and improving the purpose and mission of CDC and the CDC Foundation; (c) consistent with the highest professional standards in the field; and (d) that it possesses the necessary skills, qualifications, education, and/or licenses required to perform the Services in a competent manner. Houston Health Department represents and warrants that it will, in the performance of this Agreement, comply with all applicable federal, state, and local laws, rules, regulations, orders, and ordinances including those pertaining to 42 U.S.C. § 289 and 45 C.F.R. part 46. Except to the extent necessary to effectuate the underlying purposes of this Agreement, and in order to satisfy any applicable legal requirements, CDC Foundation shall have no control over Houston Health Department, nor the right to supervise or direct Houston Health Department's activities. Houston Health Department will determine the methods, details, and means of performing the Services.

2.3 **Records and Reporting.** Houston Health Department may be required to submit program reports and may be required to submit financial reports to the CDC Foundation to indicate progress toward accomplishment of program outputs and the use of funds advanced to it under the Award (the "Reports"). Financial reports shall include budgeted and actual costs by line item. Houston Health Department agrees to maintain books and records ("Records") in sufficient detail and will properly reflect all work done and results achieved in the performance of the Services. At any time before or after final payment under this Agreement, except where limited by law, the CDC Foundation may request, and Houston Health Department agrees to allow examination of the Records to the extent necessary to

Subcontractor Agreement
Houston Health Department

substantiate the performance of its obligations under this Agreement and applicable law. Any such examination will be conducted at reasonable times and upon reasonable notice. The Final Report shall be submitted by Houston Health Department as promptly as practicable following completion of the Work, but in no event later than two months from the date of completion of the Services.

2.4 **Communication.** Houston Health Department will maintain contact with CDC Foundation Program staff to provide an opportunity for Houston Health Department to update the CDC Foundation staff on the status of Houston Health Department's Services and to discuss any issues regarding this Agreement.

2.5 **Assignment.** The Services to be performed hereunder by Houston Health Department are of a personal nature. Accordingly, Houston Health Department may not assign or delegate any of his/her rights, obligations or duties under this Agreement without first obtaining CDC Foundation's written approval.

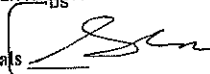
2.6 **Ethical and Procedural Standards.** Houston Health Department is subject to the same ethical and procedural standards regulating federal employment, scientific investigation, and research findings (including publications and patents) that are required of federal employees of CDC. Specifically, this includes standards under the Public Health Service Act, the Ethics in Government Act, and the Technology Transfer Act. Houston Health Department is also prohibited from taking official CDC or CDC Foundation action on a matter which it knows would affect a financial interest of its own, or that of their spouse, minor child, general partner, organization in which Houston Health Department serves as an officer, director, trustee, general partner or employee, or any person or organization with whom Houston Health Department is negotiating or has any arrangement concerning prospective employment. Houston Health Department is prohibited from using CDC or CDC Foundation E-mail, Fax, computers, or other CDC or CDC Foundation equipment or print material for Houston Health Department's personal gain, benefit or for matters that do not pertain to this Agreement.

2.7 **Confidentiality.** In the performance of Houston Health Department's obligations under this agreement, Houston Health Department may acquire both confidential and proprietary information belonging to CDC Foundation or the CDC. Houston Health Department agrees to strictly abide by the Confidentiality Agreement in Attachment 4.

2.8 **Indemnification.** To the extent permitted by law, Houston Health Department shall be responsible for its own negligence and that of its officers, employees, and agents.

2.9 **Work Product Ownership.** Houston Health Department retains title to all copyrights, patents, trade secrets, or other intellectual property rights. Houston Health Department retains the plans, data or other information developed by the Houston Health Department in connection with this Agreement (the "Data"). Houston Health Department hereby grants to the CDC Foundation a non-exclusive, irrevocable, perpetual, fully paid right and license to reproduce, publish, copy, or otherwise practice and use the Data. CDC Foundation shall not modify or create derivative works from the Data, or license others to use the Data, without first obtaining Subcontractor's advance written approval, which approval shall not be unreasonably withheld. In the event that Houston Health Department publicly disseminates the Data in any fashion, Houston Health Department agrees to accompany, or use their best efforts to cause to be accompanied, any release or publication of the Data with an acknowledgement of the help and support of the CDC Foundation and donor(s), by means of a tag line in substantially the following form: "The source of this information is the COVID-19 Response, a joint project of the CDC Foundation and Houston Health Department."

2.10 **Medical Treatment.** If the Project requires that the Services be performed in a country wherein the United States requires vaccinations, then Houston Health Department and/or its staff performing such Services will be required to obtain such vaccinations. Failure to obtain such vaccinations will be a material breach of this Agreement.



Subcontractor Agreement
Houston Health Department

2.11 **Stipulation Regarding Use of Human Subjects in Research.** If the Work will include, in whole or in part, research involving human subjects, then Houston Health Department shall conduct all such research regarding human subjects in accordance with 42 U.S.C. § 289 and 45 C.F.R. part 46, each as amended from time to time. In particular, Houston Health Department will ensure that the rights and welfare of human subjects are protected; that informed consent by all human subjects has been freely given; that the balance between risk and potential benefit involved has been assessed and deemed acceptable; and that Houston Health Department has made appropriate arrangements to eliminate or mitigate the consequences to subjects or their families in the case of death, injury, or illness resulting from the conduct or research relating to this Agreement. Furthermore, Houston Health Department will take reasonable precautions to protect the confidentiality of the information relating to the possible identification of human subjects. Houston Health Department will obtain and provide to the CDC Foundation prior to the commencement of research on human subjects a written certification of ethical review and approval for such human research from the Houston Health Department's Institutional Review Board ("IRB"), which shall conduct the review in accordance with 22 C.F.R. part 225, or from such other qualified ethical review board acceptable to the CDC Foundation.

ARTICLE 3
PAYMENTS

3.1 **Fees.** Houston Health Department will be paid a fee for the Services performed pursuant to this Agreement (the "Project Fee"). The Project Fee equals \$ 500,000.00 USD.

The Project Fee is payable in two installments pursuant to the deliverable schedule below, and as set forth in Attachment 1.

Milestone/Deliverable/Task	Due Date	Amount
Fully executed agreement and signed Confidentiality form	July 2020	\$350,000
Final narrative and financial report	October 31, 2020	\$150,000

3.2 **Budget.** The approved budget for this program (the "Approved Budget") is attached to this Agreement as Attachment 2 and incorporated herein by this reference. No deviation from the Approved Budget is authorized absent the express written approval of the CDC Foundation.

3.3 **Invoice.** Houston Health Department will provide an invoice to the CDC Foundation within 20 days after the deliverable is met. All invoices **must** include a purchase order number and be sent via email to: accountspayable@cdcfoundation.org. The CDC Foundation Program Officer, listed in 5.2 below, should also be copied on all emails regarding invoices. The CDC Foundation will thoroughly review all invoices and corresponding deliverables. Once an invoice is approved for payment, CDC Foundation will issue payment to Houston Health Department within 45 days of approval of the invoice. In case of a dispute between the CDC Foundation and Houston Health Department over amounts payable by the CDC Foundation to Houston Health Department and/or satisfactory progress towards accomplishing the goals of Houston Health Department, the CDC Foundation may withhold amounts equal to the disputed amount until the parties settle such dispute. Houston Health Department shall continue to perform all of his/her obligations under this Agreement notwithstanding such dispute.

3.4 **Final Invoice.** All invoices, including the final invoice, for all Services rendered must be submitted to CDC Foundation no later than three (3) months following the Termination of this Agreement. Failure to timely submit the Invoice, as required by this provision, will result in a full and complete release and waiver of any remaining Project Fees.

Subcontractor Agreement
Houston Health Department

3.5 **Modifications to Project Fee.** If the scope of the Project increases beyond that contemplated in Attachment 1, then the Project Fee will be increased as is reasonably agreed between the parties in writing.

3.6 **Audits.** All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of an adverse audit finding against Houston Health Department.

ARTICLE 4
TERMINATION

4.1 **Right to Termination.** CDC Foundation may terminate this Agreement without cause or further liability upon thirty (30) days' written notice to the other Party and either Party may terminate this Agreement immediately in the event of a material default hereunder by the other Party, if such default is not cured within 15 days after written notice to the other party.

4.2 **Payment Upon Termination.** The CDC Foundation's sole and exclusive obligation to the Houston Health Department upon termination under this section shall be the payment of unpaid charges due and payable for Services properly performed up to the effective date of termination. In no event will the CDC Foundation be liable to Houston Health Department for any anticipated fees or profits on account of a termination under this section.

ARTICLE 5
MISCELLANEOUS PROVISIONS

5.1 **Limitation of Liability.** In no event shall CDC Foundation be liable to Houston Health Department for consequential, indirect, special, incidental or similar damages, including without limitation anticipated fees, revenues, or lost profits.

5.2 **Notices.** Any notice required to be given by any party to this Agreement shall be in writing and hand delivered or sent by certified mail, return receipt requested, email, or by confirmed facsimile transmission to the address indicated below or such other address as either party may specify to the other.

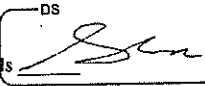
CDC Foundation:

Turquoise Sidibe
Emergency Response Director
CDC Foundation
600 Peachtree St, NE, Suite 1000
Atlanta, Georgia 30308
Tel: 404.653.0790
Fax: 404.653.0330
Email: tsidibe@cdcfoundation.org

Houston Health Department:

Stephen L. Williams, Med, MPA
Director
8000 N. Stadium Drive
Houston, Texas 77054
Tel: 832-393-5169
Fax: 832-393-5259
Email:
Stephen.williams@houstontx.gov

5.3 **Governing Law and Jurisdiction.** This Agreement will be interpreted, applied and enforced pursuant to the laws of the State of Texas, including Texas' statutes of limitation and without regard to its conflict of law principles. Any action to enforce or interpret this Agreement, or arising therefrom, must be brought exclusively in the courts located in Harris County, Texas and the parties hereby consent to the exclusive jurisdiction of these courts in any such litigation and waive any claim of forum non conveniens with respect thereto.

DS


Subcontractor Agreement
Houston Health Department

5.4 **Attorneys' Fees.** If either Party shall bring any action against another arising out of this Agreement CDC Foundation and Houston Health Department agree that each party will be responsible for its own attorneys' fees and costs.

5.5 **Entire Agreement of the Parties.** This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements or understandings between the Parties pertaining to the subject matter hereof. All changes, modifications or amendments to this Agreement shall, in order to be valid and enforceable, be by written instrument executed by both Parties.

5.6 **Severability.** If any provision or portion of this Agreement becomes, or is found by any governmental agency or court to be, illegal, unenforceable, invalid, null or void or against public policy, that provision or portion shall be severed from this Agreement and the Agreement shall, to the maximum extent legally permissible be construed such that the legality, validity or enforceability of all other provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect.

5.7 **Interpretation.** This Agreement shall be construed and interpreted as if drafted jointly by all Parties. In the event of an ambiguity in or dispute regarding the interpretation of this Agreement, the ambiguity or dispute shall not be resolved by any rule of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the draftsman. In the event of a conflict between this Agreement and any Exhibit hereto, the former will prevail.

5.8 **Section Headings: Gender.** Section headings used herein are for convenience only and shall not affect the construction of any provisions of this Agreement. All pronouns and common nouns shall be deemed to refer to the masculine, feminine, neutral, singular, and plural, as the context may require.

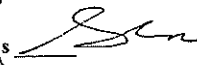
5.9 **Survival.** The terms of this Agreement, which by their nature, are reasonably intended by the parties to survive Termination shall so survive.

5.10 **Waiver.** No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

5.11 **Anti-Terrorism Statement.** Houston Health Department hereby certifies that it does not advocate, support, assist or engage in, and has not advocated, supported, assisted or engaged in, any illegal or terrorist activity. Houston Health Department further certifies that it does not employ, support, assist or otherwise associate with any entities, organizations or individuals that Houston Health Department knows, or has reason to know, support terrorism, or that appear on any official terrorist lists published by the Department of the Treasury Office of Foreign Assets Control Specially Designated Nationals List (OFAC SDN).

5.12 **Anti-Discrimination Statement.** CDC Foundation will not do business with any person or entity who discriminates against members of a protected class. Houston Health Department certifies that it does not discriminate against members of a protected class.

5.13 **Lobbying.** Houston Health Department will not use funds provided under the Agreement to influence the outcome of any election for public office or to carry on any voter registration drive. No funds are earmarked to support lobbying activity or to otherwise support attempts to influence local, state, federal or foreign legislation. Houston Health Department will comply with all lobbying, gifts, and ethics rules applicable to the Project.

DS


Subcontractor Agreement
Houston Health Department

IN WITNESS WHEREOF, the parties have executed this Agreement.

Houston Health Department

DocuSigned by:

Stephen Williams

Stephen L. Williams, MEd, MPA
Director

7/8/2020

Date

CDC Foundation
National Foundation for the Centers for Disease
Control and Prevention, Inc.

DocuSigned by:

Judy Monroe

Judith A. Monroe, MD
President and CEO

7/7/2020 | 1:00:17 PM EDT

Date

Attachments

Attachment 1: Scope of Services
Attachment 2: Budget
Attachment 3: Invoice
Attachment 4: Confidentiality

DS
[Signature]

Subcontractor Agreement
Houston Health Department

CITY OF HOUSTON, TEXAS

Signed by:

Mayor

ATTEST/SEAL:

City Secretary

COUNTERSIGNED BY:

City Controller

DATE COUNTERSIGNED:

APPROVED AS TO FORM:

DocuSigned by:

Lan Nguyen

Sr. Assistant City Attorney
0382000072001

L.D. File No. 038-2000-72-001

LPN\20575

DS
LSN



SUBCONTRACTOR SERVICES

Attachment 1

Program Description:

Wastewater Sampling: The Houston Health Department and Houston Water is collecting wastewater samples from approximately 33 of their 39 wastewater treatment plants located across the city and monitoring the samples for SARS-CoV-2. The data will be used to track infection dynamics in near-real-time with geographic resolution. This information will be used by the Health Department to inform additional testing efforts and policy on scaling back social distancing, as well as potentially enable early detection of a subsequent outbreak. The Health Department can currently only sample 33 wastewater treatment plants because samplers are not available for the other six locations. We request funds to purchase six additional samplers so that all wastewater treatment plants can be sampled. The samplers we are requesting are portable and can also be used to sample at lift stations which feed into the treatment plants to provide even higher resolution.

Communications: Crisis communications requires the need to effectively update the public, staff and other stakeholders with regularity and immediacy. To present information effectively, HHD requires equipment to fulfill our internal and external communications needs. When an emergency occurs, the need to communicate is immediate. If business operations are disrupted, the public needs to be informed and will want to know how they will be impacted. Employees and their families will be concerned and want information. It is imperative that HHD communicates on a variety of platforms, including social media, to record our local efforts and share vital information such as changes in service delivery operations, testing sites, COVID 19 dashboards, etc. To do so effectively, we need additional equipment.

Emergency Telehealth and Navigation: In 2014 the Houston Fire Department Emergency Medical System (EMS) launched ETHAN which uses advanced video and voice conferencing technologies to bring 911 patients closer to physicians at a moment's notice. Traditionally, 911 EMS patient treatment and transport decisions are established by medic assessment, system protocols and off-line medical direction. American College of Emergency Physicians and National Association of EMS Physicians believe EMS systems may encounter patients who do not need advanced life support level care or evaluation; in these circumstances transportation by alternate means or to an alternate destination may be appropriate. ETHAN provides an alternative to the ED by utilizing an emergency physician dashboard (Real-Time Audio / Video, Patient On-Scene EPCR, Yellow Cab Transportation Application, Clinic Appointment Program) to help assess and schedule the patient for primary care clinic, home care, primary care physician and / or transportation by a taxi cab, self-transport or no-transport. This parallels the just released Centers for Medicare and Medicaid Services model called Emergency Triage, Treat and Transport (ET3), which "allows beneficiaries to access the most appropriate emergency services at the right time and place". The ETHAN project has shown success is reducing EMS transports to hospitals and improving EMS on scene efficiency. The ETHAN Project has garnered local and national recognition as one of the most innovative solutions in EMS since the introduction of the paramedic. We are seeking \$208,541 to cover the cost of physician services, a portion of the total annual operational budget of \$1.9 million.

At Home and Mobile Testing: *Imaware* offers home-based solution for Individuals estimated to be at higher risk for COVID-19. This includes a healthcare professional coming to your home and collecting a swab sample that will be tested for qualitative detection of RNA from SARS-CoV-2. This company

Subcontractor Agreement
Houston Health Department

provides risk assessment, recommended next steps and testing eligibility. If a client is deemed appropriate *Imaware* is sent to the person's home to begin the process.

To date, HHD has utilized the *Imaware* donation for the most vulnerable in our city: the infirmed, disabled, elderly, and those unable to access the drive through sites and local testing events. These individuals have almost no other options to access testing and needed services. This service, offered in the home, also decreases risk to high-risk individuals as it reduces risks allowing screening with going to the hospital, thus limiting opportunity to spread or receive COVID 19. We are requesting support for 1,050 tests at \$115/test to be used with vulnerable populations elderly, disabled, advanced pregnancy, and first responders for a total cost of \$120,750.

To increase capacity of our laboratory to better accommodate both the drive-through testing and mobile testing we require an upgrade on existing equipment to meet the needed capacity. Our current capacity is limited by the equipment. The Panther Plus Option 3 provides a Continuous fluids/waste module upgrade to the lower bay of the Panther instruments, allowing access to replace a set of universal fluids when depleted and dispose solid and liquid waste containers during processing, increasing flexibility and throughput and the MTU expansion module, allowing up to 125 MTUs (600 tests) to be loaded at one time to increase capacity and walkaway time.

A handwritten signature in black ink, appearing to be 'JL' or similar, written over a horizontal line.



SUBCONTRACTOR BUDGET

Attachment 2

Subcontractor Name: Houston Health Department

Overview:

Wastewater Sampling - \$68,113.50

Communications- \$2,595.50

Emergency Telehealth and Navigation (ETHAN)- \$208,541.00

At Home and Mobile Testing- \$220,750

Total: \$500,000.00

Wastewater Sampling

Item (Unit)	# of Units	Unit Cost	Amount
Avalanche Sampler	6	\$7,736.00	\$ 46,416.00
Avalanche Battery	6	\$311.25	\$ 1,867.50
Shipping		\$2,070.00	
POSITION			
Environmental Investigator I	300 hours		\$6,000.00
(Chemist III)	420 hours		\$11,760.00
Total		\$68,113.50	

Communications

Item (Unit)	# of Units	Unit Cost	Amount
Tripod Stabilizer	1	\$ 280.00	\$ 280.00
Tripod	1	\$ 35.00	\$ 35.00
LED Lighting	1	\$ 200.00	\$ 200.00
Web Application	1	\$ 180.00	\$ 180.00
Microphone	1	\$ 200.00	\$ 200.00
Camera	1	\$ 1,700.50	\$ 1,700.50
Total		\$ 2,595.50	

Emergency Telehealth and Navigation (ETHAN)

Staffing	Unit Cost	Amount
Physicians 4 PTE	\$160/hour	\$208,541.00
Total	\$208,541.00	

At Home and Mobile Testing

Item (Unit)	# of Units	Unit Cost	Amount
Panther Plus Option 3	2	\$50,000	\$100,000.00
Imaware home testing	1050	\$115/test	\$120,750.00
Total		\$220,750.00	



SUBCONTRACTOR INVOICE

Attachment 3

<u>Subcontractor:</u>	Houston Health Department
<u>Project Number:</u>	1085
<u>Project Name:</u>	COVID-19 Response
<u>Purchase Order #:</u>	

This invoice requests the payment of **\$XXXX** from the CDC Foundation for the following Services:

(Basis for payment)

I certify that I have met the terms and conditions set forth in the Independent Contractor Agreement during the period covered by this invoice.

Subcontractor's Signature

Date

ALL INVOICES MUST BE EMAILED TO: accountspayable@cdcfoundation.org
Please cc- your Program Officer: tsidibe@cdcfoundation.org and radeboyejo@cdcfoundation.org

Please notify the CDC Foundation immediately if you have a change of address, email or phone number.



SUBCONTRACTOR CONFIDENTIALITY

Attachment 4

To comply with the applicable provisions of federal law and The Centers for Disease Control and Prevention (CDC) confidentiality policies allowing access to CDC records for the purpose of conducting epidemiologic studies or other public health activities, the National Foundation for the Centers for Disease Control and Prevention (CDC Foundation) Subcontractors assigned to CDC shall comply with the following provisions:

I, the City of Houston, Texas, by and through its Houston Health Department, a CDC Foundation Subcontractor, agree:

1. **Confidential Information.** That while providing Services under the Agreement, I will have access to certain Confidential Information in order to carry out my contractor obligations, including information that may identify individuals and/or companies or establishments. In addition to personally identifiable information regarding individuals and/or companies or establishments, "Confidential Information" also means all non-public information of a competitively sensitive nature concerning CDC and CDC Foundation, including any non-public information (whether in writing, or retained as mental impressions) concerning the Agreement; research and development; operational costs and processes; pricing, cost or profit factors; quality programs; annual and long-range business plans; marketing plans and methods; customers or suppliers; donors; contracts and bids; and personnel. "Confidential Information" may also constitute a trade secret under applicable law. I acknowledge that Confidential Information may be contained in various media, including, without limitation, computer programs, flow charts, manuals, plans, drawings, designs, technical specifications, notebooks, donor and prospective donor lists, internal financial data and other documents, surveillance, data and publications under development, and records of the CDC or the CDC Foundation. I recognize that Confidential Information includes ways of doing business which may be generally known but whose use by the CDC Foundation is not generally known. Confidential Information includes information generated by CDC and/or the CDC Foundation, or information provided to CDC and/or the CDC Foundation by other entities or individuals.
 - 1.1 **Exclusions.** Information of CDC or of the CDC Foundation is not Confidential Information if (i) it is already or becomes, known to the public other than as a result of any act or omission of Subcontractor; (ii) it is lawfully received from a third party having the right to disseminate the information without restriction on disclosure; or (iii) It is voluntarily furnished to others by CDC or the CDC Foundation without restriction on disclosure.
2. **Non-Disclosure.** Except as required under the Texas Public Information Act, during the Term of the Agreement and thereafter, I will not disclose, reveal, or transfer (directly or indirectly) any Confidential Information to any person or entity who is not specifically authorized by CDC or the CDC Foundation to receive it (hereinafter "Disclose"), and I will not use the Confidential Information for any purpose other than that for which it was provided to Subcontractor, without the express written consent of the CDC Foundation, and that I will only use the Confidential Information for the fulfillment of my obligations under the Agreement (hereinafter "Use"). I will use my best efforts to safeguard the Confidential Information and protect it against disclosure, misuse, espionage, loss and theft. I acknowledge that all Confidential Information, whether or not in writing and whether or not labeled or identified as confidential or proprietary, is and shall remain the exclusive property of CDC

or the CDC Foundation or the third party providing such information to Subcontractor or CDC or the CDC Foundation.

- 2.1 **Unauthorized Disclosures.** Notwithstanding anything to the contrary, to the extent Subcontractor has access to trade secrets or confidential business information, he/she will abide by Health and Human Services (HHS) regulations and the applicable provisions of the Freedom of Information Act regarding subsequent disclosure of such information. Any unauthorized disclosure of this information, in any form, including in published or unpublished reports, may subject Subcontractor to criminal prosecution under the Federal Trade Secrets Act, 10 U.S.C. § 1905.
- 2.2 **Required Disclosures.** If Subcontractor is legally required to disclose Confidential Information by law or pursuant to the order of a court or a governmental agency, Subcontractor shall, unless legally prohibited, immediately notify the CDC and the CDC Foundation of such disclosure. Such required disclosures shall not constitute a breach of this Agreement.
3. **Personally Identifiable Information.** I agree not to publish any personally identifiable information obtained from CDC and/or the CDC Foundation, in any publicly available document, including, but not limited to, reports or manuscripts. Moreover, I will notify CDC and the CDC Foundation of any efforts to use or obtain personally identifiable information for purposes other than research or for other public health activities.
4. **Standard of Care.** Subcontractor will: (i) to protect any and all Confidential Information from unauthorized use or disclosure with at least the same degree of care such he/she uses to protect its own confidential information of a similar nature; (ii) to not copy or reproduce any Confidential Information in any form, except to the extent contemplated by this Agreement; (iii) not to disclose to or otherwise permit any third person or entity access to any Confidential Information except with prior written consent of CDC or the CDC Foundation; (iv) to adhere to the administrative, technical, and physical safeguards that are in place to prevent unauthorized use or disclosure of the records; and (v) to take any and all steps necessary to safeguard Confidential Information against unauthorized access or disclosure. Subcontractor agrees, to assist CDC and the CDC Foundation in identifying any access, disclosure, or use of Confidential Information in a manner inconsistent with the provisions of this Agreement, by informing CDC Foundation of all individuals or entities to whom Confidential Information has been disclosed or been afforded access to. Additionally, Subcontractor has reviewed the publication titled, "CDC Confidentiality."
5. **Ownership.** That any information provided to or generated by Subcontractor under the Agreement is the property of the federal government and will remain with CDC upon the expiration of the Agreement.
6. **Publications.** Any publication or report I prepare as part of the Services performed under this Agreement must be reviewed and approved by the CDC Foundation before I am able to publish the report or publication.
7. **Termination.** Upon termination of the Agreement, Subcontractor agrees to voluntarily surrender all Confidential Information of CDC or the CDC Foundation in Subcontractor's possession, custody, or control including, without limitation, any originally, drafts, copies, or other non-originals.


Signature of Subcontractor


Date



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 7/9/2020

HITS-Citywide PC Replacement Appropriation

Agenda Item#: 13.

Summary:

ORDINANCE appropriating \$1,000,000.00 out of Equipment Acquisition Consolidated Fund for Citywide PC Replacement Project for Houston Information Technology Services

Background:

Specific Explanation:

The Chief Information officer recommends that City Council approve an ordinance to appropriate \$1,000,000.00 from the Equipment Acquisition Consolidated Fund (1800) for the planned purchase of computer hardware, peripherals and software services for various departments. The following project is budgeted in the approved FY2021 Capital Improvement Plan adopted by City Council.

The project description with allocation is as follows:

<u>PROJECT</u>	<u>PROEJCT NO.</u>	<u>AMOUNT</u>
Citywide PC Replacement	WBS# x-680030*	\$1,000,000.00

Purchase of computer hardware, peripherals, and software services to replace PC's that have exceeded the City's 5-year asset replacement cycle. In order to meet operational needs and security requirements for the City, this purchase is required to replace equipment that has reached "end of life". Houston Information technology Services (HITS) will follow all procurement policies and procedures and will come back to Council for approval as needed.

Fiscal Note:

Funding for this item is included in the FY2021 Capital Improvement Plan and was presented to TTI on April 2, 2020 as a part of the Computer Equipment Services presentation.

No significant Fiscal Operating impact is anticipated as a result of this project.

Lisa Kent, Chief Information Officer

Amount of Funding:

\$1,000,000.00

FY2021 Equipment Acquisition Consolidated Fund

Fund 1800

Contact Information:

Linda Shelton

Phone: 832-393-0082

ATTACHMENTS:

Description

Signed coversheet

2020-654 Executed Ordinance

Type

Signed Cover sheet

Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 7/9/2020

HITS-Citywide PC Replacement Appropriation

Agenda Item#: 42.

Summary:

NOT A REAL CAPTION

ORDINANCE to appropriate \$1,000,000.00 from the Equipment Acquisition Consolidated Fund (1800) for the planned purchase of computer hardware, peripherals and software services for various departments

Background:

Specific Explanation:

The Chief Information officer recommends that City Council approve an ordinance to appropriate \$1,000,000.00 from the Equipment Acquisition Consolidated Fund (1800) for the planned purchase of computer hardware, peripherals and software services for various departments. The following project is budgeted in the approved FY2021 Capital Improvement Plan adopted by City Council.

The project description with allocation is as follows:

<u>PROJECT</u>	<u>PROEJCT NO.</u>	<u>AMOUNT</u>
Citywide PC Replacement	WBS# x-680030*	\$1,000,000.00

Purchase of computer hardware, peripherals, and software services to replace PC's that have exceeded the City's 5-year asset replacement cycle. In order to meet operational needs and security requirements for the City, this purchase is required to replace equipment that has reached "end of life". Houston Information technology Services (HITS) will follow all procurement policies and procedures and will come back to Council for approval as needed.

Fiscal Note:

Funding for this item is included in the FY2021 Capital Improvement Plan and was presented to TTI on April 2, 2020 as a part of the Computer Equipment Services presentation.

No significant Fiscal Operating impact is anticipated as a result of this project.

DocuSigned by:

Lisa Kent

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Lisa Kent, Chief Information Officer

Amount of Funding:

\$1,000,000.00

FY2021 Equipment Acquisition Consolidated Fund

Fund 1800

Contact Information:

Linda Shelton

Phone: 832-393-0082

ATTACHMENTS:

Description

CIP Form A

FMBB Doc

Fiscal Note

Type

Backup Material

Financial Information

Financial Information

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 herein by this reference.
- () Other - Grant Funds Available

[Signature]
General Polk

Date: 7-28, 2020

City Controller of the City of Houston, Texas

ms
de
FUND REF: 800-4800-520900 AMOUNT: 1,000,000.00 ENCUMB. NO.: 4-6670 *FMBB*

City of Houston, Texas Ordinance No. 2020-654

A
AN ORDINANCE APPROPRIATING THE SUM OF \$1,000,000.00 OUT OF THE EQUIPMENT ACQUISITION CONSOLIDATED FUND FOR THE CITYWIDE PC REPLACEMENT PROJECT FOR HOUSTON INFORMATION TECHNOLOGY SERVICES; 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. The City Council appropriates the sum or sums of money set out in the title of this Ordinance, out of the funds set out in such title for the purposes set out in such title.

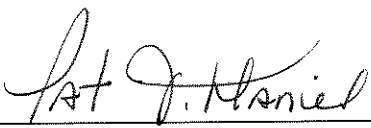
Section 2. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; 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 29th day of July, 2020.

APPROVED this _____ day of _____, 20____.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.


City Secretary

(Prepared by Legal Dept. )

(JW/arm 07/13/2020)

Assistant City Attorney II

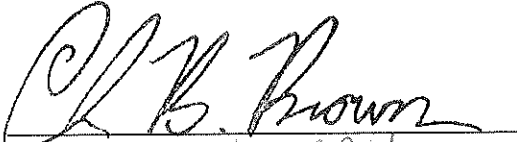
(Requested by Lisa Kent, Chief Information Officer, HITS

(L.D. File No. 0452000039001)

CERTIFICATE OF CITY CONTROLLER

I, Chris Brown, City Controller of the City of Houston, Texas, pursuant to Article II, Section 19a of the Charter of the City of Houston, with respect to the sum of **\$1,000,000.00** required for the appropriation referenced in the title of this ordinance, do hereby certify as follows:

To the extent that the **\$1,000,000.00** will be paid by commercial paper proceeds, funds will be received into the treasury and available before the maturity of said obligation, and such anticipated funds have not already been appropriated for any other purpose. Such sum will be received as a cash draw(s) to the City of Houston pursuant to the General Obligation Commercial Paper Program, Series E, Ordinance No. 2002-1122.


City Controller *Jennell Pold*

Equip1800

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	



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

Item Creation Date:

HPD - CBCR-Westside Community Initiative

Agenda Item#: 14.

Summary:

ORDINANCE approving and authorizing submission of an application for and acceptance of the **U.S. DEPARTMENT OF JUSTICE BJA FY2020 INNOVATIONS IN COMMUNITY-BASED CRIME REDUCTION PROGRAM FOR WESTSIDE COMMUNITY GRANT** ("Grant"); declaring the City's eligibility for such Grant; authorizing the Police Chief of the City of Houston Police Department to act as the City's representative in the application process, to apply for, accept, and expend the Grant Funds if awarded, and to apply for, accept, and expend all subsequent awards, if any, pertaining to the Grant and to extend the budget period

Background:

The Chief of Police for the Houston Police Department (HPD) recommends that City Council approve an ordinance authorizing the electronic application for and acceptance of grant funds through the U.S. Department of Justice (DOJ) for the CBCR - Westside Community Initiative. If awarded, the grant period becomes effective October 1, 2020, and ends on September 30, 2023, for a total of 36 months. DOJ will provide \$1,000,000.00 in grant funding and does not require a cash match or in-kind contribution.

The purpose of the CBCR - Westside Community Initiative is to combat violent crime, narcotics, human trafficking, and quality of life/nuisance violations. HPD will institute a law enforcement campaign utilizing new technology and proven place-based, data-driven techniques to lower crime rates. HPD will partner with area business management districts to garner public trust, educate the community, coordinate outreach groups, and encourage new retail developments with the objective of encouraging job growth in the area and improve the quality of life.

The Houston Police Department also requests City Council to authorize the Chief of Police or his designee to act as the City's representative in the application process with the authority to apply for, accept and expend the grant funds as awarded, and apply for, accept and expend all subsequent awards, if any, to extend the budget period, and to authorize the Mayor to execute all related agreements with the approval of the City Attorney in connection with the grant not to exceed five years.

Fiscal Note:

No Fiscal Note is required on grant items.

Art Acevedo
Chief of Police

Amount of Funding:

\$1,000,000.00

Federal Government - Grant Funded

Fund 5000

Contact Information:

Rhonda Smith, Deputy Director/CFO (713)308-1708

Sonja Odat, Council Liaison (713)308-1728

ATTACHMENTS:

Description

Signed RCA

2020-655 Executed Ordinance

Type

Signed Cover sheet

Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/21/2020

Item Creation Date:

HPD - CBCR-Westside Community Initiative

Agenda Item#: 34.

Background:

The Chief of Police for the Houston Police Department (HPD) recommends that City Council approve an ordinance authorizing the electronic application for and acceptance of grant funds through the U.S. Department of Justice (DOJ) for the CBCR - Westside Community Initiative. If awarded, the grant period becomes effective October 1, 2020, and ends on September 30, 2023, for a total of 36 months. DOJ will provide \$1,000,000.00 in grant funding and does not require a cash match or in-kind contribution.

The purpose of the CBCR - Westside Community Initiative is to combat violent crime, narcotics, human trafficking, and quality of life/nuisance violations. HPD will institute a law enforcement campaign utilizing new technology and proven placed-based, data-driven techniques to lower crime rates. HPD will partner with area business management districts to garner public trust, educate the community, coordinate outreach groups, and encourage new retail developments with the objective of encouraging job growth in the area and improve the quality of life.

The Houston Police Department also requests City Council to authorize the Chief of Police or his designee to act as the City's representative in the application process with the authority to apply for, accept and expend the grant funds as awarded, and apply for, accept and expend all subsequent awards, if any, to extend the budget period, and to authorize the Mayor to execute all related agreements with the approval of the City Attorney in connection with the grant not to exceed five years.

Fiscal Note:

No Fiscal Note is required on grant items.

DS

KS

DocuSigned by:

A handwritten signature in black ink, appearing to read "Art Acevedo", is written over a horizontal line.

6AAA6065E4424AD

Art Acevedo

Chief of Police

Amount of Funding:

\$1,000,000.00 Federal Fund (5000)

Contact Information:

Rhonda Smith, Deputy Director/CFO (713)308-1708

Sonja Odat, Council Liaison (713)308-1728

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 herein by this reference.
- (☒) Other - Grant Funds Available

[Signature]
James B. Brown
General Field

Date: 7-28, 2020

City Controller of the City of Houston, Texas

me
SC FUND REF: N/A

AMOUNT: 0

ENCUMB. NO.: 61N50101-20

CITY OF HOUSTON, TEXAS ORDINANCE NO. 2020-655

[Signature]
AN ORDINANCE APPROVING AND AUTHORIZING THE SUBMISSION OF AN APPLICATION FOR AND ACCEPTANCE OF THE U.S. DEPARTMENT OF JUSTICE COMMUNITY-BASED CRIME REDUCTION - WESTSIDE COMMUNITY INITIATIVE GRANT ("GRANT"); DECLARING THE CITY'S ELIGIBILITY FOR SUCH GRANT; AUTHORIZING THE POLICE CHIEF OF THE CITY OF HOUSTON POLICE DEPARTMENT TO ACT AS THE CITY'S REPRESENTATIVE IN THE APPLICATION PROCESS, TO APPLY FOR, ACCEPT, AND EXPEND THE GRANT FUNDS IF AWARDED, AND TO APPLY FOR, ACCEPT, AND EXPEND ALL SUBSEQUENT AWARDS, IF ANY, PERTAINING TO THE GRANT AND TO EXTEND THE BUDGET PERIOD; CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

* * * *

* * * *

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

Section 1. 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, if any, and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is authorized to attest to all signatures and to affix the seal of the City to all documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said undertaking without further authorization from Council.

Section 4. That the Chief of the Houston Police Department ("Director") is authorized and directed to represent and act for and on behalf of the City in dealing with the U.S. Department of Justice for the purpose of this grant assistance program. The Director is officially designated as the City's representative in this program and is authorized to execute all documents on behalf of the City of Houston. The Mayor and the Director are authorized to execute all documents accepting current and future grant funds. The Mayor is authorized, without further City Council action, to execute all future related contracts, agreements, amendments and documents, in connection with the above-mentioned grant program, with the approval of the City Attorney. The City Secretary is authorized to attest to all signatures and to affix the seal of the City to all documents.

Section 5. The officials designated are specifically authorized to make application for grants in future years under this program, for the life of the program; not to exceed five years, unless City Council fails to approve, by budget or otherwise, any matching funds required.

Section 6. **IN THE EVENT OF LOSS OR MISUSE OF THE U.S. DEPARTMENT OF JUSTICE BJA FY2020 INNOVATIONS IN COMMUNITY-BASED CRIME REDUCTION PROGRAM FOR WESTSIDE COMMUNITY GRANT FUNDS, THE CITY COUNCIL ASSURES THAT THE FUNDS WILL BE RETURNED TO THE U.S. DEPARTMENT OF JUSTICE IN FULL.**

Section 7. 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 29th day of July, 2020.

APPROVED this _____ day of _____, 20____.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.

Art Acevedo
City Secretary

FUNDING SOURCE:

\$ 1,000,000.00 – Federal Government – Grant Funded (5000)

(Prepared by Legal Dept. J. Washburn
(JN/yjs 07/09/20) Senior Assistant City Attorney
(Requested by Art Acevedo, Police Chief, Houston Police
(L.D. File No. 0622060237001)

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	

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: AUG - 4 2020



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

Item Creation Date:

HPD - Human Trafficking Grant Agreement with Deliverfund

Agenda Item#: 15.

Summary:

ORDINANCE approving and authorizing execution of a Subaward Agreement between City of Houston and **DELIVERFUND** related to the Human Trafficking Rescue Alliance Task Force

Background:

The Chief of Police for the Houston Police Department (HPD) recommends that City Council approve a Subaward Agreement between the City of Houston and DeliverFund. DeliverFund is a nonprofit, private intelligence organization focused on providing verifiable intelligence to law enforcement on human trafficking. The City of Houston, through HPD, received a grant award from the Department of Justice to fund the regional Human Trafficking Rescue Alliance (HTRA) Task Force. This Subaward Agreement will allow DeliverFund to provide services to the Human Trafficking Rescue Alliance Task Force and receive reimbursement from the City of Houston via the grant award.

DeliverFund will assign a full-time analyst to the HTRA Task Force, who will provide services by supporting human trafficking disruption operations and training of HTRA personnel. Grant funding will be used to assist in paying for this full-time position (\$25,000/year) for three years. The analyst's duties include:

- Support (both reactive and proactive) human trafficking investigations for members of the HTRA task force
- Attend monthly and quarterly task force meetings, as required
- Provide any analytic trainings or highlight techniques that may assist in the identification of human trafficking victims or suspects
- Facilitate specialized Counter Human Trafficking Intelligence training for task force members

Fiscal Note:

No Fiscal Note is required on grant items.

Year 1	Out-Years
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\$25,000.00	\$50,000.00
-------------	-------------

Art Acevedo
Chief of Police

Prior Council Action:

(O) 2019-703; 09/18/2019

Amount of Funding:

\$75,000.00

Federal Government - Grant Fund

Fund 5000

Contact Information:

Rhonda Smith, CFO and Deputy Director (713) 308-1708

Sonja D. Odat, Council Liaison (713) 308-1728

ATTACHMENTS:

Description

Signed RCA

2020-656 Executed Ordinance

Type

Signed Cover sheet

Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/21/2020

Item Creation Date:

HPD - Human Trafficking Grant Agreement with Deliverfund

Agenda Item#: 37.

Background:

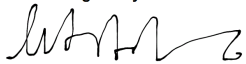
The Chief of Police for the Houston Police Department (HPD) recommends that City Council approve a Subaward Agreement between the City of Houston and DeliverFund. DeliverFund is a nonprofit, private intelligence organization focused on providing verifiable intelligence to law enforcement on human trafficking. The City of Houston, through HPD, received a grant award from the Department of Justice to fund the regional Human Trafficking Rescue Alliance (HTRA) Task Force. This Subaward Agreement will allow DeliverFund to provide services to the Human Trafficking Rescue Alliance Task Force and receive reimbursement from the City of Houston via the grant award.

DeliverFund will assign a full-time analyst to the HTRA Task Force, who will provide services by supporting human trafficking disruption operations and training of HTRA personnel. Grant funding will be used to assist in paying for this full-time position (\$25,000/year) for three years. The analyst's duties include:

- Support (both reactive and proactive) human trafficking investigations for members of the HTRA task force
- Attend monthly and quarterly task force meetings, as required
- Provide any analytic trainings or highlight techniques that may assist in the identification of human trafficking victims or suspects
- Facilitate specialized Counter Human Trafficking Intelligence training for task force members

Fiscal Note:

No Fiscal Note is required on grant items.

DS
KS DocuSigned by:

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Art Acevedo
Chief of Police

Prior Council Action:

(O) 2019-703; 09/18/2019

Amount of Funding:

\$75,000.00 - Federal Fund (5000)

Year 1	Out-Years
\$25,000.00	\$50,000.00

Contact Information:

Rhonda Smith, CFO and Deputy Director (713) 308-1708
Sonja D. Odat, Council Liaison (713) 308-1728

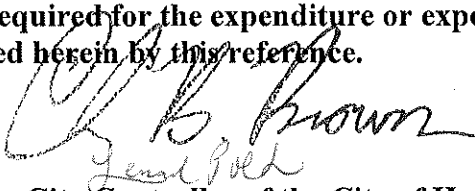
Controller's Office

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 herein by this reference.
- (✓) Other - Grant Funds Available

Date: 7-28, 2020



City Controller of the City of Houston, Texas

 FUND REF: 5000-1000

AMOUNT: -0-

CN342-21
ENCUMB. NO.:

City of Houston, Texas Ordinance 2020-656

 AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF A SUBAWARD AGREEMENT BETWEEN THE CITY OF HOUSTON AND DELIVERFUND RELATED TO THE HUMAN TRAFFICKING RESCUE ALLIANCE TASK FORCE; 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. The City Council hereby approves and authorizes these contracts, agreements or other undertakings described in the title of this Ordinance, in substantially the form as shown in the documents attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such documents and all related documents 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 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreements or other undertakings described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contracts without further authorization from Council.

Section 4. 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 29th day of July, 2020.

APPROVED this _____ day of _____, 2020.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.

Lat J. Haniel
City Secretary

(Prepared by Legal Dept. Mary J. McKeel)
(MJM:arm 07-16-2020) Senior Assistant City Attorney
(Requested by Art Acevedo, Police Chief, Houston Police Department)
(L.D. File No. 0622000090001)

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	

Subaward Agreement

Institution/Organization ("City") Name: The City of Houston Address: City of Houston 901 Bagby P.O. Box 1562 Houston, TX 77002 Project Co-Manager Sgt. -in- Charge Human Trafficking Task Force Houston Police Department 1200 Travis Houston, TX 77022		Institution/Organization ("Deliverfund") Name: DELIVERFUND Address: Sponsored Projects Administration 7000 Fannin Street, UCT 1006 Houston, Texas 77030 Chief of Operations Michael Fullilove	
Prime Award No. 2019-VT-BK-K025			
Awarding Agency: U.S. Department of Justice		CFDA No. 16.320	
Subaward Period of Performance:		Amount Funded this Action	
Date of Countersignature through 09/30/2022		\$75,000	
Project Title: Human Trafficking Rescue Alliance Southern Texas District			
Terms and Conditions			
<p>1) CITY hereby awards a cost reimbursable subaward, as described above, to DELIVERFUND. The statement of work and budget for this subaward are as shown in Attachment 1. In its performance of subaward work, DELIVERFUND shall be an independent entity and not an employee or agent of CITY.</p> <p>2) CITY shall reimburse DELIVERFUND not more often than monthly for allowable costs. All invoices shall be submitted using DELIVERFUND's standard invoice, but at a minimum shall include current and cumulative costs (including cost sharing), subaward number, and certification as to truth and accuracy of invoice. <i>Invoices that do not reference CITY's subaward number shall be returned to DELIVERFUND.</i> Invoices and questions concerning invoice receipt or payments should be directed to the appropriate party's Financial Contact, as shown in Attachment 4. Invoices shall be due by the fifteenth of each month for the preceding month and include a report of the work performed during the invoice period.</p> <p>3) A final statement of cumulative costs incurred, including cost sharing, marked "FINAL," must be submitted to CITY's Financial Contact NOT LATER THAN sixty (60) days after subaward end date. The final statement of costs shall constitute DELIVERFUND's final financial report.</p> <p>4) All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of an adverse audit finding against DELIVERFUND.</p> <p>5) Matters concerning the technical performance of this subaward should be directed to the appropriate party, as shown above.</p> <p>6) Matters concerning the request or negotiation of any changes in the terms, conditions, or amounts cited in this subaward agreement, and any changes requiring prior approval, should be directed to the appropriate party's Administrative Contact. Any such changes made to this subaward agreement require the written approval of the City's Police Chief and the Chief of Operations for DELIVERFUND.</p> <p>7) Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or directors, to the extent allowed by law.</p> <p>8) Either party may terminate this agreement with thirty days written notice to the appropriate party's Administrative Contact, as shown in Attachment 4. CITY shall pay DELIVERFUND for termination costs as allowable under OMB Circular A-21 or A-122, as applicable.</p> <p>9) No-cost extensions require the approval of the CITY. Any requests for a no-cost extension should be addressed to and received by the Administrative Contact, as shown in Attachment 4, not less than thirty days prior to the desired effective date of the requested change. The Chief of the Houston Police Department shall have the authority to approve the no-cost extensions. The Chief of Operations for this Subaward Agreement for DELIVERFUND shall have the authority to accept and approve such no-cost extensions.</p> <p>10) The Subaward is subject to the terms and conditions of the Prime Award and other special terms and conditions, as identified in Attachment 4. DELIVERFUND agrees to accept and sign the terms and conditions.</p> <p>11) The effective date of this Subaward Agreement is the date that the City Controller countersigns this Subaward Agreement.</p>			

12) PUBLICITY and USE OF NAME

Neither party shall use directly or by implication the names of the other party, nor any of the other party's affiliates or contractors, nor any abbreviations thereof, or of any staff member, faculty member, student, or employee of the other party in connection with any products, publicity, promotion, financing, advertising, or other public disclosure without the prior written permission of the other party. All requests for CITY approval shall be forwarded to: Office of Budget and Finance.

By an Authorized Officer of DELIVERFUND



Michael Fullilove
Chief of Operations
DeliverFund

10 June 2020

DATE

ATTEST/SEAL:

City Secretary

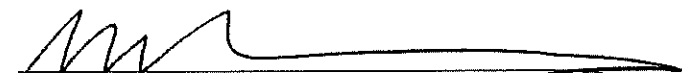
Mayor

COUNTERSIGNED:

City Controller

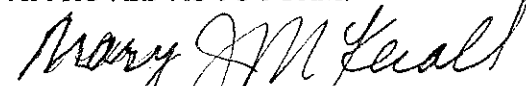
DATE COUNTERSIGNED: _____

APPROVED:



Chief of Police, Houston Police Department

APPROVED AS TO FORM:



Senior Assistant City Attorney
L.D. File No. 06220000 00001

Attachment 1 Subaward Agreement

Terms and Conditions of the Prime Award:

The terms and conditions of the prime award as attached in Exhibit A are hereby incorporated by reference into this Subaward.

Special terms and conditions:

DeliverFund will provide an analyst for the Houston area human trafficking task force known as Human Trafficking Rescue Alliance (HTRA). This analyst will provide services to HTRA supporting human trafficking disruption operations and training of HTRA personnel.
Duties shall include:

- Full-time analyst will be assigned to the task force and co-located to support both reactive and proactive human trafficking investigations for members of the HTRA
- Analyst will attend monthly and quarterly task force meetings, as required
- Analyst Will attend operational briefings
- Provide any analytic trainings or highlight techniques that may assist in the identification of human trafficking victims or suspects
- Facilitate and conduct specialized Counter Human Trafficking Intelligence training for task force members



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

Item Creation Date:

HPD - Human Trafficking Task Force - Missouri City

Agenda Item#: 16.

Summary:

ORDINANCE approving and authorizing Interlocal Agreement between City of Houston and **CITY OF MISSOURI CITY, TEXAS**, for the Human Trafficking Task Force - Houston Metropolitan Area (Approved by Ordinance No. 2019-703)

Background:

The Chief of Police for the Houston Police Department (HPD) recommends that City Council approve an Interlocal Agreement between the City of Houston and Missouri City. The City of Houston, through HPD, applied for and received the Enhanced Collaborative Model to Combat Human Trafficking: Enhancement of Established Human Trafficking Task Force grant from the U.S. Department of Justice, Office of Justice Programs, Office of Victims of Crime and Bureau of Justice Assistance.

This grant provides funding to establish an HPD led multi-disciplinary Human Trafficking Task Force (HTTF) consisting of federal, state, and local law enforcement and a victim service provider, YMCA International of Greater Houston. The implementation of the HTTF acts as a force-multiplier to increase the identification of all forms of sex and labor trafficking victims by providing a collaborative proactive investigative response to apprehend and prosecute perpetrators at both the state and federal levels. Once identified and recovered, YMCA International of Greater Houston will provide victims with a comprehensive array of social services.

Specifically, the funds will support the HTTF by adding law enforcement agencies and state prosecutors from outlying counties within the Houston metro area. The target geographical area of the grant program is the Houston Metropolitan Area, which includes incorporated as well as unincorporated areas of Harris County, Texas; and all areas of Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery and Waller Counties. As the lead agency, HPD is entering into an Interlocal Agreement with Missouri City. Pursuant to the Interlocal Agreement, the City of Houston will use \$30,000.00 in grant funds to reimburse Missouri City for overtime of one investigator participating in the Task Force.

Grant term is for 3 years; \$10,000.00 per year.

First Year	Out Years
\$10,000.00	\$20,000.00

Fiscal Note:

No Fiscal Note is required on grant items.

Art Acevedo
Chief of Police

Amount of Funding:

\$30,000.00
Federal Government - Grant
Fund 5000

Contact Information:

Rhonda Smith, CFO and Deputy Director (713) 308-1708
Sonja Odat, Council Liaison (713) 308-1728

ATTACHMENTS:**Description**

Coversheet (revised)
2020-671 Executed Ordinance

Type

Signed Cover sheet
Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

Item Creation Date:

HPD - Human Trafficking Task Force - Missouri City

Agenda Item#: 42.

Summary:

ORDINANCE approving and authorizing an Interlocal Agreement between City of Houston and **CITY OF MISSOURI CITY, TEXAS**, for the Human Trafficking Task Force - Houston Metropolitan Area (Approved by Ordinance No. 2019-703)

Background:

The Chief of Police for the Houston Police Department (HPD) recommends that City Council approve an Interlocal Agreement between the City of Houston and Missouri City. The City of Houston, through HPD, applied for and received the Enhanced Collaborative Model to Combat Human Trafficking: Enhancement of Established Human Trafficking Task Force grant from the U.S. Department of Justice, Office of Justice Programs, Office of Victims of Crime and Bureau of Justice Assistance.

This grant provides funding to establish an HPD led multi-disciplinary Human Trafficking Task Force (HTTF) consisting of federal, state, and local law enforcement and a victim service provider, YMCA International of Greater Houston. The implementation of the HTTF acts as a force-multiplier to increase the identification of all forms of sex and labor trafficking victims by providing a collaborative proactive investigative response to apprehend and prosecute perpetrators at both the state and federal levels. Once identified and recovered, YMCA International of Greater Houston will provide victims with a comprehensive array of social services.

Specifically, the funds will support the HTTF by adding law enforcement agencies and state prosecutors from outlying counties within the Houston metro area. The target geographical area of the grant program is the Houston Metropolitan Area, which includes incorporated as well as unincorporated areas of Harris County, Texas; and all areas of Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery and Waller Counties. As the lead agency, HPD is entering into an Interlocal Agreement with Missouri City. Pursuant to the Interlocal Agreement, the City of Houston will use \$30,000.00 in grant funds to reimburse Missouri City for overtime of one investigator participating in the Task Force.

Grant term is for 3 years; \$10,000.00 per year.

First Year	Out Years
\$10,000.00	\$20,000.00

Fiscal Note:

No Fiscal Note is required on grant items.

DS
RS

DocuSigned by:

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Art Acevedo

Chief of Police

Amount of Funding:

\$30,000.00

Federal Government - Grant

Fund 5000

Contact Information:

Rhonda Smith, CFO and Deputy Director (713) 308-1708

Sonja Odat, Council Liaison (713) 308-1728

ATTACHMENTS:

Description

Signed RCA
Ordinance
ILA

Type

Signed Cover sheet
Ordinance/Resolution/Motion
Contract/Exhibit

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 herein by this reference.
- (X) Other - Grant Funds Available


Gerald Pich


Date: 7-28, 2020

City Controller of the City of Houston, Texas

SP#45-329066

SC FUND REF: 5000-1000-620159 AMOUNT: \$ 30,000.00 ENCUMB. NO.: GN103351-21
0A4600016206

City of Houston, Texas Ordinance No. 2020-671

 AN ORDINANCE APPROVING AND AUTHORIZING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF HOUSTON AND THE CITY OF MISSOURI CITY, TEXAS, FOR THE HUMAN TRAFFICKING TASK FORCE – HOUSTON METROPOLITAN AREA (APPROVED BY ORDINANCE NO. 2019-703); 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. 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, or, in the absence of the Mayor, the Mayor Pro-Tem is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary, or in the absence of the City Secretary, any Assistant City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. 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 4. 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 29th day of July, 2020.
APPROVED this _____ day of _____, 20____.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.

Art J. Acevedo
City Secretary

Prepared by Legal Dept. J. L. Davis
(JN:yjs 7-9-20) Senior Assistant City Attorney
(Requested by Art Acevedo, Chief, Houston Police Department)
(L.D. File No. 0622000236001)

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	

INTERLOCAL AGREEMENT

Human Trafficking Rescue Alliance Task Force

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This Interlocal Agreement, hereinafter referred to as the **“Agreement”**, is entered into by and between the City of Houston, a Texas Home Rule City of the State of Texas, principally situated in Harris County, Texas, acting by and through its governing body, the City Council, hereinafter referred to as the **“City”**, and the City of Missouri City, a body corporate and politic, hereinafter referred to as **“Missouri City”**, and acting for the City of Missouri City Police Department, hereinafter referred to as **“MPD”**, pursuant to the Interlocal Cooperation Act, Texas Government Code, Chapter 791.

RECITALS

1. The **City**, through the Houston Police Department, hereinafter referred to as **“HPD”**, has received a grant from the U.S. Department of Justice (DOJ), Office of Justice Programs (OJP), Office for Victims of Crime, and Bureau of Justice Assistance, hereinafter referred to as **“OJP”**, in the amount of **\$900,000.00** and entitled, **“ENHANCED COLLABORATIVE MODEL TO COMBAT HUMAN TRAFFICKING: ENHANCEMENT OF ESTABLISHED HUMAN TRAFFICKING TASK FORCES”**, hereinafter referred to as the **“HUMAN TRAFFICKING GRANT”**.
2. The target geographic area of the **Human Trafficking Grant** program is the Houston Metropolitan Area, which includes incorporated as well as unincorporated areas of Harris County, Texas; and all areas of Brazoria, Chambers, Harris, Galveston, Liberty, Montgomery, Fort Bend, and Waller Counties.
3. The **Human Trafficking Grant** funds, in part, will be expended to pay the overtime costs of a **Missouri City Police Department Investigator**, hereinafter referred to as **“Investigator”**, to work with the City and other law enforcement officials to provide a

link to the current cases of human trafficking and to assist in investigations connected with the **Human Trafficking Grant** program enforcement with jurisdictional issues.

4. The **City** and **Missouri City** believe it is in their best interests to enter into this **Agreement**, to carry out the **Human Trafficking Grant** program.
5. The **City** and **Missouri City** agree to abide by all pertinent federal, state and local laws and regulations.

NOW THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

ARTICLE I
PURPOSE

- 1.01 The purpose of this **Agreement** is to provide for the service of an **Investigator** to work with the **City** and other law enforcement officials to assist in the identification of human trafficking victims, investigation and prosecution of human trafficking cases at the local, state, and federal levels, as well as serve as a liaison between same and other Investigators and law enforcement agencies that become involved in ongoing investigations as a result of the **Human Trafficking Grant** program enforcement efforts.

ARTICLE II
TERM

- 2.01 The term of this **Agreement** is to commence on the Countersignature Date, provided grant funds are available and terminate on the **Grant** expiration date, or on the termination date of any extension thereof granted by the Department of Justice, Office of Justice Programs, hereinafter referred to as the "**OJP**", or **October 31, 2022**, whichever is later. In the event **OJP** Grant funding is available for this **Agreement** after the expiration date the **HPD** Police Chief ("Chief") is authorized to extend this **Agreement** upon receiving mutual written agreement with **Missouri City** for one year at a time for up to four additional years.
- 2.02 The **City** and **Missouri City** acknowledge that the **City** must apply each year for a continuation of the **Human Trafficking Grant**, and the **Human Trafficking Grant** can be discontinued at any time by **OJP**. Should the grant be terminated or not renewed by the **OJP** for any reason, the **City** and **Missouri City** agree to terminate this **Agreement**, on the date the grant is terminated by the **OJP**.

- 2.03 Either party may terminate this Agreement by giving 30 days' prior written notice of termination to the other party in accordance with Article XIII.

ARTICLE III
CONSIDERATION

- 3.02 **Missouri City** will be paid based on itemized monthly invoices submitted by **Missouri City** and approved by the **City** showing the actual services performed and the attendant fee. The **City** shall make payment to **Missouri City** within thirty (30) days of the receipt by the **City** of such invoices. If any items in any invoices submitted by **Missouri City** are disputed by the **City** for any reason, including lack of supporting documentation, the **City** shall temporarily delete the disputed item and pay the remaining amount of the invoice. The **City** shall promptly notify **Missouri City** of the dispute and request clarification and/or remedial action. After any dispute shall have been settled, **Missouri City** shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only. The decision of the **City** regarding all disputes involving **Missouri City** invoices shall be final.
- 3.03 The **City** and **Missouri City** acknowledge that during the term of this Agreement the amounts provided in **Exhibit "A"** may change as the **City's** application for renewal of **Grant** funding in future years is reviewed by the **OJP**. It is further understood and agreed that any application for additional **Grant** funds over and above those amounts shown in **Exhibit "A"**, shall first be approved by the **City** and will be in accordance with the effective GRANT APPLICATION AND ADMINISTRATION GUIDELINES of **OJP**. In the event this Agreement is extended the HPD Chief is authorized to approve changes to **Exhibit "A"** provided the changes do not exceed the grant funds.
- 3.04 The **City's** obligation for payment under this Agreement, if any, is limited to funds received from the **HUMAN TRAFFICKING GRANT**; unless adequate funds are received, the **City** shall have no obligation to pay **Missouri City**. **Missouri City** must look to these designated funds only and to no other funds for the **City's** payment under this Agreement.

ARTICLE IV
SCOPE OF SERVICES

- 4.01 Missouri City** authorizes and **MPD** agrees to provide an **Investigator** to perform those services described in **Exhibit "B"**, attached hereto and incorporated herein for all intents and purposes.
- 4.02 Missouri City** warrants that:
- (a) Services performed by the **Investigator** assigned by the **MPD** to the **Human Trafficking Grant** program and any property acquired from the **City** for the **Investigator's** use under this or any prior agreement between the **City** and **Missouri City** pertaining to the **Grant**, hereinafter referred to as the "**Property**" are directly and exclusively devoted to the **Grant** program and that the amounts paid for personnel expenses are not more than **Missouri City's** actual cost of same.
 - (b) The **Investigator** will not receive dual compensation from **Missouri City** and the **City** for the same services performed under the terms of this **Agreement**.
 - (c) It will cooperate with **OJP**, its agents, representatives, and employees, and any other State of Texas agency in regards to any audit, investigation or inquiry concerning the **Human Trafficking Grant**.
 - (d) The **Investigator** assigned to work with **HPD** and other law enforcement officers shall at all times, remain **Missouri City** and **MPD** employees. Such **Investigator** shall be subject to all applicable **Missouri City** and **MPD** rules, regulations, procedures, orders, and training.
 - (e) Nothing in this **Agreement** shall constitute an exception from, waiver of or other basis upon which the **Investigator** is permitted to fail to, fully and promptly comply with all **Missouri City** and **MPD** rules, regulations, procedures and other operating policies.
- 4.03 Missouri City** agrees to comply with **OJP's** rules, regulations, policies, guidelines and requirements and **OJP's** Grants Management System (GMS), provided in "**Exhibit C**", as they relate to the **Agreement** and use of Federal Funds.

ARTICLE V
OWNERSHIP OF PROPERTY

- 5.01** Upon termination of this **Agreement**, ownership of Property or other non-expendable items received from the City of Houston will revert to the City of Houston Police Department, subject to the approval of the U.S. Department of Justice (DOJ), Office of Justice Programs (OJP), Office for Victims of Crime, and Bureau of Justice Assistance.

ARTICLE VI
INFORMATION/DATA

- 6.01** **Missouri City** and the **MPD** shall keep all materials to be prepared hereunder and all **City** data it receives in strictest confidence excluding those documents and records filed in the Courts. **Missouri City** and the **MPD** shall not divulge such information except as approved in writing by the **City** or as otherwise required by law.
- 6.02** **Missouri City** and the **MPD**, except as otherwise required by law, shall make no announcement or release of information concerning this **Agreement** until such release has been submitted to and approved in writing by the **City** and the **OJP**. When issuing statements, press releases, producing printed materials, audio visuals and other documents describing or related to the **Human Trafficking Grant** program, such material shall clearly state that funding was provided by the City of Houston Police Department through a grant from the U.S. Department of Justice (DOJ), Office of Justice Programs (OJP), Office for Victims of Crime, and Bureau of Justice Assistance. Any such publicity shall be in a form approved by the **OJP**, the **City** and in accordance with State law.
- 6.03** The **City** shall have the right to perform, or cause to be performed, (1) audits of the books and records of **Missouri City** pertaining to **Missouri City's** performance under this **Agreement**, and (2) inspections of all places where work is undertaken in connection with this **Agreement**. **Missouri City** shall be required to keep such books and records available for such purpose for at least four (4) years after the ceasing of its performance under this **Agreement** and to insure the availability, usability and safety of such records. The location of such records shall be disclosed to the **City** upon request. The location of such records shall not affect the time for bringing a cause of action, nor the applicable statute of limitations.
- 6.04** **Missouri City** agrees to make all data, reports, records, books, paper, documents and all other information in any form, electronically produced or otherwise, that are prepared,

collected or assembled for and during performance of this **Agreement**, concerning, derived from or because of the **Human Trafficking Grant**, available to the **City** and the **City Controller**, through any authorized representative, within a reasonable time upon request.

ARTICLE VII **INSURANCE AND LIABILITY**

- 7.01** The **City** and **Missouri City** are both governed by the Texas Tort Claims Act, §101.001 *et seq.*, as amended, Texas Civil Practice and Remedies Code Ann. (Vernon 2011 & Supp. 2017) which sets forth certain limitations and restrictions on the types of liability and the types of insurance coverage that can be required of the **City** and **Missouri City**. Each party to this **Agreement** warrants and represents that it is insured under a commercial insurance policy or self-insured for all claims falling within the Texas Tort Claims Act.
- 7.02** Each party to this **Agreement** agrees that it shall have no liability whatsoever for the actions or omissions of an individual employed by another party, regardless of where the individual's actions occurred. Each party is solely responsible for the actions and/or omissions of its employees and officers, to the extent required by Texas Law.

ARTICLE VIII **COMPLIANCE WITH EQUAL OPPORTUNITY LAWS**

- 8.01** **Missouri City** shall comply with all applicable laws, standards, orders and regulations regarding equal employment which are applicable to **Missouri City's** performance of this **Agreement**, including Rules of Practice for Administrative Proceeding to Enforce Equal Opportunity under Executive Order No. 11246, title 41, subtitle B, Chapter 60, part 60-30, which are incorporated herein by reference.

ARTICLE IX **AMENDMENTS**

- 9.01** Unless otherwise specified this **Agreement** may be amended only by written instrument executed on behalf of the **City** and **Missouri City** (by authority of ordinances or orders adopted by the respective governing bodies).

ARTICLE X
LEGAL CONSTRUCTIONS

10.01 In case any one or more of the provisions contained in this **Agreement** shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this **Agreement** shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE XI
ENTIRE AGREEMENT

11.01 This **Agreement** supersedes all other agreements, either oral or in writing between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this **Agreement**, which is not contained herein, shall be valid or binding.

ARTICLE XII
LIABILITY

12.01 Each party to this agreement shall be responsible for its own acts of negligence. Where any injury or property damage results from the joint or concurring negligence of the parties, liability, if any, shall be shared by each party based on comparative responsibility in accordance with the applicable laws of the State of Texas, subject to all defenses, including governmental immunity. These provisions are solely for the benefit of the parties hereto and not for the benefit of any person or entity not a party to this agreement; nor shall any provisions in this agreement be deemed a waiver of any defenses available by law.

ARTICLE XIII
NOTICES

13.01 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt

requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

13.02 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

Missouri City: Missouri City Police Department
ATTN: Chief of Police
3849 Cartwright Road
Missouri City, Texas 77459

City: Houston Police Department
Human Trafficking Division
Attention: Lieutenant in Charge
7277 Regency Square Blvd.
Houston, Texas 77036

13.03 A Notice is effective only if the party giving or making the Notice has complied with subsections 13.01 and 13.02 and if the addressee has received the Notice. A Notice is deemed received as follows:

13.03.01 If the Notice is delivered in person or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

13.03.02 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

ARTICLE XIV

ASSURANCES

14.01 By signing below, Missouri City makes the certifications and assurances as required in Exhibit "C" Assurances.

ARTICLE XV
SIGNATURES

15.01 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.

CITY OF HOUSTON, TEXAS

ATTEST/SEAL:

APPROVED:

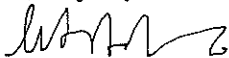
City Secretary

Sylvester Turner, Mayor

APPROVED:

COUNTERSIGNED BY:

DocuSigned by:



6AAA6065E4424AD

Art Acevedo, Houston Police Chief

Chris Brown, City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

DocuSigned by:



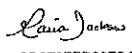
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Senior Assistant City Attorney

L.D. File No. 0622000236001

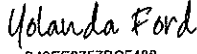
CITY OF MISSOURI CITY, TEXAS

ATTEST/SEAL:

DocuSigned by:

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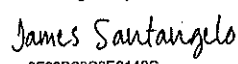
Maria Jackson, City Secretary

APPROVED:

DocuSigned by:

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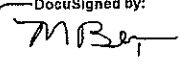
Yolanda Ford, Mayor

APPROVED AS TO FORM:

DocuSigned by:

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James Santangelo, Assistant City Attorney

APPROVED:

DocuSigned by:

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Mike Berezin, Police Chief

EXHIBIT "A"**MISSOURI CITY****Investigator (1)****Overtime (not to exceed) ***

*Estimated cost for per diem expenses incurred away from duty station for the Investigator assigned to grant position, to be paid in accordance with the Missouri City policy and procedure.

	Year1	Year2	Year3
Overtime (up to but not to exceed)	\$10,000	\$10,000	\$10,000
Total HPD/Grant Contractual Expenses per year (Overtime + Investigative Technology)	\$10,000	\$10,000	\$10,000
Total over 3-year grant period			\$30,000

EXHIBIT "B"

Scope of Services

MISSOURI CITY INVESTIGATOR (1)

The Missouri City Investigator will work with the recipients and Grantors of the Human Trafficking Grant and serve as a liaison between the City, Missouri City, and other local, state and federal law enforcement agencies. The Investigator will actively participate in investigations conducted under this grant program that overlap local law enforcement's jurisdictional lines in the State of Texas and assist local law enforcement officers in investigating all forms of human trafficking.

EXHIBIT "C"

ASSURANCES

The Grantee and Subgrantee hereby certify that they will comply with the following conditions:

- 1. A grantee and subgrantee must comply with DOJ/OJP grant rules.**
- 2. A grantee and subgrantee must comply with Texas Government Code, Chapter 573, by ensuring that no officer, employee, or member of the applicant's governing body or of the applicant's contractor shall vote or confirm the employment of any persons related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person, who shall have been continuously employed for a period of two years, or such period stipulated by local law, prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.**
- 3. A grantee and subgrantee must insure that all information collected, assemble or maintained by the applicant relative to a project will be available to the public during normal business hours in compliance with Texas Government Code, Chapter 552, unless otherwise expressly prohibited by law.**
- 4. A grantee and subgrantee must comply with Texas Government Code, Chapter 551, which requires all regular, special or called meeting of governmental bodies be open to the public, except as otherwise provided by law.**
- 5. A grantee and subgrantee must comply with Section 231.006, Texas Family Code, which prohibits payments to a person who is in arrears on child support payments.**
- 6. No health and human services agency or public safety or law enforcement agency may contract with or issue a license, certificate or permit to the owner, operator or administrator of a facility if the license, permit or certificate has been revoked by another health and human services agency or public safety or law enforcement agency.**
- 7. A grantee and subgrantee that is a law enforcement agency regulated by Texas Government Code, Chapter 415, must be in compliance with all rules adopted by the Texas Commission on Law Enforcement Officer Standards and Education pursuant to Chapter 415, Texas Government Code or must provide the grantor agency with a certification from the Texas Commission on Law Enforcement Officer Standards and Education that the agency is in process of achieving compliance with such rules.**
- 8. When incorporated into a grant award or contract, these standard assurances contained in the application package become terms or conditions for receipt of grant funds. Administering state agencies and local subrecipients shall maintain an appropriate**

contact administration system to insure that all terms, conditions, and specifications are met.

9. A grantee and subgrantee must comply with the Texas Family Code, Section 261.101 which requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Child Protective and Regulatory Services. Grantees and subgrantees shall also ensure that all program personnel are properly trained and aware of this requirement.
10. Grantees and subgrantees will comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VII of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans With Disabilities Act of 1990; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
11. Grantees and subgrantees will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. §§ 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction sub-agreements.
12. Grantees and subgrantees will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchases.
13. Grantees and subgrantees will comply with the provisions of the Hatch Political Activity Act (5 U.S.C. § 7321-29) which limit the political activity of employees whose principal employment activities are funded in whole or in part with Federal funds.

14. Grantees and subgrantees will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and the Intergovernmental Personnel Act of 1970, as applicable.
15. Grantees and subgrantees will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA. (EO11738)
16. Grantees and subgrantees will comply with Article IX, Section 5 of the state appropriations act which prohibits the use of state funds to influence the outcome of any election or the passage or defeat of any legislative measure.

HUMAN TRAFFICKING RESCUE ALLIANCE TASK FORCE

SPECIAL CONDITION

ASSURANCES CERTIFICATION

I certify that the programs proposed in this application meet all the requirements of the Enhanced Collaborative Model to Combat Human Trafficking: Enhancement of Established Human Trafficking Task Forces program, that all the information presented is correct, and that the applicant will comply with the rules of the Human Trafficking Rescue Alliance and all other applicable federal and state laws, regulations, and guidelines. By appropriate language incorporated in each grant, sub-grant, or other document under which funds are to be disbursed, the undersigned shall assure that the foregoing assurances above apply to all recipients of assistance.

DocuSigned by:

Yolanda Ford

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**Yolanda Ford, Mayor
City of Missouri City**

6/18/2020

Date

HUMAN TRAFFICKING RESCUE ALLIANCE TASK FORCE

SPECIAL CONDITION

ASSURANCES CERTIFICATION

I certify that the programs proposed in this application meet all the requirements of the Enhanced Collaborative Model to Combat Human Trafficking: Enhancement of Established Human Trafficking Task Forces program, that all the information presented is correct, and that the applicant will comply with the rules of the Human Trafficking Rescue Alliance and all other applicable federal and state laws, regulations, and guidelines. By appropriate language incorporated in each grant, subgrant, or other document under which funds are to be disbursed, the undersigned shall assure that the foregoing assurances above apply to all recipients of assistance.

Sylvester Turner, Mayor
City of Houston

Date



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 7/14/2020

MYR - TIRZ Increment \$99,830,323.84

Agenda Item#: 17.

Summary:

ORDINANCE appropriating \$99,830,323.84 out of City of Houston, Texas Tax Increment Funds for **REINVESTMENT ZONE NUMBERS TWO (MIDTOWN ZONE), THREE (MAIN STREET/MARKET SQUARE ZONE), FIVE (MEMORIAL HEIGHTS ZONE), SIX (EASTSIDE ZONE), SEVEN (OLD SPANISH TRAIL/ALMEDA CORRIDORS ZONE), EIGHT (GULFGATE ZONE), TEN (LAKE HOUSTON ZONE), TWELVE (CITY PARK ZONE), THIRTEEN (OLD SIXTH WARD ZONE), FOURTEEN (FOURTH WARD ZONE), SIXTEEN (UPTOWN ZONE), EIGHTEEN (FIFTH WARD ZONE), TWENTY (SOUTHWEST HOUSTON ZONE), TWENTY-THREE (HARRISBURG ZONE), TWENTY-FIVE (HIRAM CLARKE FORT BEND ZONE) TWENTY-SIX (SUNNYSIDE ZONE) AND TWENTY-SEVEN (MONTROSE ZONE)**, for payment of Affordable Housing Costs, payment of Administrative Expenses, payment of Project Costs, and payments to certain Redevelopment Authorities as provided herein

Background:

The appropriation of \$99,830,323.84 results from tax increment revenues received in tax year 2019 by the City for various TIRZs. As set forth in the attached spreadsheet, \$801,299.93 will be transferred to the City's Affordable Housing Fund pursuant to the City's Tri-Party Agreements with the TIRZs and their redevelopment authorities; \$4,898,345.55 will be transferred to the General Fund for TIRZ administrative costs; and \$94,130,678.36 will be paid to the various redevelopment authorities on behalf of the TIRZ or retained in the TIRZ Fund for approved project costs.

City Council approved an appropriation of \$44,486,114.68 in tax increment revenues received by the City on behalf of nine tax increment reinvestment zones on June 24, 2020, Ordinance – 546. The current request represents the remaining seventeen tax increment reinvestment zones that have not received tax increment revenues received by the City.

All tri-party agreements and creation documents can be found on the following website:
<http://www.houstontx.gov/ecodev/>

Andy F. Icken, Chief Development Officer

Prior Council Action:

Ordinance 2019 - 471, 6/19/2019

Amount of Funding:

No Funding Required

Contact Information:

___Gwendolyn F. Tillotson, Deputy Director

Phone: (832) 393-0937

ATTACHMENTS:**Description**

Coversheet

Fund transfer spreadsheet

Type

Signed Cover sheet

Backup Material



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 7/14/2020

MYR - TIRZ Increment \$99,830,323.84

Agenda Item#: 10.

Background:

The appropriation of \$99,830,323.84 results from tax increment revenues received in tax year 2019 by the City for various TIRZs. As set forth in the attached spreadsheet, \$801,299.93 will be transferred to the City's Affordable Housing Fund pursuant to the City's Tri-Party Agreements with the TIRZs and their redevelopment authorities; \$4,898,345.55 will be transferred to the General Fund for TIRZ administrative costs; and \$94,130,678.36 will be paid to the various redevelopment authorities on behalf of the TIRZ or retained in the TIRZ Fund for approved project costs.

City Council approved an appropriation of \$44,486,114.68 in tax increment revenues received by the City on behalf of nine tax increment reinvestment zones on June 24, 2020, Ordinance – 546. The current request represents the remaining seventeen tax increment reinvestment zones that have not received tax increment revenues received by the City.

All tri-party agreements and creation documents can be found on the following website:
<http://www.houstontx.gov/ecodev/>

DocuSigned by:

A handwritten signature in black ink, appearing to read "A. Icken", is written over a blue horizontal line.

7/17/2020

F405371A27C1498
Andy F. Icken, Chief Development Officer

Prior Council Action:

Ordinance 2019 - 471, 6/19/2019

Amount of Funding:

No Funding Required

DS

Contact Information:

Gwendolyn F. Tillotson, Deputy Director

Phone: (832) 393-0937

ATTACHMENTS:

Description

PCA 2019 - 471

Type

Backup Material

#	TIRZ Name	Jurisdiction Code	Fund #	City Increment	Affordable Housing Transfer to Fund 2409	City Admin. Fee Transfer to Fund 1000	Total Increment Amount Due	Payee	SAP Budget Number
2.	Midtown		7550	\$ 11,080,938.78	N/A	\$ 554,046.94	\$ 10,526,891.84	Midtown RA	100667801
	Original	581&582		9,687,734.17		484,386.71	9,203,347.46		
	Annexed	593		1,392,331.45		69,616.57	1,322,714.88		
	Annexed	312		-		-	-		
	Annexed	814		873.16		43.66	829.50		
3.	Main St./Market Square		7551	\$ 15,963,964.05	N/A	\$ 798,198.20	\$ 15,165,765.85	Special Pay Instructions #1	100667802
	Original	575		2,066,713.88		103,335.69	1,963,378.19		
	Annexed	576		13,451,797.21		672,589.86	12,779,207.35		
	Annexed	260		121,992.90		6,099.65	115,893.25		
	Annexed	936		-		-	-		
	Annexed	924		323,460.06		16,173.00	307,287.06		
5.	Memorial Heights		7553	\$ 4,729,394.47	N/A	\$ 236,469.73	\$ 4,492,924.74	Memorial Heights RA	100667803
	Original	583		1,163,745.66		58,187.28	1,105,558.38		
	Annexed	935		(304,379.28)		(15,218.96)	(289,160.32)		
	Annexed	307		540,241.76		27,012.09	513,229.67		
	Annexed	309		2,024.76		101.24	1,923.52		
	Annexed	816		3,327,761.57		166,388.08	3,161,373.49		
6.	Eastside	584	7554	\$ 2,153,023.38	N/A	\$ -	\$ 2,153,023.38	Houston ISD	100667804
7.	OST/Alameda		7555	\$ 8,773,001.14	N/A	\$ 438,650.06	\$ 8,334,351.08	OST Alameda RA	100667805
	Original	586		5,387,385.79		269,369.29	5,118,016.50		
	Annexed	587		3,139,012.20		156,950.61	2,982,061.59		
	Annexed	573		-		-	-		
	Annexed	888		246,603.15		12,330.16	234,272.99		
8.	Gulfgate		7556	\$ 2,642,991.41	N/A	\$ 132,149.57	\$2,510,841.84	Gulfgate RA	100667806
	Original	588		264,677.82		13,233.89	251,443.93		
	Annexed	595		338,830.16		16,941.51	321,888.65		
	Annexed	909		2,039,483.43		101,974.17	1,937,509.26		
10.	Lake Houston		7558	\$ 5,710,122.84	N/A	\$ 285,506.14	\$ 5,424,616.70	Lake Houston RA	100667807
	Original	585		2,503,094.64		125,154.73	2,377,939.91		
	Annexed	580		1,360,000.20		68,000.01	1,292,000.19		
	Annexed (2011)	926		19,434.70		971.74	18,462.96		
	Annexed (2011)	RCH		1,344,306.03		67,215.30	1,277,090.73		
	Annexed (2014)	858		483,287.27		24,164.36	459,122.91		
12.	City Park	591	7560	\$ 423,284.37	N/A	\$ 21,164.22	\$ 402,120.15	City Park RA	100667808
13.	Old Sixth Ward		7561	\$ 1,113,766.78	\$ 371,255.59	\$ 55,688.34	\$ 686,822.85	Old Sixth Ward RA	
	Original	592		1,460,934.36	486,978.12	73,046.72	900,909.52		
	Annexed	922		-347,167.58	(115,722.53)	(17,358.38)	(214,086.67)		100667809
14.	Fourth Ward (1)		7562	\$ 1,645,589.13	\$ 430,044.34	\$ 96,759.97	\$ 1,118,784.82	Fourth Ward RA	
	Original	599		1,651,653.47	431,391.97	97,063.19	1,123,198.31		
	Annexed	937		-6,064.34	(1,347.63)	(303.22)	(4,413.49)		
16.	Uptown		7564	\$ 29,105,212.26	N/A	\$ 1,455,260.61	\$ 27,649,951.65	Uptown Development Authority	100667821
	Original	597		28,328,089.43		1,416,404.47	26,911,684.96		
	Annexed	299		589,292.22		29,464.61	559,827.61		

#	TIRZ Name	Jurisdiction Code	Fund #	City Increment	Affordable Housing Transfer to Fund 2409	City Admin. Fee Transfer to Fund 1000	Total Increment Amount Due	Payee	SAP Budget Number
	<i>Annexed</i>	856		<i>187,830.61</i>		<i>9,391.53</i>	<i>178,439.08</i>		
18.	Fifth Ward		7566	\$ 825,324.90	N/A	\$ 41,266.24	\$ 784,058.66	Fifth Ward RA	100667822
	<i>Original</i>	594		<i>439,936.19</i>		<i>21,996.81</i>	<i>417,939.38</i>		
	<i>Annexed (2008)</i>	572		<i>115,654.46</i>		<i>5,782.72</i>	<i>109,871.74</i>		
	<i>Annexed (2015)</i>	835		<i>269,734.25</i>		<i>13,486.71</i>	<i>256,247.54</i>		
20.	Southwest Houston		7568	\$ 9,192,337.91	N/A	\$ 459,616.90	\$ 8,732,721.01	Southwest Houston RA	100667823
	<i>Original</i>	994		<i>8,270,297.67</i>		<i>413,514.88</i>	<i>7,856,782.79</i>		
	<i>Annexed (2013)</i>	855		<i>635,890.06</i>		<i>31,794.50</i>	<i>604,095.56</i>		
	<i>Annexed (2015)</i>	837		<i>286,150.18</i>		<i>14,307.51</i>	<i>271,842.67</i>		
23.	Harrisburg	925	7571	\$ 1,550,752.24	N/A	\$ 77,537.61	\$ 1,473,214.63	Harrisburg RA	100667824
25.	Hiram Clarke Fort Bend	857	7582	\$ 1,305,638.71	N/A	\$ 65,281.94	\$ 1,240,356.77	Hiram Clarke Fort Bend RA	100667825
26.	Sunnyside	840	7583	\$ 575,390.34	N/A	\$ 28,769.52	\$ 546,620.82	Special Pay Instructions #2	100667826
27.	Montrose	872	7584	\$ 3,039,591.13	N/A	\$ 151,979.56	\$ 2,887,611.57	Montrose RA	100667827
	Total			\$ 99,830,323.84	\$ 801,299.93	\$ 4,898,345.55	\$ 94,130,678.36		

Special Pay Instructions #1

Payment to HHFC for Rice Hotel (original zone)

\$ 537,675.00

Payment to Main Street/Market Square RA

\$ 14,628,090.85

Total Increment

\$ 15,165,765.85

Special Pay Instructions #2

Payments are for administration, project costs, project related costs, developer reimbursements, and debt service; invoices submitted to and paid by Economic Development.



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

District B, District I

Item Creation Date: 7/13/2020

MYR Financial Empowerment Center First Amendment to Agreement

Agenda Item#: 18.

Summary:

ORDINANCE approving and authorizing first amendment to Grant Agreement among City of Houston, **CITIES FOR FINANCIAL EMPOWERMENT FUND**, and **GREATER HOUSTON COMMUNITY FOUNDATION** for the Implementation of Financial Empowerment Centers (Approved by Ordinance No. 2019-923) - **DISTRICTS B - DAVIS and I - GALLEGOS**

Background:

SUBJECT: A First Amendment to agreement between The Cities for Financial Empowerment Fund, Greater Houston Community Foundation, and The City of Houston.

RECOMMENDATION: Approve and authorizing a First Amendment to a grant agreement (Contract No. C78238) among the City of Houston, the Cities for Financial Empowerment Fund ("CFE Fund"), and Greater Houston Community Foundation ("GHCF") for the Implementation of a Financial Empowerment Center (Approved by Ordinance No. 2019-0923); containing provisions relating to the subject; and declaring an emergency.

SPECIFIC EXPLANATION: The CFE Fund awarded the City of Houston with \$80,000 for one additional FEC counselor. The role of the additional FEC counselor will be to expand the FEC counseling capacity to meet the anticipated increase in demand of counseling services. An additional counselor can ensure that, as the true financial impact of this pandemic is realized in the coming months, residents can receive timely remote financial counseling to help with critical financial issues, such as identifying and connecting to public benefits, leveraging unemployment assistance, budgeting in the face of income volatility, and working with creditors to figure out more advantageous interest rates or payment plans.

The FEC counselor will be a staff member of the Alliance, the non-profit provider of the FEC. The Alliance for Multicultural Community Services manages the day-to-day operations of the program and is responsible for case management and provision of financial counseling services by building client-counselor relationships, conducting the financial health assessment to get a detailed financial picture, setting goals, developing a budget, and making referrals if needed.

The Office of Complete Communities also requests City Council to authorize the Director or her designee to act as the City's representative in the application process with authority to apply for, accept, and expend the grant funds, as awarded, and to extend the budget period, and to authorize

the Mayor to execute all related contracts, agreements, and documents with the approval of the City Attorney in connection with the grant.

Shannon Buggs, Director

Prior Council Action:

Ord. No. 2019-0923

Contact Information:

Shannon Buggs, Director,
Mayor's Office of Complete Communities

Phone: (832) 393-1085

ATTACHMENTS:

Description

Coversheet
2020-657 Executed Ordinance

Type

Signed Cover sheet
Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

District B, District I

Item Creation Date: 7/13/2020

MYR Financial Empowerment Center First Amendment to Agreement

Agenda Item#: 5.

Background:

SUBJECT: A First Amendment to agreement between The Cities for Financial Empowerment Fund, Greater Houston Community Foundation, and The City of Houston.

RECOMMENDATION: Approve and authorizing a First Amendment to a grant agreement (Contract No. C78238) among the City of Houston, the Cities for Financial Empowerment Fund ("CFE Fund"), and Greater Houston Community Foundation ("GHCF") for the Implementation of a Financial Empowerment Center (Approved by Ordinance No. 2019-0923); containing provisions relating to the subject; and declaring an emergency.

SPECIFIC EXPLANATION: The CFE Fund awarded the City of Houston with \$80,000 for one additional FEC counselor. The role of the additional FEC counselor will be to expand the FEC counseling capacity to meet the anticipated increase in demand of counseling services. An additional counselor can ensure that, as the true financial impact of this pandemic is realized in the coming months, residents can receive timely remote financial counseling to help with critical financial issues, such as identifying and connecting to public benefits, leveraging unemployment assistance, budgeting in the face of income volatility, and working with creditors to figure out more advantageous interest rates or payment plans.

The FEC counselor will be a staff member of the Alliance, the non-profit provider of the FEC. The Alliance for Multicultural Community Services manages the day-to-day operations of the program and is responsible for case management and provision of financial counseling services by building client-counselor relationships, conducting the financial health assessment to get a detailed financial picture, setting goals, developing a budget, and making referrals if needed.

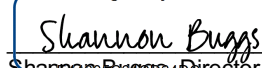
The Office of Complete Communities also requests City Council to authorize the Director or her designee to act as the City's representative in the application process with authority to apply for, accept, and expend the grant funds, as awarded, and to extend the budget period, and to authorize the Mayor to execute all related contracts, agreements, and documents with the approval of the City Attorney in connection with the grant.

Prior Council Action:

Ord. No. 2019-0923

Contact Information:

DocuSigned by:

A handwritten signature in blue ink that reads "Shannon Buggs".

Shannon Buggs, Director,

Mayor's Office of Complete Communities

Phone: (832) 393-1085

ATTACHMENTS:

Description	Type
Amendment - Houston FEC Expansion	Backup Material
CFE Fund FEC Implementation Grant - fully executed	Backup Material
PSA FIN Counseling Services Contract - The Alliance - fully executed	Backup Material
HFEC Expansion Coversheet	Signed Cover sheet

City of Houston, Texas Ordinance No. 2020-657

AN ORDINANCE APPROVING AND AUTHORIZING A FIRST AMENDMENT TO A GRANT AGREEMENT AMONG THE CITY OF HOUSTON, CITIES FOR FINANCIAL EMPOWERMENT FUND, AND GREATER HOUSTON COMMUNITY FOUNDATION FOR THE IMPLEMENTATION OF FINANCIAL EMPOWERMENT CENTERS (APPROVED BY ORDINANCE NO. 2019-923); 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. The City Council hereby approves and authorizes the 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, or, in the absence of the Mayor, the Mayor Pro Tem is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary, or in the absence of the City Secretary, any Assistant City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said agreement without further authorization from Council.

Section 4. 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 29th day of July, 2020.

APPROVED this _____ day of _____, 20____.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.

Pat J. Haney
City Secretary

(Prepared by Legal Department *Rachel D. Quinn*)
(RG 7/16/2020) Assistant City Attorney II
(Requested by Shannon Buggs, Director, Mayor's Office of Complete Communities)
L.D. File No. 042-1900162-004

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	

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE:

AUG - 4 2020



**FIRST AMENDMENT TO AGREEMENT BETWEEN
THE CITIES FOR FINANCIAL EMPOWERMENT FUND and
THE CITY OF HOUSTON**

This Grant Amendment (the “First Amendment”), dated when countersigned by the City Controller (the “Amendment Effective Date”) is by and between the **Cities for Financial Empowerment Fund** (the “CFE Fund”) and the **City of Houston**, (the “Municipal Grantee”) and reflects that the CFE Fund intends to provide additional grant funding and expand the Scope of Work. The initial Agreement, with a Countersignature Date November 25, 2019, between the Parties is hereby amended in the following respects:

1. In Section 1, titled “Grant”, an additional paragraph shall be appended as follows:

The CFE Fund pledges and agrees to provide the Municipal Grantee a grant in the form of cash in the amount of \$80,000 (the “FEC Expansion Grant”). The FEC Expansion Grant funds will be paid in U.S. Dollars in accordance with Section 6, “Payment of Grant”.

All other provisions in Section 1 shall remain unchanged.

2. In Section 5, titled “Conditions of Disbursement of Grant”, subsection (c) “Grant Payout Schedule” an additional paragraph shall be appended as follows:

“(iv) FEC Expansion Grant:

- a. 90% of funds will be available for payment upon CFE Fund’s receipt of a fully executed Amendment.
- b. Final 10% of funds will be available upon the satisfactory submission of final contract deliverables as defined in the Scope of Work.”

All other provisions in Section 5 shall remain unchanged.

3. In Exhibit B – “Scope of Work”, Section I. subsection 1., the following shall be added as subsection c.:

“Additional counselor secured by grant funds under the FEC Expansion Grant will be expected to meet the following benchmarks in their first year at the FEC, which shall begin on the additional counselor’s start date and end one year from the start date:

- At a minimum, conduct an average of **480 sessions** in the counselor’s first year.
At a minimum, achieve an average of **60 outcomes** in the counselor’s first year.”

All other provisions (Section I. subsection 1.a. and 1.b., subsections 2 through 5, and Sections II, III, and IV) in the Scope of Work shall remain unchanged.

All other terms and conditions in the Original Agreement, which are not hereby amended in this First Amendment, remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have caused this First Amendment to be duly executed as of the date countersigned by the City Controller.

CITIES FOR FINANCIAL EMPOWERMENT FUND, INC.

By: DocuSigned by:
Jonathan Mintz
CB49317ED49F421...
Name: Jonathan Mintz
Title: President and Chief Executive Officer

Date: 6/30/2020

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

City Secretary

Mayor

APPROVED:

DocuSigned by:
Shannon Buggs
E44905C64CD64DC
Mayor's Office of Complete Communities

COUNTERSIGNED BY:

City Controller

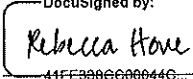
APPROVED AS TO FORM:

DocuSigned by:
Rachel Grier
8949061A261241A...
Assistant City Attorney
L.D. File No. 042-1900162-004

DATE COUNTERSIGNED:

ACKNOWLEDGED AND AGREED:

GREATER HOUSTON COMMUNITY FOUNDATION
as Fiscal Conduit

By: 
Name: Rebecca Hove
Title: Managing Director, Strategic Philanthropy
Date: 6/30/2020



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 7/10/2020

HITS-FY21 311 REPLACEMENT APPROPRIATION (1 of 2)

Agenda Item#: 19.

Summary:

ORDINANCE appropriating \$1,035,000.00 out of Equipment Acquisition Consolidated Fund for Professional Services Supporting the 311 Replacement Project for Houston Information Technology Services and various departments

Background:

Ordinance appropriating \$1,035,000.00 from the Equipment Acquisition Consolidated Fund for professional services supporting the 311 Replacement Project for Houston Information Technology Services Department and various departments.

SPECIFIC EXPLANATION:

The Chief Information Officer recommends that City Council approve an ordinance to appropriate \$1,035,000.00 from the Equipment Acquisition Consolidated Fund (1800) for professional services supporting the 311 Replacement Project for various departments.

The following project is budgeted in the approved FY2021 Capital Improvement Plan adopted by City Council.

The project description with allocation is as follows:

<u>PROJECT</u>	<u>PROJECT NO</u>	<u>AMOUNT</u>
311 Replacement	WBS# X-650011	\$1,035,000.00

This council action is to appropriate capital funding. A subsequent council action will be submitted to approve the professional services contract needed to implement the replacement of the current 311 Call Center service request management system with the city-owned Microsoft Dynamics 365 system, due to out of date technology and functionalities of the current system. These resources will be utilized to support the development of the new application/system. HITS will work with the Strategic Purchasing Division (SPD) to bring the subsequent professional services contract forward for city council for approval.

Fiscal Note:

No significant Fiscal Operating impact is anticipated as a result of this project.

This is a part of the 311 Replacement purchase package that went to the Transportation, Technology, and Infrastructure Committee on June 24, 2020.

Lisa Kent, Chief Information Officer

Prior Council Action:

Amount of Funding:

\$1,035,000.00 – Equipment Acquisition Consolidated Fund (1800)

\$1,035,000.00 - TOTAL

Contact Information:

Linda Shelton
(832) 393-0082

ATTACHMENTS:

Description

Coversheet
2020-658 Executed Ordinance

Type

Signed Cover sheet
Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 7/10/2020

HITS-FY21 311 REPLACEMENT APPROPRIATION

Agenda Item#: 19.

Summary:

Background:

Ordinance appropriating \$1,035,000.00 from the Equipment Acquisition Consolidated Fund for professional services supporting the 311 Replacement Project for Houston Information Technology Services Department and various departments.

SPECIFIC EXPLANATION:

The Chief Information Officer recommends that City Council approve an ordinance to appropriate \$1,035,000.00 from the Equipment Acquisition Consolidated Fund (1800) for professional services supporting the 311 Replacement Project for various departments. The following project is budgeted in the approved FY2021 Capital Improvement Plan adopted by City Council.

The project description with allocation is as follows:

PROJECT	PROJECT NO	AMOUNT
311 Replacement	WBS# X-650011	\$1,035,000.00

This council action is to appropriate capital funding. A subsequent council action will be submitted to approve the professional services contract needed to implement the replacement of the current 311 Call Center service request management system with the city-owned Microsoft Dynamics 365 system, due to out of date technology and functionalities of the current system. These resources will be utilized to support the development of the new application/system. HITS will work with the Strategic Purchasing Division (SPD) to bring the subsequent professional services contract forward for city council for approval.

Fiscal Note:

No significant Fiscal Operating impact is anticipated as a result of this project.

This is a part of the 311 Replacement purchase package that went to the Transportation, Technology, and Infrastructure Committee on June 24, 2020.

DocuSigned by:

Lisa Kent

44FF8FE8CCB7481...

Lisa Kent, Chief Information Officer

Prior Council Action:

N/A

Amount of Funding:

Funding:

\$1,035,000.00 – Equipment Acquisition Consolidated Fund (1800)

\$1,035,000.00 - TOTAL

Contact Information:

Linda Shelton
(832) 393-0082

ATTACHMENTS:

Description

DRAFT Ordinance
FMBB
Funding Requests
FORM A

Type

Ordinance/Resolution/Motion
Financial Information
Financial Information
Financial Information

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.
- (x) A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- () Other - Grant Funds Available

[Signature]
Gene B. Brown

City Controller of the City of Houston, Texas

Date: 7-28, 2020

FUND REF: 13006900 520900 AMOUNT: \$1,035,000.00 ENCUMB. NO.: FMBB 4-6660

City of Houston, Texas Ordinance No. 2020-658

AN ORDINANCE APPROPRIATING THE SUM OF \$1,035,000.00 OUT OF THE EQUIPMENT ACQUISITION CONSOLIDATED FUND FOR PROFESSIONAL SERVICES SUPPORTING THE 311 REPLACEMENT PROJECT FOR HOUSTON INFORMATION TECHNOLOGY SERVICES AND VARIOUS DEPARTMENTS; 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. The City Council appropriates the sum or sums of money set out in the title of this Ordinance, out of the funds set out in such title for the purposes set out in such title.

Section 2. 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 29th day of July, 2020.

APPROVED this _____ day of _____, 20____.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.

Pat J. Harrel
City Secretary

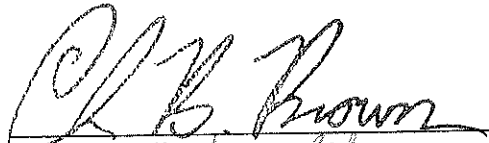
(Prepared by Legal Dept. *Jane Wu*)
(JW: arm 07/15/2020) Assistant City Attorney II
(Requested by Lisa Kent, Chief Information Officer, HITS
(L.D. File No. 0452000041001)

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: AUG - 4 2020

CERTIFICATE OF CITY CONTROLLER

I, Chris Brown, City Controller of the City of Houston, Texas, pursuant to Article II, Section 19a of the Charter of the City of Houston, with respect to the sum of **\$1,035,000.00** required for the appropriation referenced in the title of this ordinance, do hereby certify as follows:

To the extent that the **\$1,035,000.00** will be paid by commercial paper proceeds, funds will be received into the treasury and available before the maturity of said obligation, and such anticipated funds have not already been appropriated for any other purpose. Such sum will be received as a cash draw(s) to the City of Houston pursuant to the General Obligation Commercial Paper Program, Series E, Ordinance No. 2002-1122.


City Controller *Chris Brown*

Equip1800

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	



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 7/16/2020

H29400 - 311, Software Solution and IT Professional
Services - ORDINANCE (2 of 2)

Agenda Item#: 20.

Summary:

ORDINANCE approving and authorizing contract between City of Houston and **ACCENTURE LLP** for IT Professional Services for Houston Information Technology Services and Various Departments; providing a maximum contract amount - 3 Years with two one-year options - \$3,154,000.00 - Equipment Acquisition Consolidated, Central Service Revolving and Other Funds
This item should only be considered after passage of Item 19 above

Background:

S49-H29400 – Approve an ordinance awarding a Professional Services derivative agreement to Accenture, LLP through the Texas Department of Information Resources (DIR) in the maximum contract amount not to exceed \$3,154,000.00 for a software solution and IT professional services for Houston Information Technology Services (HITS) and various departments.

Specific Explanation:

The Chief Information Officer (CIO) and the Chief Procurement Officer (CPO) recommend that City Council approve an ordinance of awarding a **three (3) year derivative agreement with two (2) one (1) year options** to **Accenture, LLP** with the maximum contract amount not to exceed **\$3,154,000.00**, for a software solution and IT professional services, through the Texas Department of Information Resources (DIR) for Houston Information Technology Services (HITS) and various departments. The CPO and/or the CIO may terminate this contract at any time upon 30-days written notice to the contractor.

The scope of work requires the contractor to design, build, solution test, deploy and implement Microsoft Dynamics 365 CRM, including training and knowledge transfer to City of Houston employees. The City of Houston owns licenses for Microsoft's Dynamics 365, which is an industry standard call center and customer service application. Accenture will implement a new 3-1-1 service request management system that includes a citizen portal, virtual agent and mobile access for improved citizen experience.

This item was presented at the June 24, 2020 Transportation, Technology, and Infrastructure (TTI) Committee meeting.

M/WBE Participation:

HITS received a contract-specific M/WBE goal of 5.50% M/WBE participation for this contract. Accenture, LLP has designated the below-named company as its certified M/WBE subcontractor.

SUBCONTRACTOR	TYPE OF WORK	Percentage
Safal Partners	Design and delivery of project changes and training plans	5.50%

Pay or Play Program:

The proposed contract requires compliance with the City's 'Pay or Play' ordinance regarding health benefits for employees of City contractors. In this case, the contractor provides health benefits to eligible employees in compliance with City policy.

Hire Houston First:

This procurement is exempt from the City's Hire Houston First Ordinance. Bids/proposals were not solicited because the department is utilizing an Interlocal or Cooperative Purchasing Agreement.

Fiscal Note:

Funding for this item is included in the FY2021 Proposed Budget. Therefore, no Fiscal Note is required as stated in the Financial Policies.

No significant Fiscal Operating impact is anticipated as a result of this project.

Jerry Adams, Chief Procurement Officer
Finance/Strategic Procurement Division

Lisa Kent, Chief Information Officer
Houston Information Technology Services

Estimated Spending Authority			
DEPARTMENT	FY2021	Out Years	TOTAL
Houston Information Technology Services	\$1,954,000.00	\$1,200,000.00	\$3,154,000.00

Prior Council Action:

Ordinance No.: 2020-0595; approved July 1, 2020

Amount of Funding:

\$ 622,000.00 - Equipment Acquisition Consolidated Fund (1800) - ***Previously Appropriated by Ord. No.: 2020-0595***

\$ 99,810.00 - Contribution for Capital Projects (4515) - ***Previously Appropriated by Ord. No.: 2020-0595***

\$1,035,000.00 - Equipment Acquisition Consolidated Fund (1800)

\$1,397,190.00 - Central Service Revolving Fund (1002)

\$3,154,000.00

Contact Information:

NAME:	DEPARTMENT/DIVISION	PHONE
Candice M. Gambrell, Deputy Assistant Director	FIN/SPD	(832) 393-9129
Norbert Aguilar, Sr. Procurement Specialist	FIN/SPD	(832) 393-8751
Linda Shelton, Sr. Staff Analyst	HITS	(832) 393-0137

ATTACHMENTS:

Description

Cover Sheet
2020-659 Executed Ordinance

Type

Signed Cover sheet
Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 7/16/2020

H29400 - 311, Software Solution and IT Professional Services - ORDINANCE

Agenda Item#: 48.

Summary:

Background:

S49-H29400 – Approve an ordinance awarding a Professional Services derivative agreement to Accenture, LLP through the Texas Department of Information Resources (DIR) in the maximum contract amount not to exceed \$3,154,000.00 for a software solution and IT professional services for Houston Information Technology Services (HITS) and various departments.

Specific Explanation:

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Hire Houston First:

This procurement is exempt from the City's Hire Houston First Ordinance. Bids/proposals were not solicited because the department is utilizing an Interlocal or Cooperative Purchasing Agreement.

Fiscal Note:

Funding for this item is included in the FY2021 Proposed Budget. Therefore, no Fiscal Note is required as stated in the Financial Policies.

No significant Fiscal Operating impact is anticipated as a result of this project.

DocuSigned by:

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Jerry Adams, Chief Procurement Officer
 Finance/Strategic Procurement Division

DocuSigned by:

44FF8FE8CCB7481...

Lisa Kent, Chief Information Officer
 Houston Information Technology Services

7/20/2020

Estimated Spending Authority			
DEPARTMENT	FY2021	Out Years	TOTAL
Houston Information Technology Services	\$1,954,000.00	\$1,200,000.00	\$3,154,000.00

Prior Council Action:

Ordinance No.: 2020-0595; approved July 1, 2020

Amount of Funding:\$ 622,000.00 - Equipment Acquisition Consolidated Fund (1800) - *Previously Appropriated by Ord. No.: 2020-0595*\$ 99,810.00 - Contribution for Capital Projects (4515) - *Previously Appropriated by Ord. No.: 2020-0595*

\$1,035,000.00 - Equipment Acquisition Consolidated Fund (1800)

\$ 197,190.00 - Central Service Revolving Fund (1002)

\$1,200,000.00 - Central Service Revolving Fund (1002)

\$3,154,000.00**Contact Information:**

NAME:	DEPARTMENT/DIVISION	PHONE
Candice M. Gambrell, Deputy Assistant Director	FIN/SPD	(832) 393-9129
Norbert Aguilar, Sr. Procurement Specialist	FIN/SPD	(832) 393-8751
Linda Shelton, Sr. Staff Analyst	HITS	(832) 393-0137

ATTACHMENTS:

Description	Type
CoH Ownership Inf Form	Backup Material
Clear Tax Report	Backup Material
Form B	Backup Material
Coop Interlocal Form	Backup Material
OBO Interoffice Memo	Backup Material
OBO Letter Of Intent	Backup Material
RCA Budget Funding Inf Form	Backup Material
Ordinance 2020 0595- Appropriations	Ordinance/Resolution/Motion
OBO POP 2 Form	Backup Material
OBO POP 3 Form	Backup Material
Accenture Derivative Agreement	Contract/Exhibit

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:

① ☒ Funds have been encumbered out of funds previously appropriated for such purpose.

② ☒ 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 herein by this reference.

☐ Other - Grant Funds Available

Q. B. Brown
Jenni Puh

Date: 7-28, 2020

City Controller of the City of Houston, Texas

21800-6800 520900
4615 6800
1200 6800
1000 6800
520121

1,035,000.00
99,810.00
1,035,000.00
1,971,900.00

FMBB
ENCUMB. NO.: 4-6660

FUND RE
QA 46 16205

AMOUNT
+L #1,954,000.00

City of Houston, Texas Ordinance No. 2020-6592 1-277366

AN ORDINANCE APPROVING AND AUTHORIZING A CONTRACT BETWEEN THE CITY OF HOUSTON AND ACCENTURE LLP FOR IT PROFESSIONAL SERVICES FOR HOUSTON INFORMATION TECHNOLOGY SERVICES AND VARIOUS DEPARTMENTS; 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, THAT:

Section 1. 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, if any, and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. 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 4. The total amount for the contract, agreement or other undertaking approved and authorized hereby shall never exceed \$3,154,000.00 unless and until this sum is increased by ordinance of City Council.

Section 5. 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 29th day of July, 2020.
APPROVED this ____ day of _____, 20____.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.

Pat J. Harris
City Secretary

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: AUG - 4 2020

Funding:

\$ 622,000.00 - Equipment Acquisition Consolidated Fund (1800) - *Previously Appropriated by Ord. No.: 2020-0595*

\$ 99,810.00 - Contribution for Capital Projects (4515) - *Previously Appropriated by Ord. No.: 2020-0595*

\$1,035,000.00 - Equipment Acquisition Consolidated Fund (1800)

\$ 197,190.00 - Central Service Revolving Fund (1002)

\$1,200,000.00 - Central Service Revolving Fund (1002)

\$3,154,000.00

(Prepared by Legal Dept. Jane Wu)
 (JW/arm 07/20/20) Assistant City Attorney II
 (Requested by Jerry Adams, Chief Procurement Officer, Finance/Strategic Procurement Division)
 (L.D. File No. 0452000023001)

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

DERIVATIVE AGREEMENT

THIS DERIVATIVE AGREEMENT (the "Agreement") is made on the date countersigned by the City Controller ("Effective Date"), by and between the **City of Houston, Texas** (the "City"), a Texas Home Rule City of the State of Texas principally situated in Harris County, and **ACCENTURE LLP** (the "Vendor"), with its principal place of business at 161 North Clark Street, Chicago, Illinois 60601, and doing business in Texas.

RECITALS

WHEREAS, Accenture LLP and the State of Texas Department of Information Resources ("Texas DIR") entered into Contract Number DIR-TSO-4005 for services, effective September 13, 2017 ("DIR Contract"), as amended. The DIR Contract is based upon an award to Accenture LLP of the competitively bid Request for Offer DIR-TSO-TMP-253 for Deliverables-Based Information Technology Services and dated August 4, 2016;

WHEREAS, the City, which is a Texas unit of local government, as defined in Section 2054.003, Texas Government Code, is an authorized purchaser under the DIR Contract; and

WHEREAS, the Parties desire to enter into a contract, based upon applicable terms, conditions, and pricing of the DIR Contract, as supplemented hereby, in which Vendor will provide services described in the DIR Contract, as well as additional terms and conditions, service levels, descriptions of services, and corresponding pricing as set forth herein;

NOW, THEREFORE, the Parties agree as follows:

1. **Order of Precedence.**

1.1 The documents listed below are incorporated by reference and made part of this Agreement. Unless otherwise agreed or provided herein, in the event of conflict or inconsistency among or between the documents, the documents shall control in the order in which they are listed below (1.1.1 through 1.1.4):

- 1.1.1 The DIR Contract (in accordance with its order of precedence), as may be amended;
- 1.1.2 The sections of and exhibits to this Agreement, as it may be amended from time to time and signed by the parties (and in the event of conflict between the sections and the exhibits of this Agreement, the sections will control over the exhibits);
- 1.1.3 City's purchase orders (including service release orders) or LOAs issued pursuant to this Agreement;
- 1.1.4 Any change orders to this Agreement (the later dated document will govern).

1.2 For avoidance of doubt, any topic that is not addressed in this Agreement will be governed by the terms of the DIR Contract, including, but not limited to IP and Work Product ownership and Vendor IP and licenses granted to Customer for Vendor IP embodied in or delivered to City in conjunction with the Work Product.

2. **Entire Agreement and Performance of Obligation.**

2.1 The Agreement is the entire agreement between City and Vendor regarding the purchase of products and services described herein, and supersedes and replaces any previous communications, representations, or agreements. In the event that the DIR Contract is not extended beyond September 13, 2020, or otherwise expires or terminates before Vendor completes performance of all of its obligations under this Agreement (including an order issued before the termination or expiration of the DIR Contract), then the Parties shall nonetheless complete performance of all its obligations under this Agreement and the applicable order pursuant to the terms and conditions of the DIR Contract to the extent it is applicable.

3. **Services and Pricing.**

3.1 Vendor shall perform the services as provided in Exhibit A of this Agreement. If adequate funds are available under Section 4 of this Agreement, and if the Director of Houston Information Technology Services (or his or her designee) ("Director") provides Vendor with specific, written, authorization, including but not limited to a LOA, Vendor shall provide the products or services set forth in the applicable statement of work and in accordance with this Agreement and the DIR Contract. "LOA" or "Letter of Authorization" means the fully executed document the Director sends to Vendor authorizing certain services to be performed by Vendor or products to be provided to City in accordance with this Agreement. Unless otherwise specified in this Agreement, all references to LOA in this Agreement shall mean an LOA issued in accordance with and pursuant to this Agreement.

3.2 LOAs must set forth the following:

- a. Agreement number and Vendor's name, address, and telephone number;
- b. LOA number and date;
- c. A scope of services specifically identifying the services to be performed or products to be provided by Vendor;
- d. Time of performance (e.g. the LOA term, the LOA expiration date, or period of performance for the individual LOA or each project contemplated under the LOA);
- e. Place of performance;
- f. Identity of Vendor's key personnel assigned to each LOA and subcontractors who will perform services (after having secured the Director's written approval of such subcontractor(s));
- g. A breakout to include identification, by line item, of the required position classifications to perform the services, the estimated hours, and the hourly base rates as set forth in the DIR Contract, if an hourly based agreement;
- h. Key City personnel, such as the project manager for the LOA;
- i. Identification of the estimated amount of services to be performed by M/WBE participant(s). This M/WBE identification should include: M/WBE participant(s) to whom the activities for specified work plan and/or associated activities will be delegated, along with the stated percentage of such M/WBE services in relation to the total amount proposed under such LOA. Vendor will make reasonable efforts to adhere to the levels set forth in this Agreement to the extent M/WBE participants are available for the services or activities associated with the LOA or each project contemplated in the LOA;
- j. Method of payment, such as a Fixed Lump Sum or Time and Materials Based, both of which shall include a total "Not to Exceed" amount;
- k. Balance of funds remaining in the Agreement;
- l. Subcontract costs that shall include all "ordinary and reasonable costs," and Vendor's proposed

general and administrative costs for subcontracting services under the LOA. Vendor shall submit all of the documentation required by this paragraph to the Director for his/her review prior to the final execution of the LOA. Failing written approval by the Director, Vendor shall timely resubmit such proposed subcontract costs to the Director for his/her written approval.

- m. Frequency of payment and proposed payment schedule, such as monthly or upon completion of a deliverable, milestone, or the entire project;
- n. Submittal requirements, including schedules and deliverables, (i.e., reports, analyses statements, etc.);
- o. Provisions addressing the Director's processes and criteria for accepting and rejecting individual deliverables and milestones; hold backs, if any; and final acceptance of deliverables and invoiced services; and
- p. Any other information necessary to identify and perform the services or as may otherwise be required by the Director.
- q. Upon written request by Vendor, the Director, in his/her sole discretion, may grant extensions of time for completion of services, a project, or items required under a project or LOA, such as an extension for delays caused by the City or persons with whom the work must be coordinated and for other reasonable causes over which Vendor has no control. The Director's approval of the extension of time must be in writing. Each LOA continues in effect until all requirements have been met and a written acceptance of the services performed has been made by the Director or until Vendor receives written notification from the Director to discontinue services.
- r. In the event of a conflict between this Agreement and an LOA, this Agreement shall control.

3.3 Upon receipt of a duly issued and authorized order, Vendor shall furnish and deliver the products and services and the City shall pay Vendor in accordance with the specifications, prices, and payment terms of the DIR Contract, as well as the additional terms and conditions, service levels, descriptions of services, and pricing set forth in Exhibit A, which are attached hereto and incorporated herein, or in any other authorized writings, including but not limited to LOAs. Vendor shall not increase the pricing during the Term of this Agreement. The City's payment(s) for services under this Agreement must only be paid from Allocated Funds, as provided in paragraph 4 below.

3.4 Vendor shall complete the services or provide products in accordance with Exhibit A and any other statement of work, other project plan, LOA, and/or any authorized amendment thereto, approved and signed by the Director and Vendor. No additional term or condition added in any statement of work, other document relating to the services, or any amendment thereto can conflict with or diminish any term or condition of this Agreement and any such term or condition will be void and unenforceable.

4. Limit of Appropriation.

4.1 The City's duty to pay money to Vendor for any purpose under this Agreement is limited in its entirety by the provisions of this section.

4.2 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 1,954,000.00 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 for the Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

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

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

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

\$ _____

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. Vendor must assure itself that sufficient allocations have been made to pay for products and services it provides. If Allocated Funds are exhausted, Vendor's only remedy is suspension or termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.

5. Changes.

- 5.1 At any time during the Agreement Term, the Director and Vendor may mutually agree in a Change Order to increase or decrease the scope of services, add or delete products, or change plans and specifications, including but not limited to the number of licenses, as he or she may find necessary to accomplish the general purposes of this Agreement. Vendor 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.
- 5.2 The Director will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Vendor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of Notice]
SUBJECT: Change Order under the Agreement between the City and [Name of Vendor] 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 Vendor 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 Director]

- 5.3 The Director may issue more than one Change Order, subject to the following limitations:
 - 5.3.1 Council expressly authorizes the Director to approve Change Orders up to \$50,000. Any Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.
 - 5.3.2 If a Change Order describes items that Vendor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Vendor.
 - 5.3.3 The Total of all Change Orders issued under this section may not increase the original Agreement amount by more than 25%, unless the Change Order(s) are exempt from the competitive bidding or proposal requirements, set forth in Tex. Local Govt. Code Chapter 252.
- 5.4 Whenever Vendor agrees to the Change Order issued by the Director, Vendor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Vendor shall complete the work within the time agreed. If no time for completion is agreed, Vendor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Vendor is required to perform under this Agreement, Vendor may request a time extension for the completion of the work. The Director's decision regarding a time extension is final, however such approval may not be unreasonably withheld.
- 5.5 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.
- 5.6 Change Orders are subject to the Allocated Funds provisions of this Agreement.

6. Term.

- 6.1 The Agreement shall commence on the Effective Date and shall remain in effect for three years ("Initial Term"), unless terminated under the provisions of the Agreement.
- 6.2 The Director may issue an LOA, signed by the Director, at any time during the Initial Term of this Agreement or subsequent renewals or extensions to it. After expiration or termination of this Agreement, no additional LOAs may be issued; however, for any LOA issued prior to the expiration or termination of this Agreement, Vendor shall complete the work or services thereunder and this Agreement shall likewise remain in effect only for those purposes necessary and appropriate for the LOA to continue until its own expiration or termination, unless Vendor is otherwise notified in writing by the Director.
- 6.3 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will automatically be renewed for two successive one-year terms on the same terms and conditions (each a "Renewal Term"). If the City chooses not to renew the Agreement, the Director shall notify Vendor of the non-renewal at least 30 days before the expiration of the then-current term.

7. Termination.

- 7.1 Termination for Convenience. The Director may terminate a statement of work issued under this Agreement or this Agreement at any time for convenience upon thirty (30) days prior written notice

to Vendor. The City's right to terminate a statement of work issued under this Agreement or this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future. On receiving the notice, Vendor shall, unless the notice directs otherwise, promptly discontinue all services under the applicable statement of work or all statements of work under this Agreement and cancel all existing orders and subcontracts that are chargeable to the applicable statement of work or all statements of work under this Agreement. As soon as practicable after receiving the termination notice, Vendor shall submit an invoice showing in detail the services performed or products provided under the applicable statement of work (or all statements of work if the termination is for this Agreement) up to the termination date. The City shall then pay the fees to Vendor for services actually performed and products already provided but not already paid for, unless the fees exceed the allocated funds remaining under this Agreement. Vendor shall refund pro rata any advance fees paid for the period remaining after the termination of the applicable statement of work (and for all statements of work if the termination is for this Agreement. TERMINATION OF THE APPLICABLE STATEMENT OF WORK AND RECEIPT OF PAYMENT FOR SERVICES RENDERED OR PRODUCTS PROVIDED ARE VENDOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THE APPLICABLE STATEMENT OF WORK OR AGREEMENT. VENDOR 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.

- 7.2 Termination for Cause. Either party may terminate a statement of work issued under this Agreement or this Agreement on written notice if the other party fails to comply with the applicable statement of work or this Agreement after it has been notified in writing of the nature of the failure and been provided with thirty (30) days to cure the failure. In accordance with paragraph 10 (Notices), notice of failure to comply by the City shall be provided to the Director or his/her designee. Notice of failure to comply by Vendor shall be provided to the address in Section 10 (Notices). If the applicable statement of work or this Agreement is terminated for cause by the Vendor, the City will pay Vendor for all amounts due for products or services ordered prior to the effective termination date and ultimately accepted. If the applicable statement of work or Agreement is terminated for cause by City, the Vendor shall not be entitled to any amounts for products and services that have not been delivered and accepted by the City on or before the effective date of the termination for cause. Vendor shall not charge, the City shall not pay Vendor, termination fees under any circumstances. City may immediately suspend or terminate any statement of work(s) without advanced notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental or safety laws or regulation, if such non-compliance relates or may relate to Vendor provision of goods or services to City.
- 7.3 Bankruptcy. If either party becomes insolvent, unable to pay debts when due, files for or is subject to bankruptcy or receivership or asset assignment, the other party may terminate this Agreement and cancel any unfulfilled obligations.
- 7.4 Survival. Any termination under this section will be without prejudice to the terminating party's legal rights and remedies, including the right to seek injunction and other equitable remedies.

8. Binding Effect.

- 8.1 The parties agree that the Agreement shall be binding upon their respective successors, assigns, or transferees of any nature, if assignment and/or transfer is permitted in accordance with the terms of the Agreement.

9. Governing Law, Jurisdiction, and Venue.

- 9.1 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.

10. **Notices.**

- 10.1 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 below 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.

To the City:

The City of Houston
Houston Information Technology Services Department
Attn: Lisa Kent, CIO
611 Walker Street, 8th Floor
Houston, Texas 77002

To Vendor (Accenture):

Accenture, LLP
Attn: Robert Cohan, Chris Newport
1301 Fannin St., Suite 1900
Houston, Texas 77002

11. **Confidentiality and Information Ownership; Data Security.**

11.1 Confidentiality and Data Ownership

- 11.1.1 The City is, will be, and shall remain at all times the owner of all of the City's Information. Vendor expressly acknowledges that the City has all right, title, or other ownership interest in the City's Information and Vendor shall not possess or assert any lien or other right against the City's Information. The City is, will be, and shall remain the owner of all City data, including City-specific data created or generated by either party pursuant to this Agreement, excluding any Vendor IP. "Vendor IP" means as it is defined in the DIR Contract and that is expressly identified in the applicable statement of work that is signed by the City. The City may use this City data for any purpose. At all times, including during or after the termination or expiration of this Agreement or any license Vendor grants to the City, the City retains the right to reveal or extract the City's Information and all City data from the Vendor software and documents, and the right to use the City data and the City's Information for the City's own use, for use with other non-Vendor software, or to load elsewhere. Vendor shall provide a data export tool that returns City data and City Information on demand. Notwithstanding the foregoing, City data stored in a shared backup media will be deleted as per Vendor's backup deletion policy within ninety (90) days. Vendor shall not use City data or City

Information for any other purposes other than what is expressly specified in this Agreement.

- 11.2 Vendor, its agents, employees, contractors, and subcontractors shall hold all City information that they receive, or to which they have access, in strictest confidence (which means the same standard of care Vendor uses to protect its own proprietary and confidential information of like kind but in no event less than reasonable care). "City's Information" or "City Information" means any and all City information or data, including but not limited to, City-specific information, Personal Data, data, materials, processes, documents, , and any other information, materials, or data Vendor receives or to which Vendor has access to, in any form whatsoever including oral, written, and machine-readable form, video, audio, phonorecord, recorded media, drawings, schematics, samples, devices, software, formulas, services, processes, procedures, protocols, trade secrets, intellectual property, and business or strategic plans.
- 11.3 If it is agreed that Vendor is to access, use, transmit, process, or store (either data at rest or data in transit) data that identifies (alone or in conjunction with other information) or directly relates to natural persons as may be further defined in applicable privacy laws and data privacy laws, including but not limited to, Personally Identifying Information under the Texas Business and Commerce Code Chapter 521 ("Personal Data") in connection with the Vendor's performance under this Agreement, such as user information and citizen information, the general responsibilities of the parties (with respect to the nature and purpose of such access, security controls and protocols, international transfer of data etc.) as set out in the Exhibit E of this Agreement shall apply for access, use, transmission, processing, and storage of Personal Data. With respect to Personal Data that is provided to, used, transmitted, processed, or stored by Vendor under the Vendor's performance under this Agreement as described herein, City shall be and remain the data controller and Vendor the data processor.
- 11.4 Vendor and its personnel, temporary employees, agents, contractors, representatives, counsel, and subcontractors shall not disclose, disseminate, or use the City Information for any purpose other than solely providing the services described in the applicable statement of work issued under this Agreement, unless the Director authorizes it in writing prior to such disclosure, dissemination, or use. Vendor shall obtain written agreements from its contractors and subcontractors which bind them to the terms as restrictive as those set forth in this Agreement and shall provide a certification (email acceptable) to the City upon request by the City or the Director that such terms are as restrictive as those set forth in this Agreement. Vendor's personnel, temporary employees, agents, representatives, and counsel shall be bound to these obligations by their employment contracts with Vendor. The placement of a copyright notice on any City Information will not be construed to mean that such information has been published and will not release Vendor from its obligation of confidentiality hereunder. The terms and conditions of this Confidentiality section shall survive the expiration or termination of this Agreement for any reason.
- 11.5 Upon request by the Director at any time during the Term and upon expiration or termination of this Agreement, Vendor shall retain, migrate, or dispose of the City's Information as directed by the Director. Within two (2) days of Vendor's receipt of the Director's written request to retain, migrate, or dispose of the City's Information, Vendor shall notify the Director in writing of the estimated storage size and types of data to be retained, migrated, or disposed of. Within thirty (30) days (or 90 days if City's information is stored in shared backup media) of Vendor's receipt of the Director's written request to retain, migrate, or dispose of the City's Information, Vendor shall perform the following to the extent applicable, in accordance with the Director's requirements, and at no additional cost to the City:

- 11.5.1 deliver the City's Information (in whole or in part, as directed by the Director) and physical media owned or provided by the City to the Director, in the format and on the media requested by the Director;
- 11.5.2 destroy the City's Information (in whole or in part, as directed by the Director) and provide a certified statement of destruction to the Director;
- 11.5.3 destroy physical media using secure industry standard methods (or such methods approved by the Director);
- 11.5.4 remove the City's Information (in whole or in part, as directed by the Director) from the hosted database, storage device, server, or other repository or storage means; or
- 11.5.5 retain the City's Information (in whole or in part, as directed by the Director) and migrate the designated information to a mutually agreed upon, secure location, database, or storage device for storage and retention of City Information.

In the event the Director directs the Vendor to destroy City Information without the destruction of the physical media, then Vendor shall destroy City Information in a manner that prevents attempts to restore that City Information.

11.6 Data Security

- 11.6.1 Vendor shall maintain the security of all City Information, including but not limited to, all City-specific data, user data, citizen data, and any other data that is provided to or made accessible to Vendor by City, City on behalf of or for the City, or analyzes for the City, as further described below in in this Agreement and in Exhibit E. Vendor shall continuously audit its controls designed to (i) protect the security of City data or (ii) record and monitor the software, services, and documents. Vendor shall regularly test and audit the systems, controls, and procedures outlined in this section, which tests and audits shall occur at least once per calendar month. Vendor shall implement and maintain, at least at industry standards (ISO27001), administrative, technical, and physical controls, safeguards, measures, and procedures to (i) protect and safeguard the privacy, security, integrity, and confidentiality of the City's Information, (ii) prevent, detect, contain, and correct security breaches in, involving, or against the City's Information, and (iii) ensure that the City's Information is not accessed, processed, stored, transmitted, transferred, copied, disposed of, archived, or disclosed contrary to the provisions of this Agreement or applicable laws concerning information technology security, network or data security, and privacy laws. At a minimum, Vendor shall develop, implement, and maintain a reasonable written security program as further described in Exhibit E that includes appropriate administrative, technical, organizational, and physical safeguards and security measures that (i) maintain user identification and access controls designed to limit access to authorized users; (ii) protect the City's Information from unauthorized activity; (iii) use encryption technology, and (iv) comply with any specifications as requested by the City. Vendor shall be responsible and liable for the acts and omissions of Vendor's personnel, temporary employees, agents, contractors, representatives, counsel, and subcontractors in connection with the provision of the products and services required under this Agreement, as if such acts or omissions were Vendor's acts or omissions. With respect to any of Vendor's personnel, temporary employees, agents, contractors, representatives, counsel, and subcontractors who process, store, transmit, access, dispose of, or have access to the City's Information in so far as it relates to Vendor's performance of this Agreement, Vendor shall:

- 11.6.2 Advise these persons of and require that they comply with the provisions of this Agreement applicable to each person, including without limitation, the provisions relating to the privacy, security, integrity, and confidentiality of the City's Information;
- 11.6.3 Require contractors and subcontractors to execute and deliver to Vendor written agreements that are a direct flow-down of, or substantially similar to (or no less restrictive than) the terms of this Agreement, including without limitation, with respect to privacy, security, integrity, and confidentiality of the City's Information; and
- 11.6.4 With respect to Vendor's personnel, temporary employees, agents, contractors, representatives, counsel, and subcontractors with access to the City's physical property or premises, Vendor shall advise these persons of applicable visitor policies and require that they comply with them and only access authorized areas.
- 11.6.5 Vendor represents and warrants it has used and will use generally accepted industry tools and practices to monitor any Work Products provided or developed by Vendor under this Agreement up to the date of delivery of such Work Products for any time bombs, worms, viruses, Trojan horses, protect codes, data destruct keys, or other programming devices (collectively, "Virus") that are intended to access, modify, delete, damage, deactivate, or disable software or services as of the date of delivery to the City. If a Virus is found to have been introduced into the Work Product ("Work Product" as defined by the DIR Contract) by virtue of Vendor's breach of the foregoing warranty, Vendor will (at no additional charge and as the City's sole and exclusive remedy against Vendor) replace the portion of the Work Product that contains a Virus and mitigate and remediate any and all damage caused by the Virus, subject to section 11.12. Furthermore, Vendor shall utilize up-to-date and comprehensive virus and malware protection capabilities, and commercially reasonable practices, including but not limited to, detection, scanning, and removal of known viruses, worms, and other malware on any Vendor-controlled, owned, or hosting systems. These virus protection capabilities shall be in force on all computers, equipment, and/or devices Vendor utilizes in connection with the services provided under this Agreement, as well as on all data files or other transfers that have access or are connected to Vendor's hosting systems. Vendor shall mitigate security vulnerabilities through the use of perimeter and host countermeasures such as intrusion prevention, web application firewall, IP address shunning, and other measures designed to prevent exploitation of vulnerabilities.
- 11.6.6 Vendor shall use commercially reasonable efforts to prevent, monitor, mitigate, and remediate against: (i) services that sends or stores infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (ii) any upload to the services or use the services to send or store viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents, or programs; (iii) interference with or disruption of the integrity or performance of the services or the data contained therein; attempts to gain unauthorized access to the services or its related systems or networks; or (iv) export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside of the United States in connection with this Agreement without first complying with all applicable export control laws and regulations that may imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Vendor operates or does business.
- 11.6.7 Vendor shall proactively address security risks by applying released security patches, including, but not limited to, Windows security patching and updates to patch known vulnerabilities in an applicable operating system. Vendor shall provide City and

Director with the vendor name, location, and any other security information of any third-party hosting or cloud facility that will be utilized to hold, store, transmit, or otherwise have access to City Information within two (2) days of the Director's request. Vendor shall provide City and Director with at least 90 days' prior written notice of any relevant material changes to Vendor's information technology infrastructure, facilities (including but not limited to, vendor or location changes of any third-party hosting or cloud facility), or resources associated with information security governance and oversight, security, network, and infrastructure operations and any key personnel responsible for ensuring a secure environment spanning Vendor, any of its subcontractors, and the City.

- 11.7 Pursuant to this Agreement, Vendor shall be responsible for any fraudulent or dishonest acts committed by Vendor's employees, personnel, temporary employees, agents, contractors, representatives, counsel, subcontractors, directors, or officers.
- 11.8 United States Restriction. Unless otherwise agreed in a statement of work and signed by the Director, (i) Vendor shall ensure that, at all times, all of the City Information shall remain in networks, systems, facilities, data centers, gateways, hosting facilities, and cloud facilities physically located solely in the continental United States; (ii) Vendor shall not transmit, disclose, have access to, or process City Information outside of the continental United States; (iii) At all times, all support calls shall be provided by Vendor from within the boundaries of the continental United States.
- 11.9 SSAE 18 Compliance. Vendor shall maintain an information security program that provides for the security and protection of the City Information, including, but not limited to, processes and procedures to respond to security incidents. Vendor shall operate in conformance with the physical, technical, operational and administrative measures and protocols regarding data security as set forth in its then current Standards for Attestation Engagements ("SSAE") No. 18 SOC2 Report (or equivalent report), received from its third-party auditors. Vendor shall, upon written request, provide City with copies of then-current SSAE No. 18 report issued by its third-party independent auditors in relation to the data security policies and procedures designed to meet the requirements set forth in this Agreement. This provision shall survive the expiration or termination of this Agreement so long as Vendor holds or has access to City Information.
- 11.10 Security Monitoring and Response. Vendor shall maintain formal processes to detect, report, respond to, and mitigate and remediate Incidents in a timely manner. If Vendor learns or has reasonable suspicion that any person (including without limitation, Vendor's personnel and third parties) has gained unauthorized access to City Information, or any person has gained unauthorized access to Vendor's network and/or data storage facilities such that any City Information is obtained by an outside party, or the City Information has otherwise been disclosed to unauthorized parties (other than in the proper performance of those services or support therefor), each an "Incident", then Vendor shall promptly (within 24 hours) (i) notify the City Attorney and Director in writing of the nature and extent of the Incident; (ii) conduct an investigation to determine when and, if possible, how the Incident occurred, and then (iii) assist the City in investigating and assessing the extent and nature of the Incident; (iv) use all reasonable endeavors to promptly remedy the Incident and prevent the occurrence of any similar Incident; and (v) inform the City upon request as to the current status of such endeavors. Vendor shall support and fully cooperate with City regarding any investigations regarding an Incident, and use commercially reasonable efforts to prevent the recurrence of such unauthorized acquisition or misuse of the City Information, regardless of fault (if any or if applicable). To the extent such Incident was caused by or resulted from a breach of Vendor's security obligations under this Agreement or Vendor's willful misconduct

or Vendor's gross negligence, Vendor shall also mitigate and remediate. Furthermore, Vendor shall be liable for such data breach or unauthorized access, to the extent such breach, or unauthorized use, transmission, storage processing, or access is caused by a breach of Vendor's security obligations under this Agreement, and for any reasonable costs or expenses of providing notification required by law or regulation, for mitigation or remediation, and other reasonable costs or expenses incurred or paid by the City related to such data breach or unauthorized access. Notwithstanding the foregoing, Vendor shall use commercially reasonable efforts to aid, support, and cooperate with the City regarding any such data breach or unauthorized access regardless of any fault determined or pending to be determined.

11.11 Incident Remediation. "Mitigate" means deployment of security controls as necessary to reduce the adverse effects of threats and reduce risk exposure to a level reasonably acceptable by City. "Remediation" or "Remediate" means, as applicable, that Vendor has completely resolved a security exposure or Incident, such that the vulnerability no longer poses a risk to City Information, Vendor systems in which City Information is stored or transferred through, and City systems. Upon becoming aware of an Incident, Vendor shall Mitigate or Remediate any Incident (i) caused by Vendor's breach of its security obligations under this Agreement and (ii) that has actually resulted in the City Information being compromised, within 15 days from the time Vendor becomes aware of the Incident if such Incident is on the City's environment or within up to ninety (90) days depending on the severity of the Incident if on Vendor owned or managed systems. With respect to Incidents that are Mitigated (but not Remediated), Vendor shall Remediate such Incidents within 15 days after being Mitigated if such Incident is on the City's environment or within up to ninety (90) days depending on the severity of the Incident if on Vendor owned or managed systems.. If Vendor fails to Mitigate or Remediate any Incident within the required timeframe: (a) such failure shall be deemed a material breach of this Agreement; and (b) City may immediately terminate this Agreement or Vendor's access to City Information, including any system interfaces, connectors, or links without cost or penalty, and Vendor shall not be relieved of its obligation to continue to provide services under this Agreement, except to the extent such services are directly impacted by the termination of access.

11.12 Data Recovery. If as a result of Vendor's performance under this Agreement, any City Information is lost or corrupted, Vendor shall restore the data to the previous day's uncorrupted state. Loss or corrupted data means data that is inaccessible, and not merely one that contains inaccurate data due to service defects or other reasons. Vendor shall maintain and implement disaster recovery and avoiding procedures to ensure that the services provided by Vendor are not interrupted during any disaster and the City's Information is not lost or destroyed during any disaster. For any of the City's Information that is managed, maintained, stored, or hosted by or on behalf of Vendor, Vendor shall execute database or systems backups to a backup server according to Vendor's backup policy.

11.13 The parties agree to delete and replace Section 9.K. of the DIR Contract regarding the limitation of liabilities with the following.

For any claim or cause of action arising under or related to this Agreement: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the City shall be limited to the greater of the total amount paid to Vendor under the Agreement during the twelve months immediately preceding the accrual of the claim or cause of action, or for claims subject to Section 9.A.(2) of the DIR Contract ten million dollars. However, this limitation of Vendor's liability shall not apply to claims of

bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Agreement (except as otherwise provided in Section 9.A.(2) hereof); and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

Notwithstanding any other provision in the DIR Contract and this Agreement, for losses arising from a breach of a Party's obligations (i) with respect to Data Security as set forth in this Section 11 and Exhibit E of this Agreement, or (ii) with respect to compliance with Data Privacy Laws, a Party's aggregate liability, including for direct damages, indirect damages, or via Vendor's indemnity obligation under this Agreement, shall not exceed, in the aggregate, the greater of the total amount paid to Vendor under the Agreement during the twenty-four months immediately preceding the accrual of the claim or cause of action or four million five hundred thousand dollars (\$4,500,000.00). However, in no event shall either Party be entitled to recover damages based on business losses, including lost profits or revenue, business interruption, stock depreciation, loss or damage to goodwill, damage to reputation, or punitive damages.

12. Compliance with Laws

12.1 Vendor shall comply with all state and federal laws and regulations applicable to Vendor's performance and obligations under this Agreement, including without limitation all export laws and regulations, and the City Charter and Code of Ordinances.

13. Compliance with Equal Opportunity Ordinance

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

14. Minority and Women Business Enterprises.

14.1 It is the City's policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide Percentage Goals for contracting with MWBEs, are incorporated into this Agreement. Vendor shall make good faith efforts to award subcontracts or supply agreements in at least 5.5% of the value of this Agreement to MWBEs. The City's policy does not require Vendor to in fact meet or exceed this goal, but it does require Vendor to objectively demonstrate that it has made good faith efforts to do so. To this end, Vendor shall maintain records showing:

- (1) subcontracts and supply agreements with Minority Business Enterprises,
 - (2) subcontracts and supply agreements with Women's Business Enterprises, and
 - (3) specific efforts to identify and award subcontracts and supply agreements to MWBEs.
- Vendor shall submit periodic reports of its efforts under this Section to the Office of Business Opportunity ("OBO") Director in the form and at the times he or she prescribes.

14.2 Vendor shall ensure that all subcontracts with MWBE subcontractors and suppliers will permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

- Vendor shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:
- 14.3 (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 OBO Director ("the OBO Director").
- 14.4 _____ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
- 14.5 Within five business days of execution of this subcontract, Vendor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
- 14.6 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.
15. **Drug Abuse Detection and Deterrence**
- 15.1 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. Vendor shall comply with all the requirements and procedures set forth in the Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- 15.2 Before the City signs this Agreement, Vendor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
- (a) a copy of its drug-free workplace policy,
 - (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "B," together with a written designation of all safety impact positions and,
 - (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "C."
- If Vendor 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 "D" Vendor 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 Vendor begins work under this Agreement.
- 15.3 Vendor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Vendor's employee work force.
- 15.4 Vendor shall require that its subcontractors comply with the Executive Order, and Vendor shall secure and maintain the required documents for City inspection.
16. **Non-Waiver.**

16.1 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.

16.2 An approval by the Director, or by any other employee or agent of the City, of any part of Vendor'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.

17. **Severability.**

17.1 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.

18. **Release and Indemnification and Procedures.**

18.1 VENDOR 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. VENDOR 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.

18.2 VENDOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL THIRD PARTY 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 (SUBJECT TO SECTION 11.13 WITH REGARDS TO INTANGIBLE PROPERTY) SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

18.2.1 VENDOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 18.2.1-18.2.3, "VENDOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

18.2.2 THE CITY'S AND VENDOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER VENDOR IS IMMUNE FROM LIABILITY OR NOT; TO THE EXTENT OF VENDOR'S FAULT AND

18.2.3 THE VENDOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER VENDOR IS IMMUNE FROM LIABILITY OR NOT.

VENDOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES.

18.3 VENDOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL THIRD PARTY CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY ALLEGING THAT THE CITY'S USE OF ANY VENDOR IP OR WORK PRODUCT (WHICH MAY INCLUDE THIRD PARTY SOFTWARE, PROCESS, OR DOCUMENTS PROVIDED BY VENDOR AND EMBEDDED/COMBINED IN THE WORK PRODUCT) VENDOR FURNISHED DURING THE TERM OF THIS AGREEMENT (I) INFRINGES ON A THIRD-PARTY'S US PATENT, COPYRIGHT, OR TRADEMARK, EXISTING OR GRANTED AS OF THE ACCEPTANCE OF DELIVERY OF THE SERVICES OR PRODUCTS (OR FILED AND PUBLISHED AS OF SUCH DATE), OR, (II) MISAPPROPRIATES A THIRD-PARTY'S TRADE SECRET. VENDOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED. IF ANY VENDOR IP OR WORK PRODUCT (WHICH MAY INCLUDE THIRD PARTY SOFTWARE, PROCESS, OR DOCUMENT PROVIDED BY VENDOR AND EMBEDDED/COMBINED IN THE WORK PRODUCT) VENDOR PROVIDED TO CITY OR USED IN THE SERVICES OR EMBEDDED IN THE PRODUCTS IS, OR IS LIKELY TO BE HELD TO BE, INFRINGING, VENDOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE IP OR WORK PRODUCT (INCLUDING ANY THIRD PARTY SOFTWARE, PROCESS, AND DOCUMENTS PROVIDED BY VENDOR AND EMBEDDED/COMBINED IN THE WORK PRODUCT) OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE VENDOR IP OR WORK PRODUCT (INCLUDING ANY THIRD PARTY SOFTWARE, PROCESS, OR DOCUMENTS PROVIDED BY VENDOR AND EMBEDDED/COMBINED IN THE WORK PRODUCT), OR DISCONTINUE THE PROCESS, AND VENDOR SHALL REFUND THE FEES PAID FOR IT. VENDOR 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. VENDOR WILL HAVE NO LIABILITY TO THE EXTENT THE ALLEGED INFRINGEMENT OR MISAPPROPRIATION WAS CAUSED BY: (I) MODIFICATIONS TO VENDOR IP OR WORK PRODUCT DELIVERED TO CITY BY VENDOR; (II) USE OF THE VENDOR IP OR WORK PRODUCT OTHER THAN AS PERMITTED UNDER THE AGREEMENT OR IN COMBINATION WITH ANY PRODUCTS OR SERVICES WHERE SUCH COMBINATION WAS NOT WITHIN THE REASONABLE CONTEMPLATION OF THE PARTIES; (III) THE FAILURE TO USE CORRECTIONS OR ENHANCEMENTS TO THE VENDOR IP OR WORK PRODUCT PROVIDED BY THE VENDOR; OR (IV) SPECIFICATIONS OR DIRECTION PROVIDED BY THE CITY AFTER DELIVERY OF VENDOR IP OR WORK PRODUCT.

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

- (a) a description of the indemnification event in reasonable detail,

- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

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

18.5 Defense of Claims.

18.5.1 Assumption of Defense. Vendor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. Vendor 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, Vendor must advise the City as to whether or not it will defend the claim. If Vendor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

18.5.2 Continued Participation. If Vendor 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.

19. Insurance.

19.1 Risks and Limits of Liability. Vendor shall maintain the following insurance coverages in the following amounts:

COVERAGE	LIMIT OF LIABILITY
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> • Bodily Injury by Accident \$500,000.00 (each accident) • Bodily Injury by Disease \$500,000.00 (policy limit) • Bodily Injury by Disease \$500,000.00 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$1,000,000.00 each Occurrence, and \$2,000,000.00 aggregate
Automobile Liability	\$1,000,000.00 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Professional Liability Coverage	\$3,000,000.00 aggregate
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	\$1,000,000.00
Cyber Liability	\$2,000,000.00 aggregate
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

19.2 Insurance Coverage. At all times during the term of this Agreement and any extensions or renewals, Vendor shall provide and maintain insurance coverage that meets the Contract requirements. Prior to beginning performance under the Agreement, at any time upon the

Director's request, or each time coverage is renewed or updated, Vendor shall furnish to the Director current certificates of insurance and endorsements or other documents evidencing adequate coverage, as necessary. Vendor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Vendor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Vendor 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.

- 19.3 **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 (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) 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.

- 19.4 **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. Vendor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Vendor'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, Vendor 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 Contract with a duration of two years after substantial completion.

- 19.5 **Notice.** **VENDOR 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, Vendor shall provide other suitable policies in order to maintain the required coverage. If Vendor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Vendor from any further performance under this Agreement and begin procedures to terminate for default.

20. **Warranties.**

20.1

Vendor warrants that it is the sole owner and/or has all necessary intellectual property rights in the entire right, title, and interests in and to the software, processes, services, work products, documentation, and documents provided by Vendor to City under this Agreement. Vendor further warrants that any software, processes, services, work products, documents, and related documentation provided to City does not infringe upon any patent, copyright, trade secret, or any other rightful claim, proprietary or intellectual property right

of any third party. In the event Vendor breaches this warranty, Vendor shall, at its own expense and as the City's sole and exclusive remedy either: (1) obtain for the City the right to continue to use the software, processes, services, work products, documents, or related documentation; (2) or replace or modify them with compatible and functionally equivalent software, processes, services, work products, documents, or related documentation. If none of these alternatives are reasonably available, then the City may return the software, processes, services, work products, documents, or related documentation, and Vendor shall refund the fees paid for it.

- 20.2 Vendor's performance shall conform to a good and workmanlike manner consistent with applicable industry and professional standards with respect to the scope, quality, due diligence, and care of the services and products Vendor provides under this Agreement will materially and substantially comply with their applicable specifications and requirements as required under the statement of work and this Agreement. Upon the Director's request, Vendor shall promptly re-perform and/or provide, at no charge to the City, any Services which fail to materially and substantially conform to the warranty contained in this section, any statement of work, project plan, task order, or LOA and is brought to Vendor's attention within 60 days after that the work has been performed, unless otherwise agreed in the applicable statement of work.
- 20.3 If the services do not perform as warranted (a "Non-Conformity"), Vendor shall identify and assign a resource(s) to resolve the Non-Conformity in accordance with this paragraph within a reasonable period of time not to exceed ten (10) days from the date Vendor receives notice from the City of the Non-Conformity or a longer period as may be agreed by the Parties in writing. Vendor shall undertake to correct or repair at no cost to City such Non-Conformity in the services, or if correction or repair is not reasonably possible and the Director approves, Vendor shall replace, free of charge, the applicable services. If neither of the foregoing is commercially practicable, the Director may terminate this Agreement and within thirty (30) days of termination, Vendor shall provide the City with a refund of the non-confirming service or product fees up to the extent that such non-confirming service or product renders the other components, which by itself may be conforming, but whose function is rendered less useful or useless due to the non-confirming service or product. . Such refund will be City's sole and exclusive remedy regarding such non-confirming Service or Work Product. City may submit written notification of a Non-Conformity up to 60 calendar days(or other warranty period if agreed by the Parties under a LOA, statement of work, project plan, task order, or similar document issued under this Agreement) after Acceptance of a specific service provided under this Agreement, project, LOA, statement of work, task order, work plans, or any other like document.
- 20.4 All services shall undergo inspection and Acceptance by the Director (or his/her designee). Acceptance means the act of an authorized representative of the City by which the City assumes for itself, approval of specific services or delivery of specific products, as partial or complete performance of the Agreement, project, LOA, work plans, or any other like document. Unless otherwise agreed by the Parties in writing, the City will have 5 business days to accept or reject the Services and/or Work Products from the date of delivery ("Acceptance Period"). If the City does not reject or accept the Services and/or Work Products within the Acceptance Period, Vendor will notify the City. Within 3 business days of Vendor's notification, if the City has not rejected the Services and/or Work Products

specifically identifying the manner in which the Services and/or Work Products fail to materially comply with their applicable specifications, such Services and/or Work Products will be deemed accepted.

20.5 Any Services corrected or re-performed by the Vendor shall be subject to this Section 20. (Warranties) to the same extent as services initially provided. If Vendor fails to or refuses to correct or re-perform the non-confirming Service or Work Product to materially and substantially meet the specifications set out in the applicable statement of work and this Agreement or replace or modify it with a compatible and functionally equivalent alternative, the Vendor, as the City's sole and exclusive remedy, will refund the price of such non-confirming services or products and the Vendor is not entitled to payment for such services or product that it fails to or refuses to correct or re-perform to materially and substantially meet the specifications set out in the applicable statement of work and this Agreement, or replace or modify it with a compatible and functionally equivalent.

20.6 UNLESS OTHERWISE PROVIDED UNDER THIS AGREEMENT AND IN A STATEMENT OF WORK, THERE ARE NO OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING FITNESS FOR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT OR OTHERWISE PREVIOUSLY KNOWN TO IT WITHOUT AN OBLIGATION NOT TO DISCLOSE SUCH INFORMATION.

21 Independent Contractor.

21.1 Vendor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Vendor's performance under this Agreement. All personnel Vendor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Vendor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

22 Force Majeure.

22.1 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 Vendor. 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 Vendor, riots, 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 Vendor to extra payment.

22.2 This relief is not applicable unless the affected party does the following:

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

22.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.

- 22.3 The Director will review claims that a Force Majeure that directly impacts the City or Vendor has occurred and render a written decision within 14 days. The decision of the Director is final.
- 22.4 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.
- 22.5 If the Force Majeure continues for more than 10 days from the date performance is affected, either Party may terminate this Agreement by giving 15 days' written notice to Vendor. This termination is not a default or breach of this Agreement. **VENDOR 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.**
- 22.6 Vendor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Vendor shall employ only fully trained and qualified personnel during a strike.

23 Survival.

23.1 Vendor 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 and release, confidentiality, liability for loss or corruption of data, data security, and data breach provisions.

24 Publicity and Use of Name.

24.1 Vendor 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. Vendor shall not use the name, trademarks or other marks of City without the advance written consent of the Director.

25 Dispute Resolution.

For purposes of this Section "Project Administrator" means the person the Director designates to monitor the progress of all Parties' performance under this Agreement. Except as may otherwise be provided by law, a dispute that (1) does not involve a question of law; (2) arises during the performance of this Agreement; and (3) is not resolved between the Project Administrator and Vendor within 30 days must be handled as described below:

- 25.1 The Project Administrator shall put its decision in writing and mail or otherwise furnish Vendor with a copy. Vendor may abide by the decision or may appeal the decision to the Director.
- 25.2 If Vendor desires to appeal a decision of the Project Administrator, Vendor must submit a written appeal to the Director. Vendor must file its written appeal within 7 working days following receipt of the Project Administrator's original decision. The Director shall provide Vendor with a written response to the appeal within 14 working days following its receipt. The decision of the Director is final.

26 Remedies Cumulative.

- 26.1 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 which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

27 Anti-Boycott of Israel.

27.1 Vendor certifies that Vendor 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.

28 Zero Tolerance Policy for Human Trafficking and Related Activities.

28.1 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. Vendor 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 this Agreement's Effective Date. Vendor shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Vendor or its subcontractors providing services or goods under this Agreement within 7 days of Vendor becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

29 Pay or Play.

29.1 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. Vendor has reviewed Executive Order No. 1-7, as revised, and shall comply with its terms and conditions.

30 Audit and Reviews.

30.1 Subject to and in compliance with any related obligations of Vendor under the DIR Contract, at any time during the term of this Agreement and one year after the termination or expiration of the Agreement (but no more than once annually), representatives of the City may audit the Vendor's invoices, billings, and invoicing and billing practices respecting the Services and Work Products the Vendor provides to City, for purposes of confirming that such amounts are in compliance or consistent with this Agreement. The Director will review all bills and invoices and may request, if the audit reveals a discrepancy between the amount invoiced and the amount that should have been invoiced to the City, that the Vendor reasonably adjust such bills and invoices to comply with this Agreement and the applicable order(s). The records provided to the City pursuant to such audit shall not include certain sensitive information in the personnel files of the Vendor's employees (including information regarding salaries or other compensation of such employees) or any cost records (other than pass through expenses) relating to the Vendor's suppliers (including supplier invoices) or any other confidential information of Vendor that is not relevant to the authorized purpose of confirming that such amounts are consistent with this Agreement. For clarity and by way of example only, Vendor's employee personnel file information such as experience, employment history, education history, certifications, and other information that Vendor may use to justify billing or charging the City a certain rate for a resource, is disclosable to the City under an audit.

31 Travel Expenses.

31.1 Unless otherwise provided under a LOA signed by the Director, any expenses related to travel will be the responsibility of the Vendor and City shall not reimburse Vendor for any travel-related expenses.

In the event travel reimbursement is provided under a LOA, authorized and signed by the Director, the City shall pay Vendor for Reimbursable Expenses on receipt of Vendor's itemized invoice subject to the following below:

31.2 Vendor shall propose a maximum amount for each Reimbursable Expense at the time that Services requiring such expenses are requested by the Director. The Director must approve Reimbursable Expenses before Vendor incurs them. "Reimbursable Expenses" herein means (i) upon prior written approval of the Director, the ordinary and reasonable costs of travel to and from the City of Houston by Vendor's employees or subcontractors, not to exceed the amount established under the City's then-current travel reimbursement policy for its employees, including automobile mileage reimbursement, common carrier coach or economy fares, ground transportation expenses, and, for overnight trips, the cost of lodging and meals if such travel is reasonably necessary to accomplish a task directly related to the project, and reservations are made as far in advance as feasible; and (ii) sales tax related to Vendor's services under this Agreement which it is legally required to pay. The compensation for Reimbursable Expenses shall never exceed this agreed-upon maximum amount. Reimbursable Expenses are the actual expenditures Vendor and its subcontractors make while performing services for the project requested by the Director. They include travel costs outside the City and its extraterritorial jurisdiction (not to exceed the amounts established under the City's then-current travel reimbursement policy for its employees), if reasonably necessary to accomplish a task in connection with the project, plus living expenses in connection with out-of-town travel, long distance communications, and fees paid for securing approval of authorities having jurisdiction over the project. ALL TRAVEL EXPENSES MUST BE PRE-APPROVED IN WRITING BY THE DIRECTOR OR DESIGNEE. TRAVEL THAT IS NOT PRE-APPROVED IN WRITING BY THE DIRECTOR OR DESIGNEE WILL NOT BE ELIGIBLE FOR REIMBURSEMENT AND CITY SHALL HAVE NO OBLIGATION WHATSOEVER TO PROVIDE REIMBURSEMENT TO VENDOR FOR TRAVEL RELATED EXPENSES.

32 **Taxes.**

32.1 The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Vendor'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 Vendor if requested.

33 **Preservation of Contracting Information.**

33.1 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Vendor agrees that this Agreement can be terminated if the Vendor 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), Vendor 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, Vendor shall provide any Contracting Information related to this Agreement that is in the custody or possession of Vendor. Upon the expiration or termination of this Agreement, Vendor 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 Vendor, 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.

If Vendor 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 Vendor 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, Vendor shall, unless the notice

directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

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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):

By: Chris Newport
Name: Chris Newport
Title: Senior Manager

ACCENTURE LLP

By: Rob Cohan
Name: Robert Cohan
Title: Managing Director
Tax ID: 72-0542904

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

City Secretary

Mayor

APPROVED:

DocuSigned by:
Lisa Kent
44FFAE8CCB7481

Director,
Houston Information Technology Services
Department

COUNTERSIGNED BY:

City Controller

DocuSigned by:
Jerry Adams
D0D35013BA6F4C8

Chief Procurement Officer

DATE COUNTERSIGNED:

APPROVED AS TO FORM:

DocuSigned by:
Jane Wu
56E122E99F73406

Assistant City Attorney II
L.D. File No. 0452000023001

EXHIBIT "A"

Scope of Work

The scope of work is attached hereto.

If any services requested by City are not identified in the scope of work, Vendor shall work with Director to give City the best rate in accordance with the DIR Contract, which shall not exceed the Vendor's then-current rates for such related services and the rate will be added as an addendum to this Agreement without the need of further approval from City Council. Vendor shall work with Director in selecting the personnel appropriate for the services prior to initiating performance of any services or invoicing City for such services.

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STATEMENT OF WORK (SOW)

Digital Transformation of Houston 311 Customer Service Management System

Engaging citizens where they are today and tomorrow

This Statement of Work ("SOW") is entered into as of the Agreement to which this SOW is attached to ("SOW Effective Date") by and between the City of Houston ("Client" or "City") and Accenture LLP ("Accenture") pursuant to the Contract Number DIR-TSO-4005 for services, effective September 13, 2017 entered into by and between Accenture LLP and the State of Texas Department of Information Resources ("Texas DIR") as amended from time to time ("DIR Contract") and supplemented by the Derivative Agreement entered into by and between Accenture and the City to which this SOW is attached to ("Derivative Agreement"). All capitalized terms used in this SOW which are undefined shall have the meanings set forth in the DIR Contract or Derivative Agreement.

1.0 Overview

The City desires to digitally transform its communication methods with citizens regarding specific topics such as City information, services requests, and non-emergency incidents. The City currently utilizes an on-premise 311 CRM solution and its contract for support expires in July 2021. The current set of technology and processes result in regular variances from internal 311 Service Level Agreements including average speed of answer, call handling times, and call abandonment rates. The current system configuration requires manual agent intervention to enter Service Requests received via email, web application, and calls.

The City desires to upgrade to a cloud-based application that can ultimately enable decoupling of citizen service-request ingestion, routing, and resolution from 311 agents that will result in more resident self-service; reduced call volume and handling times; and, improved agent productivity and system capacity. The City seeks a vendor to deliver on the near-term need to replace the existing 311 on-premise tool with Dynamics 365 CRM in a manner that enables execution of the City's vision.

Accenture will support the City to transform and modernize its 311 system by delivering the solution highlighted as follows ("the Project"):

- **Proven Solution:** Accenture will collaborate with the City to design, build, implement and

test Dynamics 365 CRM (D365) including training and knowledge transfer to allow City employees to be capable of making future configurations as needs may change.

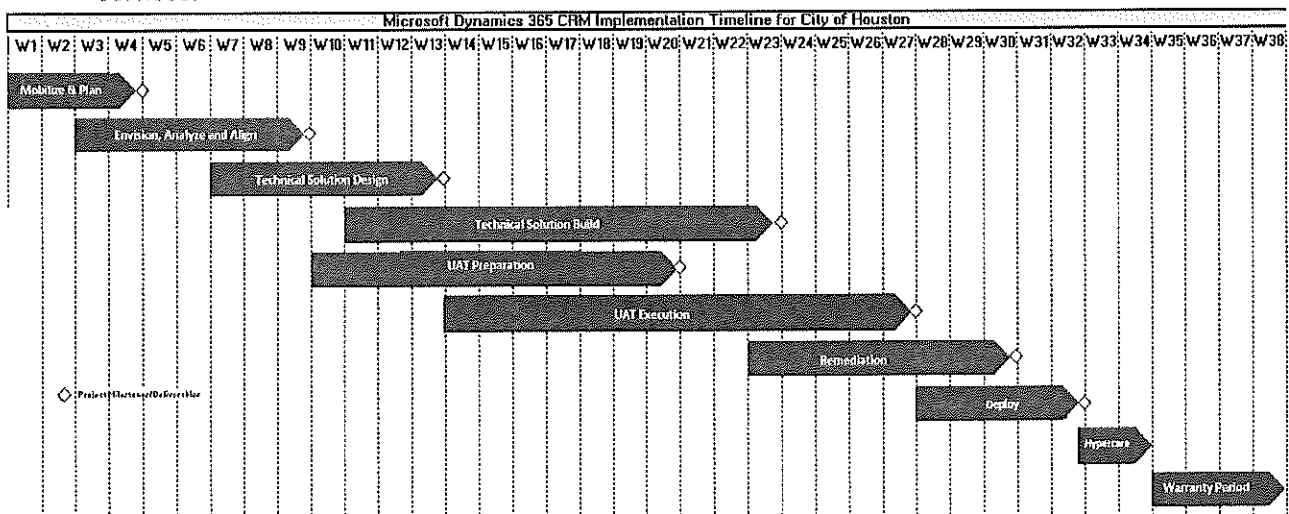
- **Project Schedule:** Accenture will collaborate with the City to deliver on an **eight-month** timeline
- **Team with Deep Experience:** The City will work with Accenture resources that bring experience from New York City 311, the State of Texas Medicaid contact center, and the implementation of D365 CRM for Microsoft's own Customer Engagement Center. Chris Newport will lead the Accenture team and is supported by an organization that has completed 600+ D365 implementations for Public and Private Sector clients.
- **Pricing and Investment:** Accenture offers the City a **fixed price of \$1.654M** for the initial implementation engagement. Accenture will also **collaborate with the City to provide greater speed to value**. Accenture proposes the inclusion of Virtual Agent capabilities to assist both 311 agents and Houston citizens in their interactions with the D365 311 solution.

This SOW is further informed by the requirement to minimize and mitigate risks. Accenture will design a change and training plan that enables internal and external stakeholders to be ready and excited for their new ways of working, on time, and on budget. Throughout the project and formally prior to conclusion, the Accenture team will work with the City team to transfer knowledge of the solution, including adding new users, creating reports and new service requests. Formal training and documents created will be included in deliverables.

The remainder of this document presents additional specifics of our recommended approach, project scope, and assumptions. While we believe this SOW delivers on the City's near-term needs and enables its long-term vision, we recognize that the precise solution will require additional collaboration with the City and will be finalized during the initial Envision phase of the project. Any changes to the scope of services or effort described herein will be agreed by Accenture and the Director (or his or her designee) in a written change order and without the need for further City Council approval.

2.0 Approach and Timeline Overview

The graphic below summarizes the phases of the Project, and the timeline for Accenture to provide the services.



3.0 In Scope Items

The Envisioning stage of the Project represents the activities required to further define the solution requirements and establish the general solution design that will set the foundation for the Build, Test, and Deploy stages of the implementation Project. For a summary of Deliverables, please refer to Section 6.0. The following activities will be performed during the phases of the Project lifecycle:

3.1 Mobilize and Plans Delivered

- Workshop agenda and planning
- Participant scheduling
- Draft workshop materials
- Project kick-off meeting
- Pre-workshop questionnaire
- Blueprint
- Project plan
- Test plan
- Documented Approach
- Script development process

3.2 Envision, Analyze and Align Phase

Includes up to 8 workshops covering agent desktop design, service request management, dashboards, reporting, architecture, and integration. Deliverables from workshops will include implementation designs. Activities performed during this phase include:

- A series of business process & technical sessions structured by Accenture's Business Process Hierarchy and Logical Operating Model to review relevant Client business processes as defined in the workshop schedule;
- Determination of any of Client's critical functional gaps associated with Dynamics365 out of the box functionality;
- Organizational change management, Train-the-Trainer and Knowledge Transfer plan designs; and
- Utilization of session outcomes to define critical gaps, independent software vendor (ISV) recommendations (if required), workflows, reports, integration specifics, conversions, and extensions (WRICE) scope inventory, development effort, Build, Test, Remediate, and Deploy Phases estimate refinement, work plan, and schedule for activities during the Implementation Phases of the Client Project.

3.3 Technical Solution Design

- Solution Blueprint, Functional Design Document, and Technical Design Document Deliverables are created
- Technical and integration architecture definition
- Project design and roadmap presentation to Project leadership team
- Development planning
- Integration planning
- Test approach and plan development

- Develop detail Project plan

3.3.1 311 System Functionality

- Ability to receive, log, and manage until resolution service requests received by phone, email, or client portal:
 - Configuration of up to five Virtual Agent service request templates where Virtual Agent will assist customer and agent in creation of Service Request
 - Remaining inventory of existing Service Requests (195) to be migrated into Dynamics to provide the "classic" agent interaction (currently provided via script flow + service request eForm).
 - Users will be able to attach files to service request to support documentation of an issue to be resolved or that has been resolved.
 - Training plan to empower City employees to configure additional Virtual Agent service request templates at its discretion.
- Accenture and City teams will jointly determine the ideal Service Request candidates for the Virtual Agent interaction experience. Ability to attach and create one-to-one correlation between documentation and a service request
- Duplicate cases will be identified and linked to a parent case. Agent can create a new case if requested by end user

3.4 Technical Solution Build (Architecture, Migration, and Integration Overview)

- Setup of Dynamics 365 CRM Call center within Microsoft Azure
- Setup, configuration and integration between Dynamics 365 Call Center and:
 - Single integration with the City's Oracle SOA System, which City staff will triage to the following HPW systems
 - CityWorks for Transportation and Drainage Operations (TDO)
 - CityWorks for Parks & Recreations, Forestry
 - Infor EAM for TDO
 - Infor IPS for Houston Water
 - Infor IPS for Solid Waste Management (SWM) / Houston Water Customer Account Services (HWCAS)
 - Infor IPS for the Department of Neighborhood Services (DON)
 - Infor IPS for the Fire Department (HFD)
 - PowerPark for Parking Management (T2)
- US3 for Sanitary Sewer Overflow Creation and integration of up to the same number of business process workflows in the current 311 system.
- Ability to import and export data with Dynamics365
- Migration of data associated with all active cases and all other cases in accordance with the City retention policy as detailed below:
 - Up to 2,600 knowledge articles
 - Up to 2,000,000 contacts

- Up to 1,300,000 cases
- For migration of data, Accenture intends to use a proprietary, purpose-built migration tool. Should additional tooling be necessary to enable data transfer, Accenture will provide a recommendation to the City for tooling required.
 - This SOW does not include costs for incremental data transfer tooling
- Attachment files for the data being migrated will be included
- Integrations to be configured to allow for transfer of attachments between applications. Eg – picture of pothole from 311 system to Public Works
- Integration to Esri ArcGIS geolocation service to replicate current 311 address authentication protocols
- Security configuration as defined in the IT Security Accreditation document listed in deliverables section
- Setup and configuration of Microsoft Azure DevOps to include three environments: Development, Test and Training, Production

3.4.1 Citizen Portal

- Creation of a self-service portal with a maximum of 30 pages built within Microsoft Power Apps using the Liquid template language and integrating with data from Microsoft Dynamics 365
 - Forms will be consistent between agent and external portal and those utilized by virtual agents
- Portal will provide citizens the ability to view service requests including the following information:
 - Date submitted
 - Current status
 - Historical view of service requests submitted, 12 months in arrears
- Portal will provide a near-real time view of case maps within the city limits visualizing the following:
 - Type of Call
 - Location
 - Status
- Client portal will function in both desktop and mobile formats
 - Mobile format will enable framing of environment into mobile app in the City's Google play and Apple App store

3.4.2 Knowledge Base

- Creation of approval workflows associated with Knowledge Base Articles
- Articles will be classified and managed by the native D365 capability, which creates taxonomy based on underlying data key words and tags

3.4.3 Reporting

- Migration of up to 10 current reports to the new system
- Implementation and configuration of PowerBI

3.4.4 Training

Accenture will develop an overall change management and training approach to design and support the City's change activities. Such activities will include:

- Direct communication to and buy in from key stakeholders within the City departments
- Required communications and engagement activities
- Documented training requirements
- Documented support requirements
- Targeted timeline for change management activities, including dependencies on other project work streams
- Accenture will work with the City to execute a 'train-the-trainer' (TTT) approach to create subject matter expertise in 311 and HITS staff for ongoing system and process knowledge.
 - Accenture will facilitate up to four TTT sessions (each session is equal to 1 business day) with the 311 trainers to build familiarity and comfort with the tools.
 - Content to include learning objectives, curricula by target audience type; i.e., technical, administrator, agent, and non-311/ARA Department users.
 - Faculty guide, student guide, job aids to serve as training pre-read and on-the-job reference material
 - One PowerBI classroom session of 1 business day and job aids as ongoing reference material.
- The training program will include eight (8) days (each day equals 8 hours) of formal Knowledge Transfer activities, the specific subjects of which to be mutually agreed to by the City and Accenture.

3.4.5 Application Cutover

The operational cutover plan will be a key factor for a highly visible and mission-critical system like Houston 311. The Parties would leverage an application cutover strategy refined over time, coupled with the Project team's expertise delivering Dynamics CRM implementations. Application cutover activities will include:

- Early pilots utilizing migrated 311 data
- A detailed deployment plan considering interdependencies of all impacted systems and resource
- Documented plans to handle issues during the cutover including back out criteria, back out scenarios, and a detailed back out plan
- Full dress rehearsals with migrated 311 data of all deployment and back out steps to confirm the tasks, the order, and the timing of cutover and back out activities

Planning for the application cutover is a key component of the release, will begin early in the release process, and will be refined throughout the course of the project.

4.0 Out of Scope Items

- SMS functionality
 - Management, understanding and ensuring of working within statutes of limitations on data
- Refactoring of any existing reports using SSRS and/or PowerBI
- User Experience (UX) redesign of the Client portal
- Migration or rebuilding of the existing content within the City's 311 website
- Configuration of the Data Export Service to the Common Data Service platform
- Deployment of and updates to framed mobile app in the City's Google play and Apple App stores
- Any activity not identified in Section 3 and subsections above.

5.0 Assumptions/Client Responsibilities and Dependencies

In addition to any other responsibilities or assumption described in this SOW, set forth below is a list of the obligations for which Client will be responsible, conditions on Accenture's performance, and assumptions upon which Accenture relies in agreeing to perform the Services described in this SOW on the terms set out herein (collectively "Client's Responsibilities"). If any of Client's Responsibilities are not performed or prove to be incorrect, it may cause changes to the Project schedule, fees and expenses, Deliverables, level of effort required, or otherwise impact Accenture's performance of the Services described in this SOW, and Accenture shall have no liability with respect to its inability to perform the Services resulting therefrom. The Parties understand that Accenture may need additional time as is reasonable to provide the Services and/or the relevant Deliverables, as the case maybe, and the Director (or his or her designee) must approve in advance in writing to pay to Accenture any additional fees necessary to compensate Accenture for any necessary additional effort or expenses.

5.1 Assumptions:

- Email templates will be needed to send e-mail alerts and updates to constituents.
- Accenture will create up to five (5) templates and up to 10 additional pages to address help and information
- Accenture will provide the base portal configuration and style.
- The web portal will consist of the following page types with a unique layout, logic, and style:
 - Home page
 - Search results page
 - Case creation page
 - Knowledge article page
- Individual Department Pages estimated to number 12 in total
- Knowledge base article templates will be needed for articles on the Houston 311 website.
 - Accenture will deliver up to three templates for Knowledge Base articles.
- The 311 system will be built and deployed for use by up to 500 city employees
- Azure DevOps will be used for this engagement and will host three (3) environments: Development, Test and Training, Production
- Data migration will only occur from the following systems:

- Lagan, the core CRM/case management system containing citizen and case data
- Knowledge Base/ Management
- Scriptflow, the agent scripting tool
- The current City Active Directory will serve as the identity management tool
- Regarding import and export of data, Accenture will leverage City-provided PowerBI and Azure
- Email will continue to be used as a direct line of communication to the City's 311 inbox
- There will be a single Knowledge Base approval flow
- Re-creation of the existing client portal will not require any additional design or new information architecture
- Citizen portal will be hosted in Microsoft Azure using PowerApps portals
- The cloud environment to be used will be Microsoft Azure GovernmentCloud
- User setup and D365 environments must be in Microsoft Government Cloud
- The solution will be developed and tested to be compatible with the latest versions of Google Chrome, Microsoft Edge and Safari browsers only
- Work performed by the City to support the implementation efforts will adhere to the agreed upon project plan milestone dates
- Knowledge article approval will follow a single, defined approval flow. Assumption is the single flow is complex, requiring alerting of participants and multiple, serial approvals before publication
- Machine Learning ("ML") based email routing will require implementation services. City will provide Accenture with complete and accurate data related to City's existing 311 system in CSV format for training ML algorithms. The City represents that it has the right to provide such data to Accenture and that Accenture may use this data for the sole purposes of training ML algorithms during the Project for City's sole benefit. Accenture shall not use such data for any other purpose or for Accenture or any third party's benefit.
- Current reports to be migrated have a medium level of complexity
- Accenture will perform a reconciliation of joint findings from the initial Envision and subsequent Technical Design project phases with the scope described above. Any activity additions or reductions to the scope, approach, timeline, deliverables, and/or cost will be similarly communicated in writing to the City and agreed by the Parties in a Change Order.

5.2 Client Responsibilities

- The City will provide three appropriate environments for DevOps: Development, Testing & Training, Production
- Procure and maintain all applicable licenses and obtain, at no cost to Accenture, consents for Accenture's use of third party products and applications including but not limited to: Esri ArcGIS, Tenfold CTI, Microsoft products, PowerBI Gateway and others deemed necessary during discovery. These may result in incremental costs, which would be agreed to by both parties in a supplemental agreement.
- Localization of the Citizen Portal using Dynamics365
- The City will be responsible for the creation of all reports beyond the quantity identified within the in-scope section
- Configuration of the Data Export Service, data extraction and validation pre-migration
- The City will be responsible for adding additional data feeds to the portal pages. Building

of additional Service Requests beyond those included in current scope

- The City will be responsible for preparing and configuring applications to be integrated with Dynamics365, which includes integrations of the following HPW systems with the City's Oracle SOA tool:
 - CityWorks for Transportation and Drainage Operations (TDO)
 - CityWorks for Parks & Recreations, Forestry
 - Infor EAM for TDO
 - Infor IPS for Houston Water
- Creation/configuration of additional components for the Citizen Self-Service Portal, including but not limited to:
 - Call wait time ticker
 - Heat map
 - Five-star rating emails
 - Key issue tracker
 - Top ten service requests
- Delivery of the training courses to end-users with the support of Accenture.
- The City is responsible for creating a team of Subject Matter Experts to support the initiative, sharing their names/contact information and ensuring their availability within the required time frames
- Client shall be responsible for the performance of other contractors or vendors engaged by Client in connection with the Project and ensuring that they cooperate with Accenture.
- Client shall be responsible for its operation and use of the Deliverables and for determining whether to use or refrain from using any recommendation that may be made by Accenture. Client will be solely responsible for determining whether any Services provided by Accenture (i) meet Client's requirements; (ii) comply with all laws and regulations applicable to Client; and (iii) comply with Client's applicable internal guidelines and any other agreements it has with third parties.

5.3 Additional terms:

- Client grants Accenture a non-exclusive license to import and process such Client data into/via the application of artificial intelligence in Dynamics 365 solely for the training purposes of such the application. Client certifies that (i) it has the right to use and/or provide the Client's data to Accenture for the purposes described in this clause, and it will promptly notify Accenture of any failure to comply with this requirement (ii) it is responsible for backing up the Client Data unless otherwise agreed in writing, (iii) it is responsible if there is an issue linked to the use of the application of artificial intelligence that is due to Client's data as provided by Client, notably due to the quality or integrity of such data.
- Accenture and its licensors, where applicable, own all right, title and interest, including all Intellectual Property Rights (i.e., unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature) , in Dynamics 365 "Bot Skill" and Citizen Services Case Management, including derivatives, modifications, and enhancements thereof done by a person or a technology.
- Client will provide Accenture with Personal Data only to the extent it is necessary for the provisions of Services, Accenture will access or process Personal Data of

Client only to the extent it is necessary for Accenture's provision of Services, and Accenture will comply with the terms of the Agreement, which includes Exhibit E - Data Processing and Security Addendum attached to the Derivative Agreement ("Exhibit E") for the processing of personal data within the scope of this SOW.

- The Parties will work together to accommodate any changes or impacts to the Services or Deliverables (or delivery thereof) that are reasonably required to mitigate any impact of, or related to, any global or local health emergency or disease outbreak, including COVID-19 or such similar disease, and shall document the same in an agreed upon change order or amendment to this SOW. The Parties acknowledge and agree that the Parties will follow the operational principles set out in Appendix 1 to this SOW ("Remote Work Protocols") when implementing a remote work model.

6.0 Deliverables

6.1 Create Baseline effort

Operate team under proposed method using agile principles; define and agree to mutually agreed sprint delivery capacity, typically in two- week intervals.

- Accenture shall develop or configure, test, stage, and release business applications by applying agile principles and a frequent release cycle.
- Deliverables must be provided within the milestones specified.
- All deliverables must be submitted in a format agreed by the Parties.
- If the deliverable cannot be provided within the scheduled timeframe, Accenture is required to contact the City contract manager in writing with a reason for the delay and the proposed revised schedule. The request for a revised schedule must include the impact on related tasks and the overall project.
- A request for a revised schedule must be reviewed and approved by the City contract manager before placed in effect.
- A kickoff meeting will be held at a location and time selected by the City where the Accenture project team will be introduced to the City staff working on this project.

6.2 Deliverables Summary

The following deliverables ("Deliverables") will be produced by Accenture under this SOW:

No.	Phase	Deliverable	Description	Milestone
1	Project Management	Risks & Issues Report	Ongoing document serving as the repository for all risks and issues for the project	1
2	Project Management	Program Roadmap	Summarizes the overall project delivery schedule to the project team and executives	1
3	Project Management	Project Workplan	Documents the milestones, dependencies, start/end dates, releases and sprints, as well as any other information agreed upon as needed to manage the project's delivery	1

4	Project Management	Status Report	Contains information on individual, team, or overall project accomplishments for the period, as well as performance measures, risks, issues, and other information that may be agreed appropriate for status communication.	1
5	Application Development	IT Security Accreditation	Documents application, accreditation, user roles, physical and logical architecture, security, and private data handling	2
6	Business Analysis	Data Dictionary	Set of metadata that contains definitions and representations of data elements. It generally includes: Data types, formats, lengths and constraints	2
7	Business Analysis	Use Cases	Capture functional requirements that describe the interaction of the user with the system for both normal and exception scenarios	2
8	Business Analysis	Requirements Traceability Matrix	The Requirements Traceability Matrix is used to track the relationship from the detailed requirement items back to the contract documents, the high level business requirements, and the rest of the project life cycle deliverables to validate the implementation of the solution.	2
9	Application Development	Technical Design	Specifies the process, transformation, and architecture components in the integration solution. This includes describing each component's variables, condition for its activation/invocation, processing logic, and configuration.	3
10	Application Development	Migration Plan	Defines the cornerstones of the data migration methodology – providing guidance for the programs on the upcoming detailed planning and clarifies the responsibilities and the scope between the programs in terms of data migration.	3
11	Application Development	System Artifacts	Components that are being designed and built as part of the application development process	3
12	Application Development	Runbook	Detailed, software-specific operations procedures for managing software related to work environment services	3

13	Application Development	Release Notes	Defines the release strategy and steps to take to deploy a build solution containing the bug fixes in that build.	3
14	Business Analysis	Functional Design	The Functional Application Detailed Design deliverable provides functional and configuration design settings information for the Dynamics CRM Solution and it covers functional detailed design for Reports, Integrations, Extensions and Workflows. This also includes documentation produced as part of the Virtual Agent User Experience design including Content Inventory, GUI design, User Interaction Flows and Annotated Wireframes.	3
15	Quality Assurance	Test Plan	Details a systematic approach to test the new solution and confirm that it meets the agreed upon project requirements. Includes test strategy and schedule.	3
16	Quality Assurance	Test Scripts	Details the exact steps a tester follows when executing a test (i.e., to test all the conditions), usually covering a test scenario. Each step of a test script has an associated test condition that can be traced back to a requirement item to provide traceability allowing the Tester to record the actual against the expected test result and provide commentary where appropriate. Test scripts will also include the data that is used for testing or reference external data files to be used	3
17	Business Analysis	Error & Message Inventory	Provides a single repository of all messages, warnings, issues and triggering scenarios, categorized by type, presented via the user interface	4
18	Change Management	Change Management Approach	Defines the change management approach to move key stakeholders along the change commitment curve from awareness to support and advocacy. Areas will include business readiness, stakeholder engagement and communication, training, organization design, change leadership development and culture and behavior change.	4
19	Quality Assurance	Defect Report	Defect Log is used to track defects found during unit testing, iteration system testing, and final system testing.	4

20	Quality Assurance	Test Progress Report	Status report detailing the execution and completion of test scripts across the various cycles and phases	4
21	Quality Assurance	Test Report	Summarizes the results of testing for a specific phase of testing	4
22	Change Management/ Training	Training Plan	Defines the comprehensive approach to deliver training associated with the implementation of an application. It includes detailed business and technical requirements, delivery and instructional strategy and the recommended approach to educate and improve the skills of all end users during the change effort.	5
23	Change Management/ Training	Training Materials	Developed for delivering training to the target audiences. The scope of the materials developed is determined based on the scope of the audience groups, which may include end users, administrators, application management team, and customers. Training content may include faculty guide, student guide, job aids, scenarios, activities, demo scripts, detailed agendas	5

6.3 Testing and support

- Testing to be provided as a part of this project is outlined in the table below:

Title	Timeline
System Integration Testing	Estimate of 8 weeks
User Acceptance Testing	Estimate of 4 weeks
Penetration Testing	Estimate of 3 weeks
Performance Remediation	Estimate of 2 weeks

- Post-deployment Support:
 - Three weeks of post-deployment Hypercare for production-related issues
 - Warranty period – 30 days commencing at end of Hypercare
 - Support & maintenance beyond described above would be subject of future statement of work to be agreed by the Parties and is excluded from this SOW

7.0 Reports and Meetings

- Accenture will provide the City Project leadership team with weekly updates against the milestones in the agreed to project plan by end of day each on the first business day for the prior week. The project schedule will reflect City and Accenture holiday schedule.
 - The progress reports shall cover all work performed and completed during

the week for which the progress report is provided and shall present the work to be performed during the subsequent week.

- The progress report shall identify any problems encountered or still outstanding with an explanation of the cause and resolution of the problem or how the problem will be resolved.
- Additionally, Accenture will host bi-weekly status meetings with the designated City 311 leadership. We suggest the meetings be held on Fridays - at a time and place so designated by the City. The meetings may be in person or over the phone/web as may be agreed by the Parties.

8.0 Accenture IP

For the purposes of this SOW, the following is considered Accenture IP:

- Conversation designer for virtual agents;
- Dynamics 365 "Bot Skill";
- Accenture proprietary data model, code and portal configuration for Citizen Services Case Management solution. For avoidance of doubt, customization for Houston-specific context will be owned by the City according to the terms of the DIR Contract.
- Accenture proprietary, purpose-built migration tool.

9.0 Pricing and Invoices

Accenture will perform its Services on a fixed fee basis. Based on the terms set forth in this SOW, Accenture's fees for its Services will be \$1,654,000.00 which is all inclusive of any expenses or travel and lodging expenses, and exclusive of any applicable taxes. Accenture will invoice this amount as follows after acceptance by City of each milestone:

Milestone		Description	Amount
1	Mobilization, project plan and timeline	Project kick off meeting, presentation, discovery questionnaires, confirm project and test plan, script development process, Project Plan, program roadmap, risk/issues and status reports	\$206,750
2	Envision, analyze and design	Workshop outputs, stakeholder analysis, change management plan, WRICE scope inventory, use cases, data dictionary, and requirements trackability	258,438
3	Technical Solution design	Solution blueprint, functional and technical design blueprint, migration plan, integration plan, testing approach and system artifacts	206,750
4	UAT/ Remediation	UAT, remediation and completion	516,875
5	Deploy	Functional system online and training execution	206,750
6	Completion	Cut over and formal knowledge transfer complete	258,437
Total			\$1,654,000

Each invoice will include a summary of work performed during the previous period. Note: If there are material changes after analysis/ design phase to initial scope of work, there could be a commensurate change in final price which shall be agreed by the Parties in a Change Order.

9.1 Testing/Acceptance of Milestones and Deliverables:

- Under this SOW, the City will designate specific representative(s) to be responsible for acceptance of each Deliverable. The Accenture Project Lead and City's designated representative(s) shall mutually agree on Milestone and/or Deliverable format, scope and specification.
- **Documentary and Non-Documentary Milestones and Deliverables.** Communication of Milestone and/or Deliverable completion is to be confirmed by Accenture Project Manager via email to the City's designated representative(s), which indicates the start of the "Acceptance Testing Period".
 - The City representative shall accept or reject each Milestone and/or Deliverable listed in Section 6.2 above within five (5) business days after its delivery by Accenture (the "Acceptance Testing Period"), or provide a written explanation (a "Rejection Notice") within such Acceptance Testing Period specifying in reasonable detail the aspects of the Milestone and/or Deliverable(s) that do not conform in any material respect to the Acceptance Criteria set forth in this SOW (a "Non-Conformity").
 - If there is no written response from the City representative within the Acceptance Testing Period of at least 5 business days, Accenture shall notify the Director or his or her designee and City project manager that Acceptance is pending and shall give the City 3 business days to Accept or reject. If City does not respond after notification of Acceptance pending and the 3 business days has expired, or if the City puts the Deliverable into production, the Milestone and/or Deliverable shall be deemed accepted.
 - If the City representative delivers a Rejection Notice to Accenture within the Acceptance Testing Period, Accenture will have up to ten (10) days to identify and assign a resource(s) to address the Non-Conformity, including determining in good faith whether a reproducible Non-Conformity exists, and if so, begin the process to correct the Non-Conformity and redeliver the Milestone and/or Deliverable(s) to City for further acceptance testing pursuant to this Section. Accenture shall conduct testing of the corrected Deliverable, as applicable, prior to redelivery to evaluate and verify that such Deliverable is functional and meets the specifications described in this SOW.
 - Upon redelivery, the City shall then have five (5) business days to evaluate whether the Non-Conformity still exists according to the acceptance procedure described herein.
 - City will not unreasonably withhold, delay or condition its approval of a Milestone and/or Deliverable.
- **Documentary Milestone and Deliverables Acceptance Criteria.** Acceptance Criteria for each documentary Milestone and/or Deliverable stated in section 6.2 above will be that the Milestone and/or Deliverable:
 - Is in substantial conformance with the agreed format and scope set out in the specification for the Milestone and/or Deliverable;
 - is clearly written, in language that appropriately skilled readers who will need to refer to the document should reasonably be able to understand;
 - contains an appropriate level of detail and any relevant cross-references; and
 - has no obvious errors of spelling, grammar, numbering or order,

duplications, or omissions.

- **Non-Documentary Milestone and/or Deliverable Acceptance Criteria.** The Acceptance Criteria for each non-documentary Milestone and/or Deliverable stated above is:
 - Either no High or Medium priority defects are identified in a Rejection Notice during the Acceptance Testing Period or all High and Medium priority defects identified in a Rejection Notice during the Acceptance Testing Period are remediated in accordance with section above.
 - Low and Minor priority defects need not be resolved for non-documentary Milestone and/or Deliverable acceptance. The applicable priority defect categories are as follows:

Priority Classification	Meaning
1 – High	The solution cannot function at all (e.g. defects cause system crashes or data corruption) and the defect is a severe malfunction against functionality for which there is no Workaround
2 – Medium	The solution as a whole can function, but the defect is a mal- function against functionality for which there is no workaround
3 – Low	The defect does not prevent the solution from operating, but it does not operate as it should. Business operation can continue as data availability and quality is not affected
4 - Minor	The defect has no functional impact (e.g. minor incorrect display)

10.0 Staffing, Equipment and Workspace

Accenture's team lead roles are listed below. If during the project the City's needs change, it and Accenture will work together to address the Accenture workplan and team to amend the SOW accordingly in writing.

Role	Name
Project Executive	Rob Cohan
Project Lead	Chris Newport
Delivery Lead Functional Lead Technical Lead Technical Architect QA Director	TBD

The Accenture Project Executive will coordinate project activities and status with the City's designated project Executive Sponsor for the City direction and oversight of this project. To meet the City's business goals for the Project, Accenture will carefully allocate additional resources using

its demonstrated ability to reach back to its local, national, and global practices to support delivery of the Project.

Accenture will structure the schedules for the Project leadership roles described above to fit a mutually-agreeable remote or on-site availability to the City Project team members. Accenture and the City agree to assess factors including delivery schedule and personal safety when determining on-site and remote presence. Accenture will also leverage its solution delivery centers in Monterrey, Mexico and Bangalore, India to augment the local delivery team. If necessary, the City will provide space for Accenture staff to provide Services within the City facilities. Where possible, the teams can also collaborate and share information via tools like Microsoft Teams subject to the Confidentiality provisions of the DIR Contract and the attached Derivative Agreement.

The City agrees to provide access to key staff throughout the duration of the project during City's normal business hours. The City further agrees to provide appropriate access to IT systems or replicated environments accessible to Accenture personnel as necessary. As stated above, the Parties acknowledge and agree that the Parties will follow the operational principles set out in Appendix 1 to this SOW ("Remote Work Protocols") when implementing a remote work model.

The parties may mutually agree to modify dates or end dates and should do so in writing. For clarity, the Director may agree on behalf of the City for any modification to dates or end dates without the need for further City Council approval. If the parties agree that the nature of the 311 D365 Implementation changes in project scope, the parties will agree in writing to any change of scope, budget, and activities.

11.0 Optional Professional Support Services

Incremental to the pricing in this SOW, Accenture is ready to provide post-implementation support for the City's 311 solution as may be agreed by the Parties in a specific statement of work. Accenture would make the following team available to remotely support the City post implementation with the service level agreements defined below.

Role Description	US Resource Rate/hr	Nearshore Resource Rate/hr	Offshore Resource Rate/hr
Project Manager	\$230	\$175	\$60
Business Analyst/ Tester	\$163	\$95	\$38
Senior Business Analyst/ Tester	\$195	\$130	\$50
Technical Developer	\$168	\$105	\$40
Sr. Technical Developer	\$198	\$140	\$54
Report Developer	\$140	\$80	\$30

Service Level Agreements

Severity Levels	Definition
Severity 1	<p>The total unavailability of the production application, or a repeatable malfunction within the production application causing impact to business operation if not promptly restored.</p> <ul style="list-style-type: none"> • System Down (Software Application) • Inability to process payments • Program errors without workarounds • Incorrect calculation errors impacting a majority of records • Aborted postings or error messages preventing data integration and update • Performance issues of severe nature impacting critical processes
Severity 2	<p>Reproducible issues that affect the functioning of components within the application, or data inconsistencies with no work around available.</p> <ul style="list-style-type: none"> • Calculation errors impacting a minority of records • Report calculation issues • Printer related issues (related to interfaces with our software and not the printer itself) • User Security/Permission issues • Workstation connectivity issues (Workstation specific)
Severity 3	<p>Reproducible or intermittent Issues that affect the functioning of components within the application, or data inconsistencies. Workaround available.</p> <ul style="list-style-type: none"> • Usability issues • Performance issues not impacting critical processes • Report formatting issues • Training questions, how to, or implementing new processes • Recommendations for enhancements on system changes
Severity 4	<p>Requests for information, assistance on application capabilities, and other requests that do not fit the criteria for Severity 1, Severity2, or Severity 3.</p> <ul style="list-style-type: none"> • Questions about documentation • Requests for documentation or information • Questions about products • Aesthetic issues

The response and resolution times are defined below.

Severity Levels	Response Time	Resolution Time
Severity 1	1 - 2 Hours	Commercially reasonable efforts to resolve, unless specified in the applicable LOA
Severity 2	4 - 8 Hours	Commercially reasonable efforts to resolve, unless specified in the applicable LOA

Severity 3	1-5 Business Days	Commercially reasonable efforts to resolve
Severity 4	1-5 Business Days	Commercially reasonable efforts to resolve

- Accenture would invoice the City monthly on a time and materials basis based on actual consumption of support capacity, according to the rate schedule and terms listed above.
- The City's support team would be available 24 x 7. The US rates provided are Texas-based remote resources, available during normal business hours. These rates start in March of 2021 (assuming project start date of July 1, 2020 and 8 month deployment) and there will be a 3% cost of living increase per year commencing March of 2022.

AGREED AND ACCEPTED

Accenture Signature:

Rob Cohan

Name and Title:

Robert Cohan/Managing Director

Date:

July 17, 2020

Client Signature:

DocuSigned by:
Lisa Kent
44FF8FEBCCB74B1...

Name and Title:

Lisa Kent Chief Information Officer

Date:

7/18/2020

Appendix 1

Remote Work Protocols

This Appendix 1 sets out the remote work protocols to be followed by the Parties.

Workstations: Accenture will implement controls for all workstations/laptops on Accenture provided devices that are used in connection with service delivery/receipt incorporating the following:

- Encrypted hard drive;
- Software agent that manages overall compliance of workstation and reports a minimum on a monthly basis to a central server;
- Patching process to ensure workstations are current on all required patches;
- Ability to prevent non-approved software from being installed (e.g., peer-to-peer software);
- Antivirus with a minimum weekly scan;
- Firewalls installed;
- Data Loss Prevention tool (subject to any legal requirements, e.g. Works Council); and
- Web filtering.

Access Control: The Parties will comply with the following controls for their respective infrastructure:

- Enable two factor authentication for respective VPNs;
 - The City will promptly provide authentication credentials for Accenture personnel, including any additional requirements to support the City's two factor authentication;
- Promptly deactivate authentication credentials where such credentials have not been used for a period of time (such period of non-use not to exceed six months);
- Deactivate authentication credentials upon notification that access is no longer needed (e.g., employee termination, project reassignment, etc.) within one business day; and
- Manage the access controls using the least privilege access protocols where applicable.

Connectivity:

- Where Accenture personnel connect to Accenture networks and infrastructure, Accenture is responsible for applying Accenture standard technical and organizational security controls to such Accenture-provided workstation/laptop and the Accenture environment.
- Where Accenture personnel are using Accenture or City provided desktop and/or laptops and accessing the City network, environments and systems, via VDI, the City is responsible for applying City's standard technical and organizational security controls to such City network, systems and environments.

Accenture cannot confirm that the wireless network used by Accenture personnel in a remote setting is protected with agreed upon security standards.

Physical Controls: Any contractual requirements to provide specific physical and environmental security controls at the Accenture personnel's work location when working remotely will not apply, including, but not limited to, the following:

- Secure bays;
- Presence of security guards to prevent unauthorized resources from accessing the work site;
- Use of CCTV to monitor access and the work environment;
- Use of cross-cut shredders to dispose of hard copy;
- Prohibition of cell phones and other cameras during work.

Client Standards: To the extent reasonably possible, Accenture personnel working remotely will continue to abide by the applicable City policies and standards in performing the Services. Such policies govern and control within the City's systems and environments.

EXHIBIT B

DRUG POLICY COMPLIANCE AGREEMENT

I, Robert Cohan, Managing Director as the managing director of
(Name) (Print/Type) (Title)
Accenture (Contractor)
(Name of Company)

Have authority to bind Vendor 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 Vendor 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 Vendor that meet the criteria and requirements established by the Mayor's Drug Detection and Deterrence Procedures for Engineers (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 the pass/fail certification.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Vendor that full compliance with the 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 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.

7/17/2020
Date

Robert Cohan
Contractor Name
Rob Cohan
Signature
Managing Director, Accenture
Title

EXHIBIT C

CERTIFICATION OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT

Robert Cohan, Managing Director
(Name) (Title)

as the managing director of Accenture
(Contractor) (Name of Company)

have authority to bind the Vendor with respect to its bid, and hereby certify that Vendor has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved

in performing 311 Dynamics Implementation.
(Project)

Vendor agrees and covenants that it shall immediately notify the City of Houston Director of Human Resources if any safety impact positions are established to provide services in performing this City Contract.

Robert Cohan
(Typed or Printed Name)

(Date) 7/17/2020

Rob Cohan
(Signature)

Managing Director
(Title)

**EXHIBIT D
DRUG POLICY COMPLIANCE DECLARATION**

I, _____ as a managing
director of

(Name) (Print/Type)

(Title)

(Contractor)

(Name of Company)

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

This reporting period covers the preceding 6 months from _____ to _____, 20____.

Initials A written Drug Free Workplace Policy has been implemented and employees notified.

Initials The policy meets the criteria established by the Executive Order No. 1-31

Initials Written drug testing procedures have been implemented in conformity with the Executive
Order No. 1-31. Employees have been notified of such procedures.

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

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

From _____ to _____ the following test has occurred
(Start date) (End date)

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

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

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

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

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT E
DATA PROCESSING AND SECURITY ADDENDUM

This Data Processing and Security Addendum ("Addendum") describes the responsibilities of the parties with respect to the processing and security of any City Personal Data in connection with the Services provided under any statement of work ("SOW") under this Agreement. Terms not defined below shall have the meaning set forth in the Agreement. In the event of a conflict between the Agreement and this Addendum, this Addendum shall prevail.

1. Definitions.

- (a) "Business Contact Information" means the names, mailing addresses, email addresses, and phone numbers regarding the other party's employees, directors, vendors, agents and customers, maintained by a party for its own business purposes as further described in Section 8 below.
- (b) "City Personal Data" means City-owned or controlled personal data provided by or on behalf of City to Vendor or an Vendor affiliate or subcontractor for processing under an SOW. Unless prohibited by applicable Data Protection Laws, City Personal Data shall not include information or data that is anonymized, aggregated, de-identified and/or compiled on a generic basis and which does not name or identify a specific person alone or in conjunction with other information could name or identify a specific person.
- (c) "Data Protection Laws" means all applicable data protection and privacy Laws that apply to the processing of personal data under a particular SOW, and any US state or federal Laws or regulations pertaining to the collection, use, disclosure, security or protection of personal data, or to security breach notification.
- (d) "Information Security Incident" means a breach of Vendor's security leading to the accidental or unlawful destruction, loss, alteration or unauthorized acquisition, disclosure, misuse or access to unencrypted City Personal Data transmitted, stored or otherwise processed by Vendor.
- (e) "Subprocessors" means third parties authorized under the terms of this Addendum to have access to and process City Personal Data in order to provide a portion of the Services.

2. Roles of the Parties; Compliance with Data Protection Laws.

- (a) Vendor will comply with the requirements of the Data Protection Laws as applicable to its performance under this Agreement as a service provider and with the SOWs issued under this Agreement with respect to the processing of the City Personal Data.
- (b) City certifies to Vendor that it has all necessary rights to provide the City Personal Data to Vendor for the processing to be performed in relation to the Services. City agrees that Vendor shall not be responsible for obtaining any necessary consents (if applicable), and providing any necessary notices, as required under the relevant Data Protection Laws in relation to the processing of the City Personal Data.
- (c) Vendor will process the City Personal Data only in accordance with City's documented processing instructions as set forth in the Agreement, including this Addendum and the applicable SOW, unless otherwise required by law.
- (d) Except as otherwise set forth in the applicable SOW, (i) Vendor is a service provider and/or processor with respect to the City Personal Data; and (ii) City is an owner / controller or service provider / processor, as applicable, of the City Personal Data.
- (e) The applicable SOW shall set out (i) the subject matter and duration of the processing; (ii) the nature and purpose of the processing; and (iii) the type of personal data and categories of data subjects involved.

3. Disclosure and Use of Data.

- (a) When providing or making available City Personal Data to Vendor, City shall only disclose or transmit City Personal Data that is necessary for Vendor to perform the applicable Services.
- (b) Vendor shall not:
 - (i) sell any City Personal Data;
 - (ii) retain, use, or disclose any City Personal Data for any purpose other than solely fulfilling its obligations and performing services in accordance with the Agreement; or

- (iii) retain, use or disclose the City Personal Data outside the direct business relationship between Vendor and City, as set forth in the Agreement, including this Addendum and the applicable SOW.
- (c) Following expiration or termination of the provision of Services relating to the processing of City Personal Data, or at City's request, Vendor shall (and shall require that its sub-processors) promptly and securely delete or destroy (or return to City) all City Personal Data (including existing copies), unless otherwise required or permitted by applicable laws. Unless otherwise agreed, Vendor will comply with any City deletion instruction as soon as reasonably practicable and within a maximum period of 90 days.

4. Security Obligations.

- (a) Vendor shall implement appropriate technical and organizational security measures to safeguard City Personal Data from unauthorized processing or accidental loss or damage, as further described in **Attachment 1** to this Addendum ("**Data Safeguards**") and this Agreement .
- (b) Taking into account the ongoing state of technological development, the costs of implementation and the nature, scope, context and purposes of the processing of the City Personal Data, as well as the likelihood and severity of risk to individuals, Vendor's implementation of and compliance with the security measures set forth in this Agreement and the applicable SOW is designed to provide a level of security appropriate to the risk in respect of the processing of the City Personal Data.

5. Additional Vendor Responsibilities.

- (a) **Documentation, Audits and Inspections.** Vendor shall make available to City information reasonably requested by City to demonstrate Vendor's compliance with its obligations in this Section and submit to audits and inspections by City (or City directed third parties) in accordance with a mutually agreed process designed to avoid disruption of the Services and protect the confidential information of Vendor and its other clients. As required by applicable law, Vendor shall inform City if, in Vendor's opinion, any City audit instruction infringes upon any applicable Data Protection Law. City shall be solely responsible for determining whether the Services and Vendor's security measures as set forth in **Attachment 1** and the applicable SOW will meet City's needs.
- (b) **Data Subject and Supervisory Authority Requests.** As required by law and taking into account the nature of the Services provided, Vendor shall:
 - (i) provide assistance to City as reasonably requested with respect to City's obligations to respond to requests from City's data subjects as required under applicable Data Protection Laws. Vendor will not independently respond to such requests from City's data subjects, but will refer them to City, except where required by applicable Data Protection Law; and
 - (ii) provide assistance to City as reasonably requested if City needs to provide information (including details of the Services provided by Vendor) to a competent supervisory authority, to the extent that such information is solely in the possession of Vendor or its Subprocessors.
- (c) **Privacy / Data Protection Impact Assessments.** As required by law and taking into account the nature of the Services provided and the information available to Vendor, Vendor shall provide assistance to City as reasonably requested with respect to City's obligations to conduct privacy / data protection impact assessments with respect to the processing of City Personal Data as required under applicable Data Protection Laws.

6. Subprocessors. In the event in an applicable SOW it identifies Personal Data processing within the scope of the SOW, then City specifically authorizes the engagement of Vendor's affiliates as Subprocessors and generally authorizes the engagement of other third parties as Subprocessors as identified in the applicable SOW. Vendor shall contractually require (including via intra-company agreements with respect to affiliates) any such Subprocessors to comply with data protection obligations that are at least as restrictive as those Vendor is required to comply with hereunder. Vendor shall remain fully liable for the performance of the Subprocessor. Vendor shall provide City with written notice of any intended changes to the authorized Subprocessors and City shall promptly, and in any event within 10 business days, notify Vendor in writing of any reasonable objection to such changes. Any disagreements between the parties shall be resolved via the contract dispute resolution procedure.

7. Information Security Incidents. Vendor shall maintain procedures to detect and respond to Information Security Incidents. If an Information Security Incident occurs which is reasonably suspected or may reasonably compromise the security or privacy of City Personal Data, Vendor will promptly notify City. Vendor will cooperate with City in investigating the Information Security Incident and provide assistance to City as reasonably requested with respect to City's breach notification obligations under any applicable Data Protection Laws.

8. Use of Business Contact Information. Each party consents to the other party using its Business Contact Information for contract management, payment processing, service offering, and business development purposes related to the Agreement and such other purposes as set out in the using party's global data privacy policy (copies of which shall be made available upon request). For such purposes, and notwithstanding anything else set forth in the Agreement or this Addendum with respect to City Personal Data in general, each party shall be considered a controller with respect to the other party's Business Contact Information and shall be entitled to transfer such information to any country where such party's global organization operates.

9. Changes in Laws. In the event of (i) any newly enacted Data Protection Law, (ii) any change to an existing Data Protection Law (including generally-accepted interpretations thereof), (iii) any interpretation of a new or existing Data Protection Law by City, or (iv) any material new or emerging cybersecurity threat, which individually or collectively requires a change in the manner by which Vendor is delivering the Services to City, the parties shall come to a mutual agreement upon how Vendor's delivery of the Services will be impacted and shall make equitable adjustments to the terms of the Agreement and the Services in accordance with the Change Control Procedures.

Appendix "A" to Exhibit E Data Safeguards for City Data

These data safeguards ("Data Safeguards") set forth the technical and organizational measures that Vendor will follow with respect to maintaining the security of City Data in connection with the Agreement in place between the Parties. In the event of a conflict between these Data Safeguards and any terms and conditions set forth in the Agreement, the terms and conditions of the Agreement shall prevail, except to the extent this Appendix A is more stringent.

To the extent the City Data includes Personal Data, and taking into consideration the nature, scope and purposes of the processing of the City Personal Data, the implementation of and compliance with these Data Safeguards and any additional security measures set out in the applicable SOW/description of Services are designed to provide a level of security appropriate to the risk in respect of the processing of the City Personal Data. Notwithstanding the foregoing, the level of security shall be at least the minimum level as set forth in this Agreement and this Appendix "A" to Exhibit E of this Agreement and no SOW or description of Services shall reduce the level of security as specified in this Agreement, except when implementing a remote work solution as may be agreed by the Parties.

I. Controlling Standards

- 1. Vendor Standards.** Vendor will maintain globally applicable policies, standards, and procedures intended to protect data within Vendor's environments, and, except as otherwise set forth herein, will comply with such policies in connection with the provision of the Services. Such policies will govern and control within Vendor's environments.

Examples of such policies include:

- System Security
- Security of Information and Acceptable Use of Systems
- Confidentiality
- Data Privacy
- Data Management

- 2. City Standards.** City agrees and acknowledges that it will not access or operate within Vendor's environment. If such access is agreed by the Parties in writing, the applicable statement of work will document the terms and conditions applicable to such access. Vendor will abide by City's policies and standards when accessing or operating within City's environments, provided that City's policies and standards have been provided or made available in writing. Prior to the commencement of Services, the Parties will mutually agree and document in writing the specific security controls resulting from such policies and standards that shall be followed when operating on the City's environment. If there is any change to such controls, the Parties will mutually agree to such changes and any impact to the Services in writing.

- II. Technical and Organizational Measures.** Without limiting the generality of the foregoing, the Vendor has implemented and will maintain appropriate technical and organizational measures, internal controls, and information security routines intended to protect City Data in the Vendor's environment against accidental, unauthorized or unlawful access, disclosure, alteration, loss, or destruction, as documented below and in compliance with the terms and conditions of the Agreement. \

1. Organization of Information Security

- a) Security Ownership.** Vendor will appoint one or more security officers responsible for coordinating and monitoring the security rules and procedures.
- b) Security Roles and Responsibilities.** Vendor's personnel with access to City Data will be subject to confidentiality obligations.

- c) **Risk Management Program.** Vendor will have a risk management program in place to identify, assess and take appropriate actions with respect to risks related to the processing of the City Data in connection with the applicable Agreement in place between the Parties.

2. Asset Management

- a) **Asset Inventory.** Vendor will maintain an inventory of all media on which City Data is stored. Access to the inventories of such media will be restricted to the Parties' personnel authorized in writing to have such access.
- b) **Data Handling.**
 - i. Vendor will classify City Data to help identify such data and to allow for access to it to be appropriately restricted (e.g., through encryption).
 - ii. Vendor will limit printing of City Data to what is minimally necessary to perform services and have procedures for disposing of printed materials that contain City Data.
 - iii. Vendor will require its personnel to obtain appropriate authorization prior to storing City Data on portable devices, remotely accessing City Data, or processing City Data outside the Parties' facilities.

3. Human Resources Security

- a) **Security Training.**
 - i. Vendor will inform its personnel about relevant security procedures and their respective roles. Vendor also will inform its personnel of possible consequences of breaching the security rules and procedures.
 - ii. Vendor will only use anonymous data in training.

4. Physical and Environmental Security

- a) **Physical Access to Facilities.** Vendor will only allow authorized individuals to access facilities where information systems that process City Data are located.
- b) **Physical Access to Components.** Vendor will maintain records of the incoming and outgoing media containing City Data, including the kind of media, the authorized sender/recipients, date and time, the number of media, and the types of City Data they contain.
- c) **Protection from Disruptions.** Vendor will use a variety of industry standard (e.g., ISO 27001, CIS Sans 20, and/or NIST Cyber-Security Framework, as applicable) systems to protect against loss of data due to power supply failure or line interference.
- d) **Component Disposal.** Vendor will use industry standard (e.g., ISO 27001, CIS Sans 20, and/or NIST Cyber-Security Framework, as applicable) processes to delete City Data when it is no longer needed.

5. Communications and Operations Management

- a) **Operational Policy.** Vendor will maintain security documents describing their security measures and the relevant procedures and responsibilities of their personnel who have access to City Data.
- b) **Mobile Device Management (MDM).** Vendor will maintain a mobile device policy that:
 - i. Enforces device encryption;
 - ii. Protects and limits use of City Data accessed or used on a mobile device; and
 - iii. Prohibits enrollment of mobile devices that have been "jail broken."
- c) **Data Recovery Procedures.**

- i. Vendor will have specific data recovery procedures in place designed to enable the recovery of City Data being maintained in its systems.
 - ii. Vendor will review its data recovery procedures at least annually.
 - iii. Vendor will log data restoration efforts, including the person responsible, the description of the restored data and where applicable, the person responsible and which data (if any) had to be input manually in the data recovery process.
- d) Malicious Software.** Vendor will have anti-malware controls to help avoid malicious software gaining unauthorized access to City Data, including malicious software originating from public networks.
- e) Data Beyond Boundaries.** Vendor will
- i. Encrypt City Data that is transmitted over public networks.
 - ii. Protect City Data in media leaving their facilities (e.g., through encryption).
 - iii. Implement automated tools to reduce the risks of misdirected email, letters, and / or faxes.
- f) Event Logging.**
- i. Vendor will log the use of their respective data-processing systems.
 - ii. Vendor will log access and use of information systems containing City Data, including at a minimum registering the access ID, time, and authorization granted or denied.

6. Access Control

- a) Access Policy.** Vendor will maintain a record of security privileges of individuals having access to City Data.
- b) Access Authorization.**
- i. Vendor will maintain and update a record of personnel authorized to access City Data via that Vendor's systems.
 - ii. When responsible for access provisioning, Vendor will promptly provision authentication credentials.
 - iii. Vendor will deactivate authentication credentials where such credentials have not been used for a period of time (such period of non-use not to exceed six months).
 - iv. Vendor will deactivate authentication credentials upon notification that access is no longer needed (e.g. employee termination, project reassignment, etc.) within two business days.
 - v. Vendor will identify those personnel who may grant, alter or cancel authorized access to data and resources.
 - vi. Vendor will ensure that where more than one individual has access to systems containing City Data, the individuals have unique identifiers/log-ins.
- c) Least Privilege.**
- i. Technical support personnel will only be permitted to have access to City Data when needed.
 - ii. Vendor will restrict access to City Data to only those individuals who require such access to perform their job function.
 - iii. Vendor will limit access to City Data to only that data minimally necessary to perform the services.
 - iv. Vendor will support segregation of duties between environments and between key roles.

d) **Integrity and Confidentiality.** Vendor will instruct its personnel to disable administrative sessions when leaving premises or when computers are otherwise left unattended.

e) **Authentication.**

- i. Vendor will use industry standard (e.g., ISO 27001, CIS Sans 20, and/or NIST Cyber-Security Framework, as applicable) practices to identify and authenticate users who attempt to access information systems.
- ii. Where authentication mechanisms are based on passwords, Vendor will require that the passwords are renewed regularly.
- iii. Where authentication mechanisms are based on passwords, Vendor will require the password to contain at least eight characters and three of the following four types of characters: numeric (0-9), lowercase (a-z), uppercase (A-Z), special (e.g., !, *, &, etc.).
- iv. Vendor will ensure that de-activated or expired identifiers are not granted to other individuals.
- v. Vendor will monitor repeated attempts to gain access to information systems using an invalid password.
- vi. Vendor will maintain industry standard (e.g., ISO 27001, CIS Sans 20, and/or NIST Cyber-Security Framework, as applicable) procedures to deactivate passwords that have been corrupted or inadvertently disclosed.
- vii. Vendor will use industry standard (e.g., ISO 27001, CIS Sans 20, and/or NIST Cyber-Security Framework, as applicable) password protection practices, including practices designed to maintain the confidentiality and integrity of passwords when they are assigned and distributed, as well as during storage.

f) **Multi Factor Authentication.** Vendor will implement Multi-Factor Authentication for internal access and remote access over virtual private network (VPN).

7. **Network and Application Design and Management**

- a) Vendor will have controls to avoid individuals gaining unauthorized access to City Data.
- b) Vendor will use network based data loss prevention to monitor or restrict movement of sensitive data.
- c) Vendor will use firefighter IDs or temporary user IDs for production access.
- d) Vendor will use network intrusion detection and / or prevention.
- e) Vendor will use secure coding standards.
- f) Vendor will scan for and remediate OWASP vulnerabilities.
- g) To the extent technically possible, the Parties will work together to limit the ability of Vendor personnel to access non-City and non-Vendor environments from the City systems.
- h) Vendor will maintain up to date server and network device security configuration standards.
- i) Vendor will scan their respective environments to ensure identified configuration vulnerabilities have been remediated.

8. **Patch Management**

- a) Vendor will have a patch management procedure that deploys security patches for systems used to process City Data that includes:
 - i. Defined time allowed to implement patches (not to exceed 90 days for all patches); and
 - ii. Established process to handle emergency patches in a shorter time frame.
- b) Vendor agrees that no software or hardware that is past its End of Life (EOL) will be used in the scope of services without a mutually agreed risk management process for such items.

9. Workstations

- a) Vendor will implement controls for all workstations it provides that are used in connection with service delivery/receipt incorporating the following:
 - i. Users cannot change or modify default security controls
 - ii. Encrypted hard drive
 - iii. Software agent that manages overall compliance of workstation and reports a minimum on a monthly basis to a central server
 - iv. Patching process to ensure workstations are current on all required patches
 - v. Ability to prevent unapproved software from being installed
 - vi. Antivirus with a minimum weekly scan
 - vii. Firewalls installed
 - viii. Data Loss Prevention tool (subject to any legal requirements, e.g. Works Council)
 - ix. Web filtering

10. Information Security Breach Management

- a) **Security Breach Response Process.** Vendor will maintain a record of security breaches with a description of the breach, the time period, the consequences of the breach, the name of the reporter, and to whom the breach was reported, and the process for recovering data.
- b) **Service Monitoring.** Vendor's security personnel will review logs as part of their security breach response process to propose remediation efforts if necessary.

11. Business Continuity Management

- a) Vendor will maintain emergency and contingency plans for the facilities in which the Parties' information systems that process City Data are located.
- b) Vendor's redundant storage and procedures for recovering data will be designed to reconstruct City Data stored by Vendor in its original state from before the time it was lost or destroyed.



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date:

E29334 - All Hazards Preparedness, Planning, Consulting &
Recovery Services - ORDINANCE

Agenda Item#: 21.

Summary:

ORDINANCE approving and authorizing an End User Agreement to **TETRA TECH, INC** through Houston-Galveston Area Council of Governments for all Hazards Preparedness, Planning, Consulting & Recovery Services for Solid Waste Management Department; providing a maximum contract amount - 1 Year - \$292,916.00 - Grant Fund

Background:

S30-E29334 - Approve an Ordinance awarding a derivative agreement to Tetra Tech, Inc. through the Houston-Galveston Area Council in a maximum contract amount not to exceed \$292,916.00 for all hazards preparedness, planning, consulting & recovery services for Solid Waste Management Department.

Specific Explanation:

The Director of Solid Waste Management Department and the Chief Procurement Officer recommend that City Council approve an ordinance awarding a **one year** agreement to **Tetra Tech, Inc.** in a maximum contract amount not to exceed **\$292,916.00** for all hazards preparedness, planning, consulting & recovery services for Solid Waste Management Department.

The scope of work requires the contractor to provide emergency operations, planning and response, contingency, risk assessment, vulnerability, hazards and operability, hazard mitigation, incident response, testing, training, exercise programs, asset management, logistics and support, regional response, decontamination, continuity of operations planning, data management, documentation, debris clean-up and removal monitoring. This work is related to removal of sediment and debris deposited at the confluence West Fork San Jacinto River and Lake Houston.

Chapter 271, Subchapter F of the Texas Local Government Code allows local governments to participate in cooperative purchasing programs with another government or local cooperative organization to purchase goods or services utilizing contracts currently existing between another local government and its vendors. This process satisfies the state's competitive bid law requirements.

M/WBE Participation:

This contract will have a 24% participation level. Tetra Tech, Inc. has designated the below-named companies as its certified M/WBE subcontractors.

<u>Name</u>	<u>Type of Work</u>	<u>Percentage</u>
Triloq Engineering Services LLC	Engineering Support	24%

Pay or Play Program:

The proposed contract requires compliance with the City's 'Pay or Play' ordinance regarding health benefits for employees of City contractors. In this case, the contractor provides health benefits to eligible employees in compliance with City policy.

Hire Houston First:

The procurement is exempt from the City's Hire Houston First Ordinance. Bids/proposals were not solicited because the department is utilizing an Interlocal or Cooperative Purchasing Agreement for this purchase.

Fiscal Note:

No Fiscal Note is required on grant items

Jerry Adams, Chief Procurement Officer
Finance/Strategic Procurement Division

Department Approval Authority

ESTIMATED SPENDING AUTHORITY			
DEPARTMENT	FY2021	OUT YEARS	TOTAL
Solid Waste Management Department	\$292,916.00	\$00.00	\$292,916.00

Amount of Funding:

\$292,916.00

Federal State Local - Pass Through Fund
Fund No.5030

Contact Information:

Richard Morris - 832-393-8736
Harry Hayes - 832-393-0454

ATTACHMENTS:**Description**

Cover Sheet
2020-660 Executed Ordinance

Type

Signed Cover sheet
Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date:

E29334 - All Hazards Preparedness, Planning, Consulting & Recovery Services -
ORDINANCE

Agenda Item#: 21.

Summary:

ORDINANCE approving and authorizing an End User Agreement to **TETRA TECH, INC** through Houston-Galveston Area Council of Governments for all Hazards Preparedness, Planning, Consulting & Recovery Services for Solid Waste Management Department; providing a maximum contract amount - 1 Year - \$292,916.00 - Disaster Recovery Fund

Background:

S30-E29334 - Approve an Ordinance awarding a derivative agreement to Tetra Tech, Inc. through the Houston-Galveston Area Council in a maximum contract amount not to exceed \$292,916.00 for all hazards preparedness, planning, consulting & recovery services for Solid Waste Management Department.

Specific Explanation:

The Director of Solid Waste Management Department and the Chief Procurement Officer recommend that City Council approve an ordinance awarding a **one year** agreement to **Tetra Tech, Inc.** in a maximum contract amount not to exceed **\$292,916.00** for all hazards preparedness, planning, consulting & recovery services for Solid Waste Management Department.

The scope of work requires the contractor to provide emergency operations, planning and response, contingency, risk assessment, vulnerability, hazards and operability, hazard mitigation, incident response, testing, training, exercise programs, asset management, logistics and support, regional response, decontamination, continuity of operations planning, data management, documentation, debris clean-up and removal monitoring. This work is related to removal of sediment and debris deposited at the confluence West Fork San Jacinto River and Lake Houston.

Chapter 271, Subchapter F of the Texas Local Government Code allows local governments to participate in cooperative purchasing programs with another government or local cooperative organization to purchase goods or services utilizing contracts currently existing between another local government and its vendors. This process satisfies the state's competitive bid law requirements.

M/WBE Participation:

This contract will have a 24% participation level. Tetra Tech, Inc. has designated the below-named companies as its certified M/WBE subcontractors.

<u>Name</u>	<u>Type of Work</u>	<u>Percentage</u>
Trilogy Engineering Services LLC	Engineering Support	24%

Pay or Play Program:

The proposed contract requires compliance with the City's 'Pay or Play' ordinance regarding health benefits for employees of City contractors. In this case, the contractor provides health benefits to eligible employees in compliance with City policy.

Hire Houston First:

The procurement is exempt from the City's Hire Houston First Ordinance. Bids/proposals were not solicited because the department is utilizing an Interlocal or Cooperative Purchasing Agreement for this purchase.

Fiscal Note:

Funding for this item is included in the FY2021 Proposed Budget. Therefore, no Fiscal Note is required as stated in the Financial Policies.

DocuSigned by:

Jerry Adams

7/24/2020

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Jerry Adams, Chief Procurement Officer
Finance/Strategic Procurement Division

Department Approval Authority

ESTIMATED SPENDING AUTHORITY			
DEPARTMENT	FY2021	OUT YEARS	TOTAL
Solid Waste Management	\$292,916.00	\$00.00	\$292,916.00

Department			
------------	--	--	--

Amount of Funding:

\$292,916.00
Federal State Local - Pass Through Fund
Fund No.5030

Contact Information:

Richard Morris - 832-393-8736
Harry Hayes - 832-393-0454

ATTACHMENTS:

Description	Type
Form B	Backup Material
Form A	Backup Material
POP 1 & 2	Backup Material
Affidavit	Backup Material
Tax Report	Backup Material
MWBE Letter of Intent	Backup Material
Contract	Contract/Exhibit
Funding Form	Backup Material
Cover sheet	Signed Cover sheet
Signed Ordinance	Ordinance/Resolution/Motion
Signed Contract	Contract/Exhibit
Grant Funding Verification- CB	Backup Material

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 herein by this reference.
- (X) Other *Grant Fund Available*

Date: 7-28, 2020

Cliff Brown
City Controller of the City of Houston, Texas

hgs
FUND REF 5030-2100

520132
AMOUNT: 292,916.00

SAO
ENCUMB. NO.: 45-329111

dc OA 46-16021

City of Houston, Texas Ordinance No. 2020-660

A
AN ORDINANCE APPROVING AND AUTHORIZING AN END USER AGREEMENT TO TETRA TECH, INC. THROUGH HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS FOR ALL HAZARDS PREPAREDNESS, PLANNING, CONSULTING & RECOVERY SERVICES FOR THE SOLID WASTE 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. The City Council hereby approves and authorizes the contracts, agreements or undertakings described in the title of this Ordinance, in substantially the form shown in the documents attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such documents and all related documents 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 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. 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 4. The total allocation for the contract, agreement or other undertaking approved and authorized hereby shall never exceed **\$292,916.00**, unless and until this sum is increased by ordinance of City Council.

Section 5. 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 29th day of July, 20 20.

APPROVED this _____ day of _____, 20 ____.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.

Rachel L. Smith
City Secretary

FUNDING SOURCE:

\$292,916.00 – Disaster Recovery Fund (5303)

(Prepared by Legal Dept. *Rachel L. Smith*)

(RG 7/16/2020)

Assistant City Attorney II

(Requested by Jerry Adams, Chief Procurement Officer)

(L.D. File No. 074-2000004-001)

CAPTION PUBLISHED IN DAILY COURT

REVIEW

DATE:

AUG - 4 2020

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	

END USER AGREEMENT

THIS END USER AGREEMENT (the "Agreement") is made on the date countersigned by the City Controller ("Countersignature Date"), by and between the **CITY OF HOUSTON, TEXAS** (the "City"), a Texas Home Rule City of the State of Texas principally situated in Harris County, and **TETRA TECH, INC.** (the "Contractor" or "Tetra Tech"), a Delaware company doing business in Texas.

RECITALS

WHEREAS, Contractor entered into a contract with Houston-Galveston Area Council of Governments ("H-GAC") for All Hazards Preparedness, Planning, Consulting & Recovery Services, Contract Number HP08-17, Code HP17A7, effective August 1, 2017 (the "Master Agreement"), which provides All Hazards Preparedness, Planning, Consulting & Recovery Services to End Users who have entered into an Interlocal Contract with H-GAC;

WHEREAS, the City as an End User may purchase products and services under the Master Agreement on the same terms, conditions and pricing as H-GAC;

WHEREAS, the Parties desire to enter into a contract, based upon applicable terms, conditions and pricing of the Master Agreement, as supplemented hereby, in which Contractor will provide products and services described in the Master Agreement, as well as additional terms and conditions, services levels, descriptions of services, and corresponding pricing as set forth herein;

NOW, THEREFORE, in consideration of the above recitals, the Parties agree as follows:

1. Order of Precedence.

1.1. The documents listed below are incorporated by reference and made part of this Agreement. Unless otherwise agreed or provided herein, in the event of conflict or inconsistency among or between the documents, the documents shall control in the order in which they are listed below:

- 1.1.1. Master Agreement, including Attachment A, H-GAC's General Terms and Conditions, Proposal Specifications No. HP08-17, including any relevant suffixes, and Contractor's Response to Proposal No. HP08-17, including but not limited to, prices and options offered, as may be amended;
- 1.1.2. The sections of and exhibit to this Agreement, as it may be amended from time to time and signed by the parties (and in the event of conflict between the sections and the exhibits of this Agreement, the sections will control over the exhibits;
- 1.1.3. City's purchase orders (including service release orders) or letters of agreements issued pursuant to this Agreement;
- 1.1.4. Any change orders to this Agreement (the later dated document will govern).

2. Entire Agreement and Performance of Obligation.

2.1. The Agreement is the entire agreement between City and Contractor regarding the purchase of products and services described herein, and supersedes and replaces

any previous communications, representations, or agreements. In the event that the Master Agreement is not extended beyond July 31, 2020, or otherwise expires or terminates before Contractor completes performance of all of its obligations under this Agreement and an order is issued before the termination or expiration of the Master Agreement, then Contractor shall nonetheless complete performance of all its obligations under this Agreement and the applicable order pursuant to the terms and conditions of the Master Agreement to the extent it is applicable.

3. Products & Services; and Pricing.

- 3.1. Contractor shall furnish and deliver the products and services described in **Exhibit A**, and the City shall pay Contractor in accordance with **Exhibit B**. Contractor shall not increase the pricing during the Term of this Agreement. The City's payment(s) for services under this Agreement must only be paid from Allocations Funds, as provided in Section 4 below.

4. Limit of Appropriation.

- 4.1. The City's duty to pay money to Contractor for any purpose under this Agreement is limited in its entirety by the provisions of this section.

- 4.2. In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section of the Texas Constitution, the City has appropriated and allocated the sum of \$292,916.00 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 for the Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

- 4.2.1. 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 responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This Supplemental Allocation has been charged to such appropriation.

\$ _____

- 4.2.2. 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 products and services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.

5. **Changes**

5.1. At any time during the Agreement Term, the Director may issue a Change Order, which must be signed by Contractor and the Director, to increase or decrease the scope of services, add or delete products or services, or change plans and specifications, as the Director 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. Any change to the scope of activities identified in **Exhibit A** shall be mutually agreed to prior to the issuance of a change order.

5.2. The Director will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of Notice]
SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

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

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

Signed:
[Signature of Director]

5.3. The Director may issue more than one Change Order, subject to the following limitations:

5.3.1. Council expressly authorizes the Director to approve Change Orders up to \$50,000.00. Any change Order of more than \$50,000.00 over the approved contract amount must be approved by the City Council.

5.3.2. 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.

5.3.3. The Total of all Change Orders issued under this section may not increase the original Agreement amount by more than 25%.

5.4. 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 Director's decision regarding a time extension is final.

5.5. 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.

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

6. Term.

6.1. The Agreement is effective on the Countersignature Date and expires one (1) year from the Countersignature Date, unless sooner terminated in accordance with the terms and conditions of this Agreement.

7. Confidentiality and Data Ownership; Data Security.

7.1. In order for Contractor or City personnel to perform the obligations under this Agreement, it may become necessary for either party to receive or have access to specifications, designs, plans, drawings, software, data prototypes, or other technical or business information of the other party that either existed before performance of work or was subsequently developed independent of the parties performance of contract obligations ("Background Information"), which is considered proprietary or confidential by the other party. In addition, information developed in connection with the performance of this Agreement ("Delivered Information"), which is provided under this Agreement is proprietary and confidential. All Background Information and all Delivered Information are collectively referred to in this Section as "Information."

7.2. The party to whom Information is disclosed, shall:

- 7.2.1. hold the Information in confidence and protect it in accordance with the security regulations by which it protects its own proprietary or confidential information;
- 7.2.2. restrict disclosure of the Information solely to those employees, agents and representatives with a need to know; and
- 7.2.3. advise those employees, agents and representatives of their obligations with respect to the Information.
- 7.3. The party to whom Information is disclosed shall have no obligation to preserve the proprietary nature of any Information that:
 - 7.3.1. was previously known to it free and clear of any obligation to keep it confidential;
 - 7.3.2. except as otherwise provided under this Agreement, is disclosed to third parties by the disclosing party without restriction;
 - 7.3.3. is or becomes publicly available by other than unauthorized disclosure;
 - 7.3.4. is independently developed by it; or
 - 7.3.5. is disclosed in response to requests made under the Texas Public Information Act or a court order. However, the party ordered to disclose the Information shall (i) give the disclosing party of the Information or software prompt written notice of all such requests, and (ii) cooperate with the disclosing party's efforts to obtain a protective order protecting the Information or Software from disclosure.
- 7.4. Neither party shall be liable for the inadvertent or accidental disclosure of Information, if the disclosure occurs despite the exercise of a reasonable degree of care, which is at least as great as the care the party normally takes to preserve its own proprietary information of a similar nature.
- 7.5. All Information owned by Contractor or its suppliers and furnished to the City under this Agreement is the property of Contractor or the supplier, and unless otherwise expressly provided in the applicable Order, the City, its agents and representatives shall:
 - 7.5.1. use Information only to install, operate, or maintain the product(s) for which originally furnished or to perform an audit conducted by City employees or a third party to assess Contractor's performance under the Agreement and the effectiveness of systems, software, and equipment provided by Contractor;
 - 7.5.2. use Information only for the City's internal business purposes;

- 7.5.3. not reproduce or copy Information except as authorized under this Agreement unless the parties otherwise agree in writing;
- 7.5.4. not use the Information to develop other software;
- 7.5.5. return or destroy the Information and any copies when no longer needed or permitted for use with the product for which initially furnished; and
- 7.5.6. not remove Information from the United States.
- 7.6. Upon request, the receiving party shall return to the furnishing party all Background Information received in tangible form that is not part of the Delivered Information.

8. Use of Work Products.

- 8.1. The City may use all notes, plans, computations, databases, tabulations, exhibits, photographs, reports, underlying data and other work products (collectively, the "Documents") that Contractor prepares or obtains under this Agreement.
- 8.2. Contractor warrants that it owns the copyright to the Documents.
- 8.3. Contractor shall deliver the original Documents to the Director on request. Within five Business 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.

9. Compliance with Equal Opportunity Ordinance.

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

10. Minority and Women Business Enterprise.

- 10.1. In its performance under this Agreement, 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 **24%** 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.
- 10.2. Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:
 - 10.2.1. _____ (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 OBO Director ("the Director").

10.2.2. _____ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

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

10.2.4. 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.

11. Drug Abuse Detection and Deterrence.

11.1. It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

11.2. Before the City signs this Agreement, Contractor shall file with the City Contract Compliance Officer for Drug Testing ("CCODT"):

11.2.1. a copy of its drug-free workplace policy,

11.2.2. 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,

11.2.3. if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit D**.

11.3. If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance

of this Agreement (or on completion of this Agreement if performance is less than six (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 thirty (30) days of the expiration of each six-month period of performance and within thirty (30) days of completion of this Agreement. The first six-month period begins to run on the date the City issues its Notice to Proceed or, if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

- 11.4. 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.
- 11.5. Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

12. RELEASE AND INDEMNIFICATION.

12.1. RELEASE.

12.1.1. 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, INCLUDING INSTANCE OF CONCURRENT NEGLIGENCE, BUT EXCLUDING ANY INJURY, DEATH, DAMAGE, OR LOSS TO PERSON OR PROPERTY CAUSED BY THE CITY'S SOLE NEGLIGENCE.

12.2. INDEMNIFICATION

12.2.1. 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:

12.2.1.1. CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 12.2.1.1.-12.2.1.3., "CONTRACTOR")

ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

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

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

12.2.2. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

12.3. INTELLECTUAL PROPERTY RELEASE AND INDEMNIFICATION

12.3.1. CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, SERVICE MARK, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

12.3.2. CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

12.3.3. WITHIN SIXTY (60) DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR

DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

12.4. SUBCONTRACTOR'S INDEMNITY

12.4.1. 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.

12.5. INDEMNIFICATION PROCEDURES

12.5.1. *Notice of Claims.*

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

- a. a description of the indemnification event in reasonable detail,
- b. the basis on which indemnification may be due, and
- c. the anticipated amount of the indemnified loss.

12.5.1.2. 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.

12.5.2. *Defense of Claims.*

12.5.2.1. *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.

- 12.5.2.2. *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.

13. Insurance.

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

COVERAGE	LIMIT OF LIABILITY
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 (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Professional Liability Coverage	\$1,000,000 per occurrence; \$2,000,000 aggregate
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile	\$1,000,000.00
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

- 13.2. *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 (a) all premiums and (b) 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.

13.3. *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 (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) 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.

13.4. *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.

13.5. *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 sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

14. Publicity.

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.

15. Dispute Resolution.

15.1. For purposes of this Section "Project Administrator" means the person the Director designates to monitor the progress of all Parties' performance under this Agreement.

- 15.2. Except as may otherwise be provided by law, a dispute that (i) does not involve a question of law; (ii) arises during the performance of this Agreement; and (iii) is not resolved between the Project Administrator and Contractor must be handled as described below:

15.2.1. The Project Administrator shall put its decision in writing and mail or otherwise furnish Contractor with a copy. Contractor may abide by the decision or may appeal the decision to the Director.

15.2.2. If Contractor desires to appeal a decision of the Project Administrator, Contractor must submit a written appeal to the Director. Contractor must file its written appeal within seven Business Days following receipt of the Project Administrator's original decision. The Director shall provide Contractor with a written response to the appeal within 14 Business Days following its receipt. The decision of the Director is final.

16. Anti-Boycott of Israel.

- 16.1. 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.

17. Zero Human Trafficking.

- 17.1. 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 this Agreement's Effective Date. Contractor shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by Contractor or its subcontractors providing services or goods under this Agreement.

18. Preservation of Contractor Information.

- 18.1. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and Contractor agrees that this Agreement can be terminated if 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.

- 18.2. 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 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.

19. Pay or Play.

- 19.1. 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.

20. Notices.

- 20.1. 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, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Article I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

To the City:

The City of Houston
Solid Waste Management Department
Attn: Director or Designee
P.O. Box 1562
Houston, Texas 7251

To Contractor:

Betty Kamara, Contracts Manager
Tetra Tech, Inc.
2301 Lucien Way, Suite 120
Maitland, Florida 32751

21. Remedies Cumulative.

- 21.1. 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 which exist now or in the future. Neither Party may terminate its duties under this Agreement except in accordance with its provisions.

22. Contractor Debt.

- 22.1. 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, THE CITY CONTROLLER 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 CONTRACT, 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.

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 corporation):

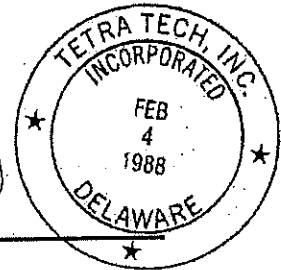
By: _____

Name: Betty Kamara
Title: Contracts Administrator

CONTRACTOR:

By: _____

Name: Jonathan Burgiel
Title: Business Unit President
Federal Tax ID No.: 95-4148514



ATTEST/SEAL:

CITY:
CITY OF HOUSTON, TEXAS

City Secretary

Mayor

APPROVED:

Director (Solid Waste Management
Department)

COUNTERSIGNED BY:

City Controller

Chief Procurement Officer

DATE COUNTERSIGNED:

APPROVED AS TO FORM:

Assistant City Attorney
L.D. File No.: 074-2000004-001

EXHIBIT A—SCOPE OF SERVICES

1.0. PURPOSE AND GENERAL INFORMATION

- 1.1. Tetra Tech shall provide services under this Agreement relating to preparing documents for a debris removal plan to restore the hydrology of the West Fork San Jacinto River to pre-Hurricane Harvey condition by the removal of sediment and debris deposited at the confluence West Fork San Jacinto River and Lake Houston. The proposed scope of work includes preparing construction plans and specifications for work included in the City's US Army Corps of Engineers (USACE) Nationwide Permit No. SWG-2018-00916. Attachment 1 provides the approximate dredge limits for the proposed project and Attachment 2 presents the referenced permit. The work consists of the removal shoal material within the West Fork of the San Jacinto River in the area of Lake Houston shown in Attachment 1. Materials to be removed are defined as debris originating from the Hurricane Harvey event. The project will be designed to remove miscellaneous material and sand debris falling within the project limit and accumulated sand deposits. The project does not include removing virgin material or material outside of the footprint of the permitted dredge area in Attachment 1. The dredging operation will be conducted either by hydraulic or mechanical method or both.
- 1.2. Tetra Tech shall be required to coordinate directly with the property owner of the dredged material placement area, identified as the Madden Tract under U.S. Army Corps of Engineers ("USACE") permit No. SWG-2018-00916, for the required work. The City will coordinate with Tetra Tech to obtain all required items from the DMPA land owner for all property access and work activities.

2.0. SCOPE OF SERVICES

Contractor shall provide the following general services, which include but are not limited to:

- 2.1. Data Review. Tetra Tech shall review post-dredge bathymetry survey conducted by the US Army Corps of Engineers (USACE) in Reach Mod. NH010 in June 2019 to estimate the sand deposits remaining in Lake Houston study area after Hurricane Harvey.
 - 2.1.1. The review shall include, but is not limited to, the following:
 - 2.1.1.1. Reviewing and evaluating Federal Emergency Management Agency 2007 effective flood map that may represent pre-Harvey conditions of the West Fork San Jacinto River (USACE, 2019).
 - 2.1.1.2. Comparing the findings of Lake Houston Sediment Study (Tetra Tech, 2019), FEMA 2007 effective flood map and the current bathymetry within the study area.

- 2.1.1.3. Preparing a technical memorandum for the findings of the data review and the approach for estimating total sand debris removal volume.
- 2.1.2. The review will not include additional hydrographic or bathymetric surveys of the project area to better define the current conditions and elevation of the sand debris.
- 2.2. Preparation of Project Plans and Specifications. Tetra Tech shall prepare Contract Documents (i.e., plans and specifications) to remove the sand debris within the identified permitted dredge area (Attachment 1).
 - 2.2.1. Tetra Tech shall prepare the Contract Documents in a phased manner to include, but not limited to, Debris Removal Plan design documentation report, design drawings and Project Manual technical specifications. The design documentation report shall summarize the project, design approach, and removal volume estimates. The Contract Documents shall provide information about the existing conditions and dredging requirements. The following specific items shall be included:
 - 2.2.1.1. Cover Sheet. Including General Notes Sheet, Abbreviations, Legend and other pertinent project information for the City's Contractor based on information included in the City's permit (Attachment 2).
 - 2.2.1.2. Overall Project Site Plan. including establishing the limits of source material site and approximate volume of dredged material.
 - 2.2.1.3. Dredging Operations Plan. Prepare the location and plan for the dredge operations including location of dredge barges, and waterway routes for barges.
 - 2.2.1.4. Material Source Grading Plan. Create the grading plan showing the intended approximate dredged depths of the material source site including grading and cross-section details based on existing bathymetry survey provided by the City and in general accordance with Attachment 2.
 - 2.2.1.5. Technical Specifications. Prepare the technical specifications related to construction for the proposed work. The technical specifications are intended to complement the Plans by providing detail related to general construction requirements, shop drawing submission requirements, materials specifications, and execution specifications.
 - 2.2.2. The Contract Documents shall be developed in three design stages: Preliminary Draft, Draft, and Final.
 - 2.2.2.1. Preliminary Draft. The Preliminary Draft Contract Documents shall be an initial preliminary design including, but not limited to,

existing bathymetric survey information provided by others showing the approximate limits of recent dredging work by the USACE. Potential initial areas for City dredging activities will be identified and provided to the City in the Preliminary Draft stage.

2.2.2.2. Draft. The Draft Contract Documents shall include a draft design for the remaining areas for the dredge material volume identified.

2.2.2.3. Final. The Final Contract Documents shall include one round of revisions to the Draft plans and specifications.

2.2.3. Tetra Tech shall provide electronic submissions of the preliminary draft, draft, and final Contract Documents, including plans and technical specifications, in PDF Format and three full-size and three-half-size hard copies of the plans and two sets of specifications for each submittal of the preliminary draft, draft, and final Contract Documents.

2.3. Meetings.

2.3.1. City Coordination Meetings. Tetra Tech shall prepare for, attend and document up to three meetings with the City to coordinate design progress and identify required action and responsible charge for action items. Tetra Tech shall include a kickoff meeting to commence work on the project as one of these meetings.

2.3.2. Regulatory Agency Meetings. Tetra Tech shall prepare for, attend and document up to two meetings with USACE and/or Texas Department of Environmental Quality (State) to review plans and discuss design alternatives or preferred methods that should be included in the final Contract Documents for this project. These meetings shall include a discussion based on the Draft documents and another review meeting to review and discuss all items related to the Final Design based on the proposed bidding conditions. Tetra Tech will coordinate with the City in advance and arrange the meetings.

2.3.3. Meeting Notes. Tetra Tech shall provide the City with meeting notes from all meetings.

2.4. Program Management and Administration. Tetra Tech shall provide program management and administration support for the overall project and contract.



TETRA TECH

ATTACHMENT 1. Project Location



TETRA TECH

ATTACHMENT 2. USACE Nationwide Permit



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
P. O. BOX 1229
GALVESTON, TEXAS 77553-1229

August 20, 2019

Evaluation Branch

SUBJECT: Permit No. SWG-2018-00916; Nationwide Permit Verification

City of Houston
Attn: Carol Haddock
P.O. Box 1562
Houston, TX 77251

Dear Ms. Haddock,

This is in reference to your request, dated April 1, 2019, subsequently revised on July 9, 2019, submitted on your behalf by Berg Oliver Associates, Inc. to discharge fill material from a temporary discharge pipe, in the form of effluent or return water, into the West Fork San Jacinto River, after placing hydraulically dredged material within two upland dredged material placement areas (DMPA) within a 204 acre tract. The project site is located in the West Fork San Jacinto River and at 1 Diamond M Drive, Humble, in Harris County, Texas.

This request is verified by Nationwide Permit (NWP) 16 pursuant to Section 404 of the Clean Water Act. This NWP verification is valid provided the activity is compliant with the enclosed plans, in 16 sheets. In addition, the activity must be in compliance with the NWP General/Regional Conditions, Section 401 Water Quality Certification, and the Coastal Management Program, which can be found at: <http://www.swg.usace.army.mil/Business-With-Us/Regulatory/Permits/Nationwide-General-Permits/>. A hard copy can be provided to you upon request.

NWP 16. Return Water from Upland Contained Disposal Areas: The return water from a contained disposal area is defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself does not require a section 404 permit.

The NWP verification is valid until the NWP is modified, reissued, or revoked. All of the existing NWPs are scheduled to be modified, reissued, or revoked prior to March 18, 2022. It is incumbent upon you to remain informed of changes to the NWPs. We will issue a public notice when the NWPs are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant NWP is modified or revoked, you will have 12 months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this NWP.

This letter does not constitute a verification of the design of the proposed DMPAs nor does it authorize any additional discharge of fill material into waters of the United States above and beyond the effluent exiting the temporary discharge pipe.

The following special conditions have been added to your authorization:

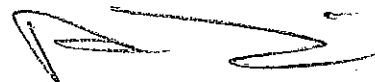
1. Prior to the performance of hydraulic dredging, the permittee will obtain a Section 401 -water quality certification from the TCEQ for the effluent or return water associated with the upland dredged material placement area to be utilized. The permittee will submit a copy of the Section 401 -certification to the Corps of Engineers (CE), Chief of Compliance, Galveston District, Office Regulatory Branch, prior to performing hydraulic dredging.
2. The permittee must notify the Corps of Engineers, Galveston District, Regulatory Division, Chief, Evaluation and Compliance Branch, in writing at the start of work.

The impacts to waters of the United States (U.S.) associated with this NWP verification are based on a Preliminary Jurisdictional Determination (PJD) for your subject site. If you wish, you may request an Approved Jurisdictional Determination (AJD) (which may be appealed), by submitting a written request to us within 30 days from the date of this letter. Please note that if you request an AJD and then decide to appeal it, the appeal will not be accepted if any work has started in waters of the U.S. or that would alter the hydrology of waters of the U.S.

Corps determinations are conducted to identify the limits of the Corps Clean Water Act jurisdiction for particular sites. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

If you have any question regarding this verification please contact Elizabeth Shelton at the letterhead address or by telephone at 409-766-3937. Please notify the Chief of the Compliance Branch in the Galveston District Regulatory Division in writing at the letterhead address, upon completion of the authorized project.

FOR THE DISTRICT COMMANDER:



Andria Davis
Leader, North Evaluation Unit

cc w/Encl.

Mr. Keith Morgan, Berg Oliver Associates, Inc., 14701 St. Mary's Lane, Suite 400,
Houston, TX 77079

Eighth Coast Guard District, New Orleans, LA

National Oceanic and Atmospheric Administration (NOAA), National Ocean Service
(NOS), Coast & Geodetic Survey, Silver Spring, MD

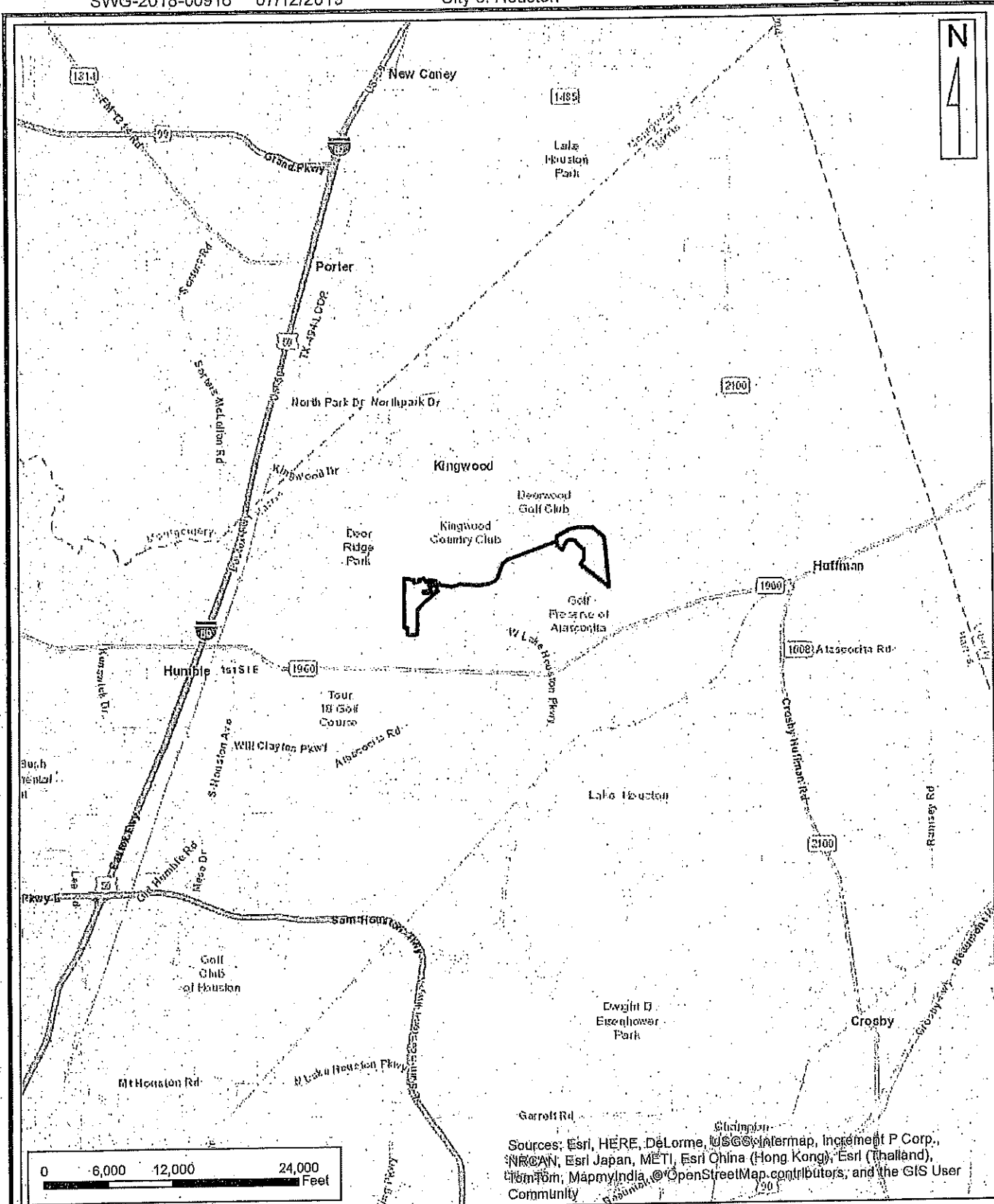
Texas Commission on Environmental Quality

Texas General Land Office



HOUSTON, TEXAS 77079 PHONE (281) 589-0898 <http://www.bargoliver.com>





SITE LOCATION MAP

Project #: 11014N-WD
 For: C. Berry Madden
 Location: Diamond M Dr & S of the W Fork San Jacinto River
 Harris County, Texas

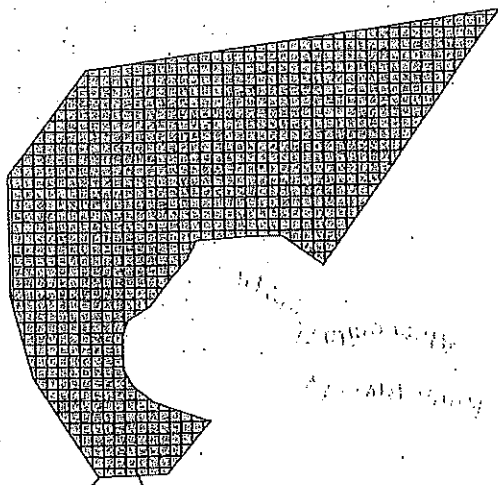
REVISIONS

BERG+OLIVER ASSOCIATES, INC.

ENVIRONMENTAL SCIENCE & LAND USE CONSULTANTS
 14701 ST. MARY'S LANE, SUITE 400
 HOUSTON, TEXAS 77079 PHONE (281) 589-0898 <http://www.bergoliver.com>







DREDGE SITE

PROP. TEMPORARY
DREDGE SEDIMENT
PIPELINE ROUTE

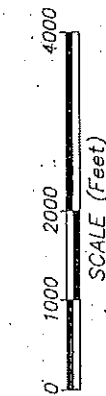
DREDGE MATERIAL
PLACEMENT SITE

LEGEND	ACRES
	Wetlands - Avoided 36.74
	Waters - Avoided 1.71 (4,018 LF)
	Impoundment - Avoided 3.60
	Roadside Ditch - Avoided 0.02 (151 LF)
	Waters - Dredged 296.90 (500,000 CY)
	Proposed Temporary Dredge Sediment Pipeline Route
	Proposed Temporary Clean Water Discharge Route
	Proposed Dredge Material Placement

NOTES:

1. HDPE MATERIAL DISCHARGE + SEDIMENT PIPING
2. 2 FL FREEBOARD ALLOWANCE PLACEMENT ZONES
3. 1V/3H SLOPES ON CONTAINMENT DIKES
4. 12 FL CREST TOP OF CONTAINMENT DIKE
5. CONTAINMENT DIKES CONSTRUCTED OF IN-SITU MATERIAL + DREDGED SEDIMENT
6. CONTAINMENT DIKES ARE 20 FL IN HEIGHT (TYPICAL)

PROPOSED WATERS OF THE US TO BE DREDGED
OVERVIEW



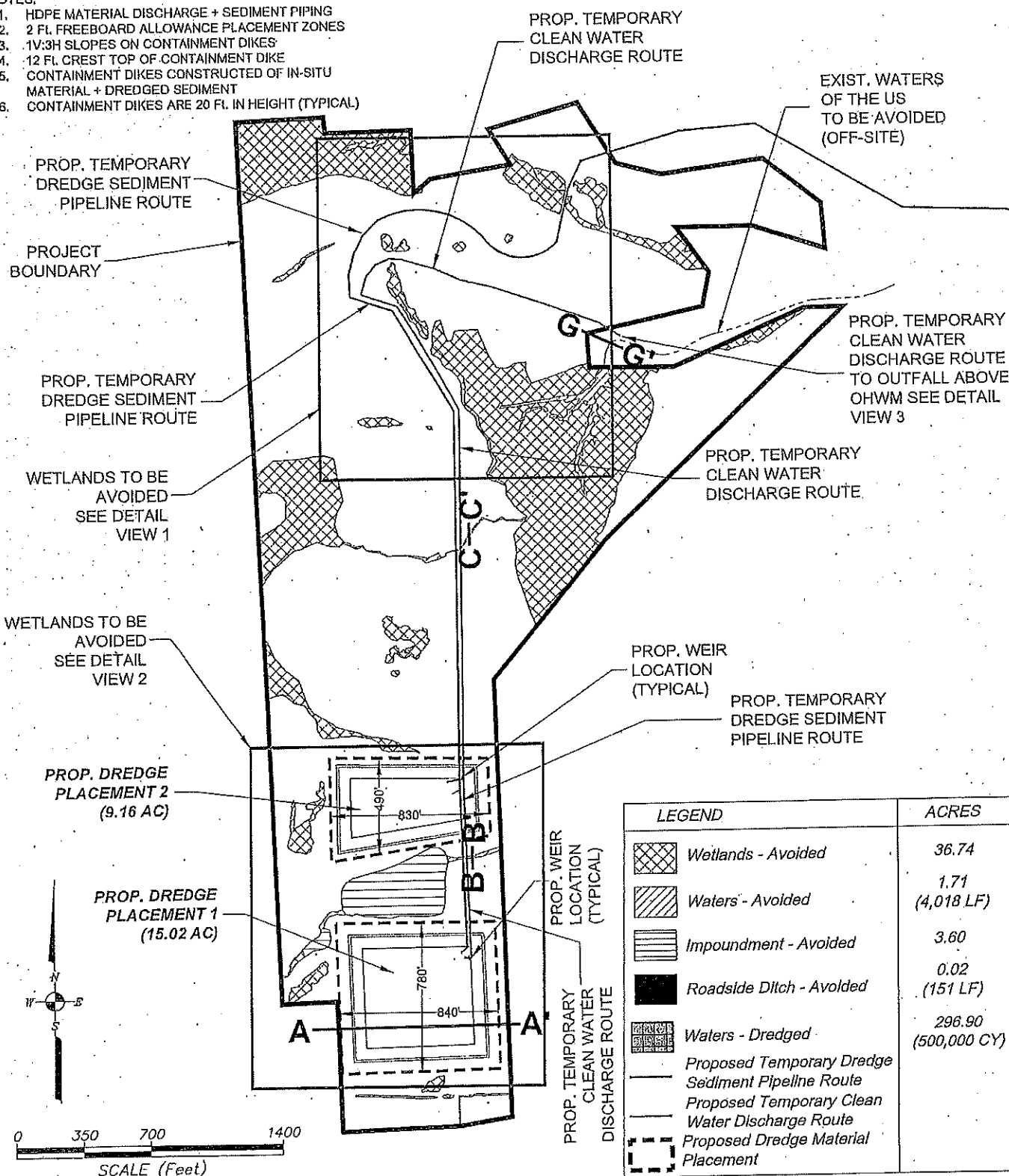
PROJECT #: 11014N-NIP
FOR: C. Berry Madden
LOCATION: Diamond M Dr & S of San Jacinto River
Harris County, Texas

REVISIONS:
March 26, 2019 BY MBE
April 9, 2019 BY MBE
May 6, 2019 BY MBE



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LAND USE CONSULTANTS
14701 ST. MARY'S LANE, SUITE 400 HOUSTON, TX 77079
PHONE (281) 569-0698 <http://www.bergoliver.com>

1. HDPE MATERIAL DISCHARGE + SEDIMENT PIPING
2. 2 FL FREEBOARD ALLOWANCE PLACEMENT ZONES
3. 1V:3H SLOPES ON CONTAINMENT DIKS
4. 12 FL CREST TOP OF CONTAINMENT DIKE
5. CONTAINMENT DIKES CONSTRUCTED OF IN-SITU MATERIAL + DREDGED SEDIMENT
6. CONTAINMENT DIKES ARE 20 FL. IN HEIGHT (TYPICAL)



PROPOSED DREDGE MATERIAL PLACEMENT
PLAN VIEW

LOCATION: Diamond M Dr & S of San Jacinto River
Harris County, Texas

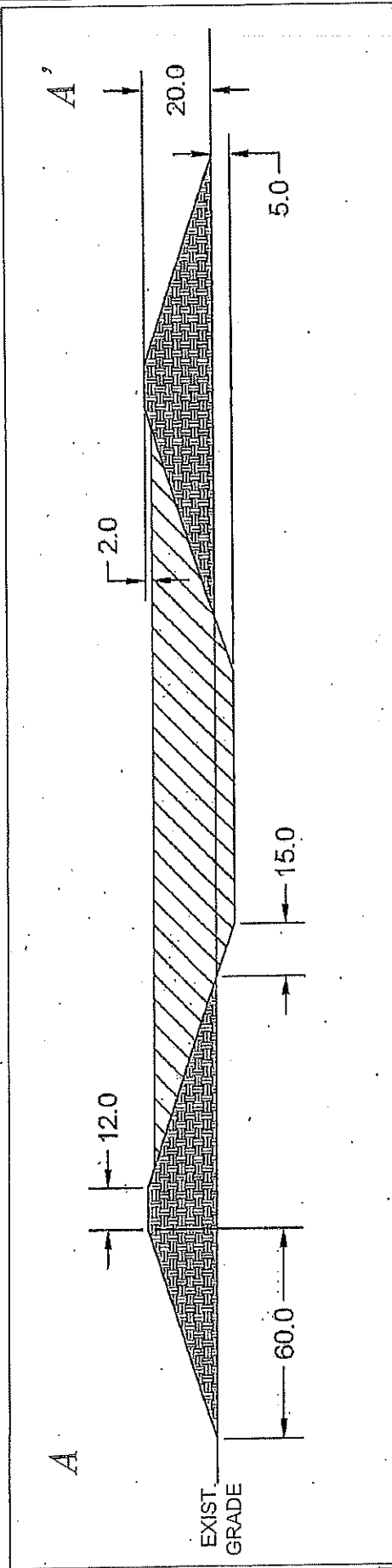
Oct. 30, 2018 by MGB
April 8, 2019 by MGB
May 6, 2019 by MGB
July 9, 2019 by MGB

14701 ST. MARY'S LANE, SUITE 400 HOUSTON, TX 77079
PHONE (281) 589-0898 <http://www.bergolliver.com>



TYPICAL DIKE
 LEVEE HAS A 3:1 SLOPE
 2' OF FREEBOARD
 5' OF REMOVED MATERIAL IN THE INTERIOR
 BELOW THE EXISTING GRADE LINE USED TO
 CONSTRUCT BASE OF LEVEE

PLACEMENT AREA
 DREDGE PLACEMENT 1 - 271,421.33 CY
 DREDGE PLACEMENT 2 - 155,323.45 CY
 BERM CONSTRUCTION - 73,500 CY
 TOTAL - 500,244.78 CY



PROPOSED DREDGE MATERIAL PLACEMENT
 TYPICAL CROSS SECTION A-A'

PROJECT #:	11014N-NTP
FOR:	C. Barry Madden
LOCATION:	Diamond M Dr & S of San Jacinto River Harris County, Texas
REVISIONS:	
	March 28, 2019 by MGB
	April 8, 2019 by MGB
	May 6, 2019 by MGB



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 14701 ST. MARY'S LANE, SUITE 400 HOUSTON, TX 77079
 PHONE (281) 559-0958 <http://www.bergoliver.com>

B

B'

TEMPORARY PIPELINE

EXIST NG

EXIST NG

OHWM

WATERS OF THE US
TO BE AVOIDED
10'

PROPOSED DREDGE MATERIAL PLACEMENT
TYPICAL CROSS SECTION B-B'

PROJECT #: 11014N-NTP

FOR: C. Berry Madden

LOCATION: Diamond M. Dr & S of San Jacinta River

Harris County, Texas

REVISIONS:

March 28, 2018 by JMR

April 8, 2018 by JMR

May 8, 2018 by JMR

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14701 ST. MARY'S LANE, SUITE 400 HOUSTON, TX 77079

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C

C'

TEMPORARY PIPELINE

EXIST NG

EXIST NG

OHWM

WATERS OF THE US
TO BE AVOIDED
10'

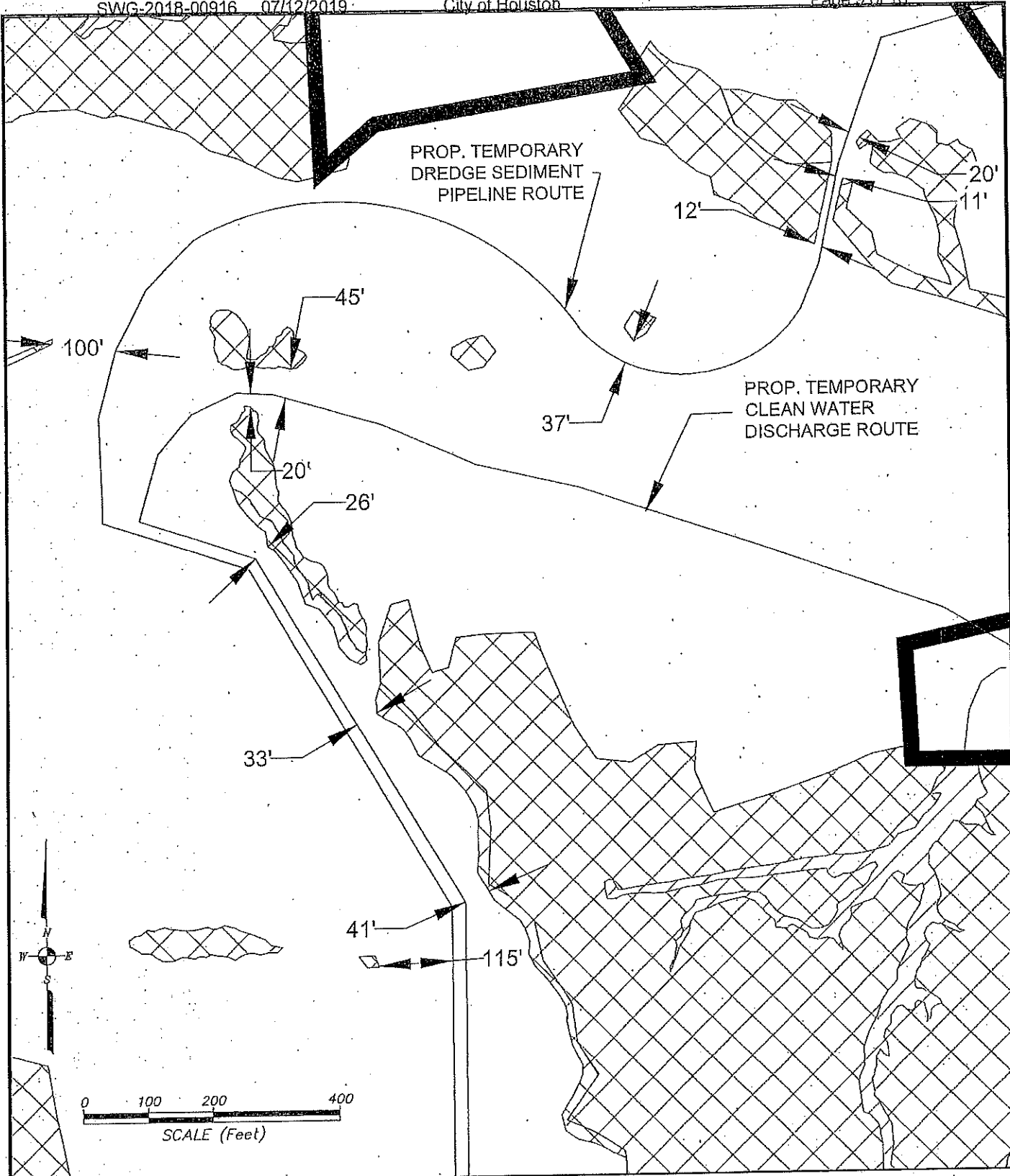
PROPOSED DREDGE MATERIAL PLACEMENT
TYPICAL CROSS SECTION C-C'

PROJECT #: 11014N-NWP
FOR: C. Berry Madden
LOCATION: Diamond M Dr & S of San Jacinto River
Harris County, Texas

REVISIONS:
March 28, 2019 by MOB
April 5, 2019 by MOB
May 5, 2019 by MOB

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LAND USE CONSULTANTS
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PHONE (281) 599-0898 <http://www.bergoliver.com>





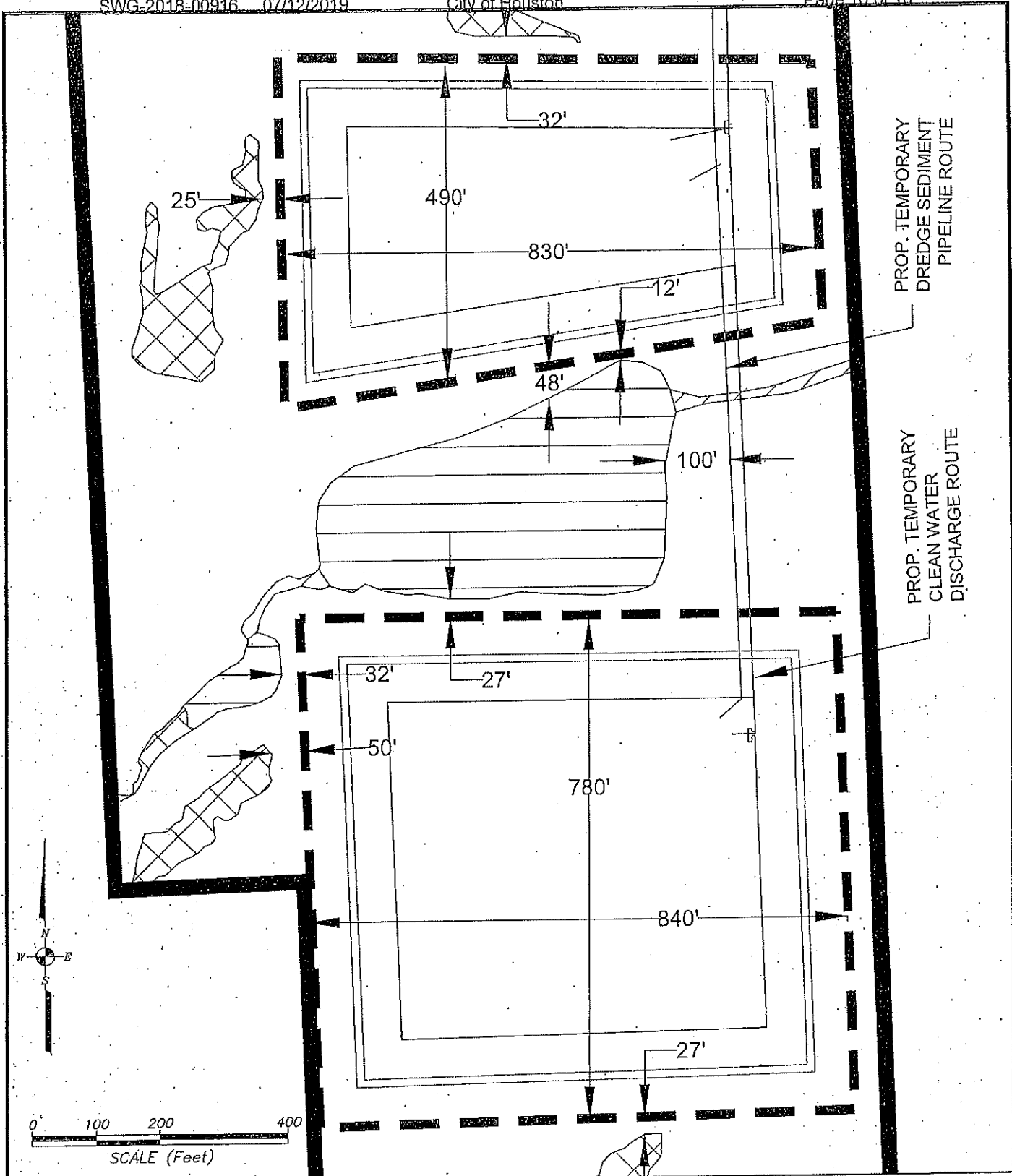
PROPOSED DREDGE MATERIAL PLACEMENT
DETAIL VIEW 1

PROJECT #: 11014N-NWP
FOR: C. Berry Madden
LOCATION: Diamond M Dr & S of San Jacinto River
Harris County, Texas

REVISIONS:
May 5, 2019 by 1109

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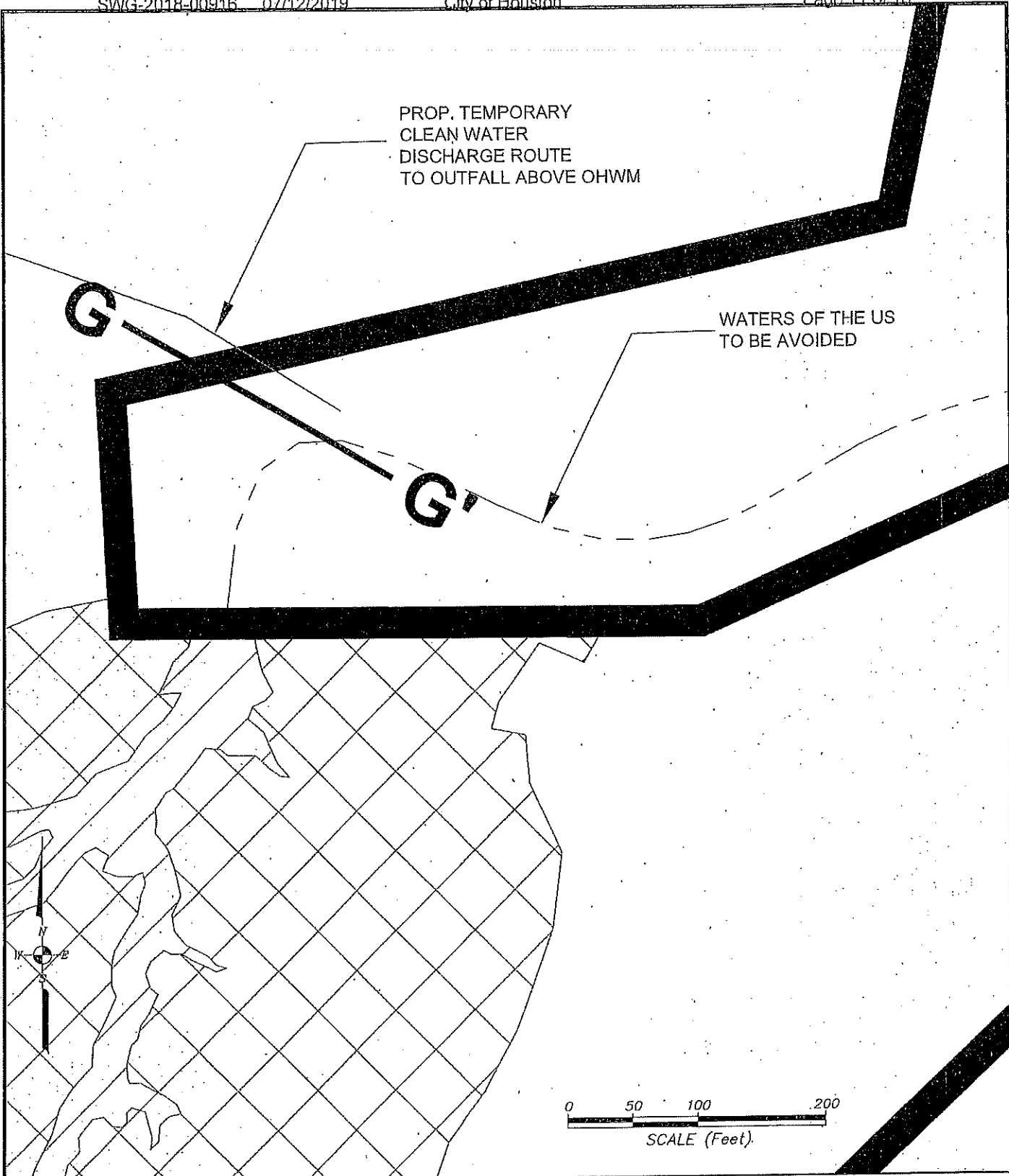
PROPOSED DREDGE MATERIAL PLACEMENT
DETAIL VIEW 2

PROJECT #: 11014N-NWP
FOR: C. Berry Madden
LOCATION: Diamond M Dr & S of San Jacinto River
Harris County, Texas

REVISIONS:
May 6, 2019 by 1108

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PROPOSED CLEAN WATER DISCHARGE OUTFALL
DETAIL VIEW 3

PROJECT #: 11014N-NWP
FOR: C. Berry Madden
LOCATION: Diamond M Dr & S of San Jacinto River
Harris County, Texas

REVISIONS:

May 6, 2019 by HDB
July 9, 2019 by HDB

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PHONE (281) 589-0898 <http://www.bergoliver.com>



G

G'

OUTFALL ABOVE OHWM
NO IMPACTS TO WATERS
OF THE US

TEMPORARY CLEAN WATER
DISCHARGE PIPELINE

EXISTING

EXISTING

OHWM

WATERS OF THE US
TO BE AVOIDED
10'

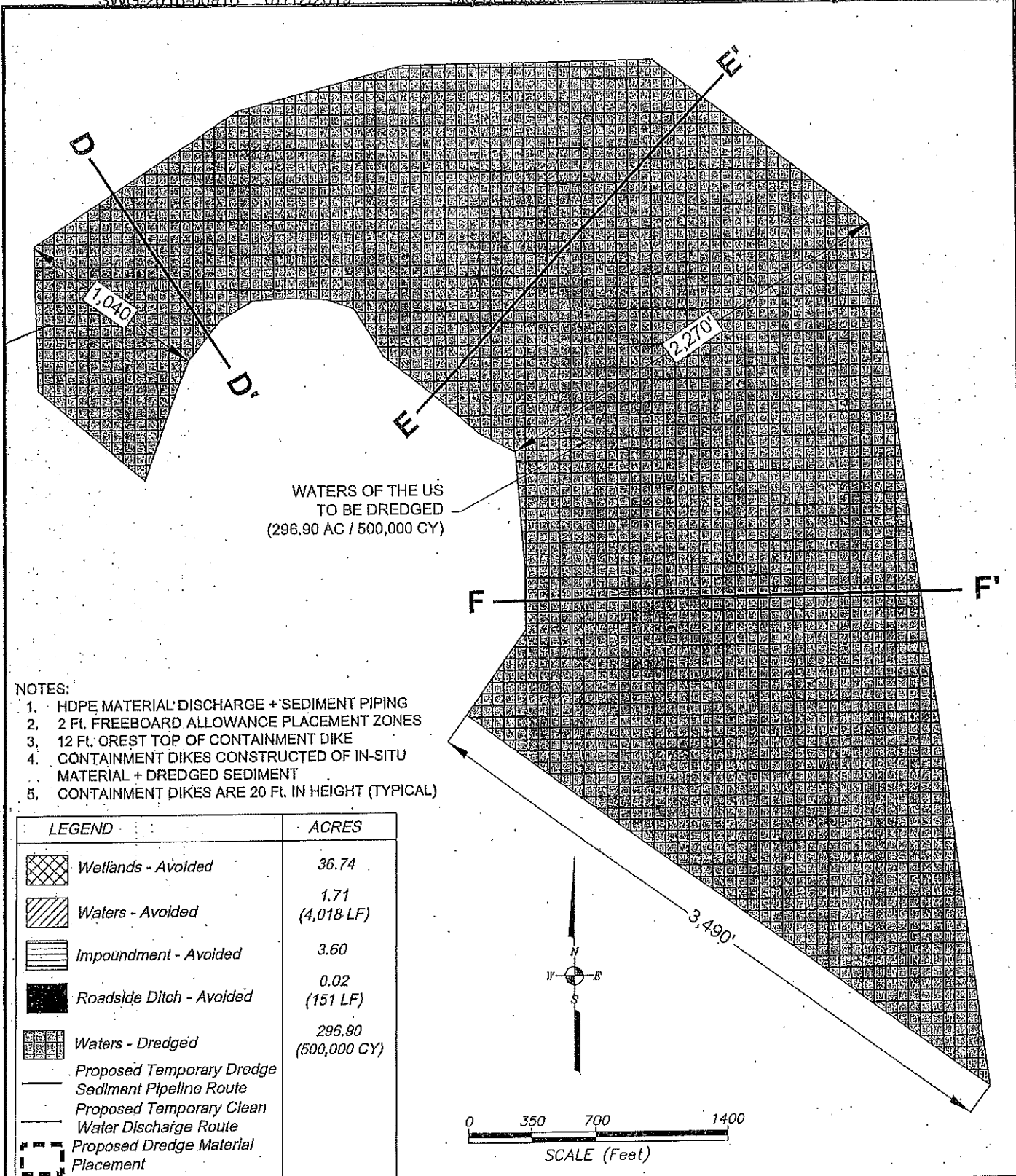
PROPOSED CLEAN WATER DISCHARGE OUTFALL
TYPICAL CROSS SECTION G-G'

PROJECT #:	11014N-NWP
FOR:	C. Berry Madden
LOCATION:	Diamond M Dr. & S of San Jacinto River Harris County, Texas

REVISIONS
March 28, 2019 by AOB
April 8, 2019 by AOB
May 6, 2019 by AOB
May 3, 2019 by AOB

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ENVIRONMENTAL SCIENCE &
LAND USE CONSULTANTS
14701 ST. MARY'S LANE, SUITE 400 HOUSTON, TX 77079
PHONE (281) 589-0898 <http://www.bergoliver.com>





PROPOSED WATERS OF THE US TO BE DREDGED PLAN VIEW

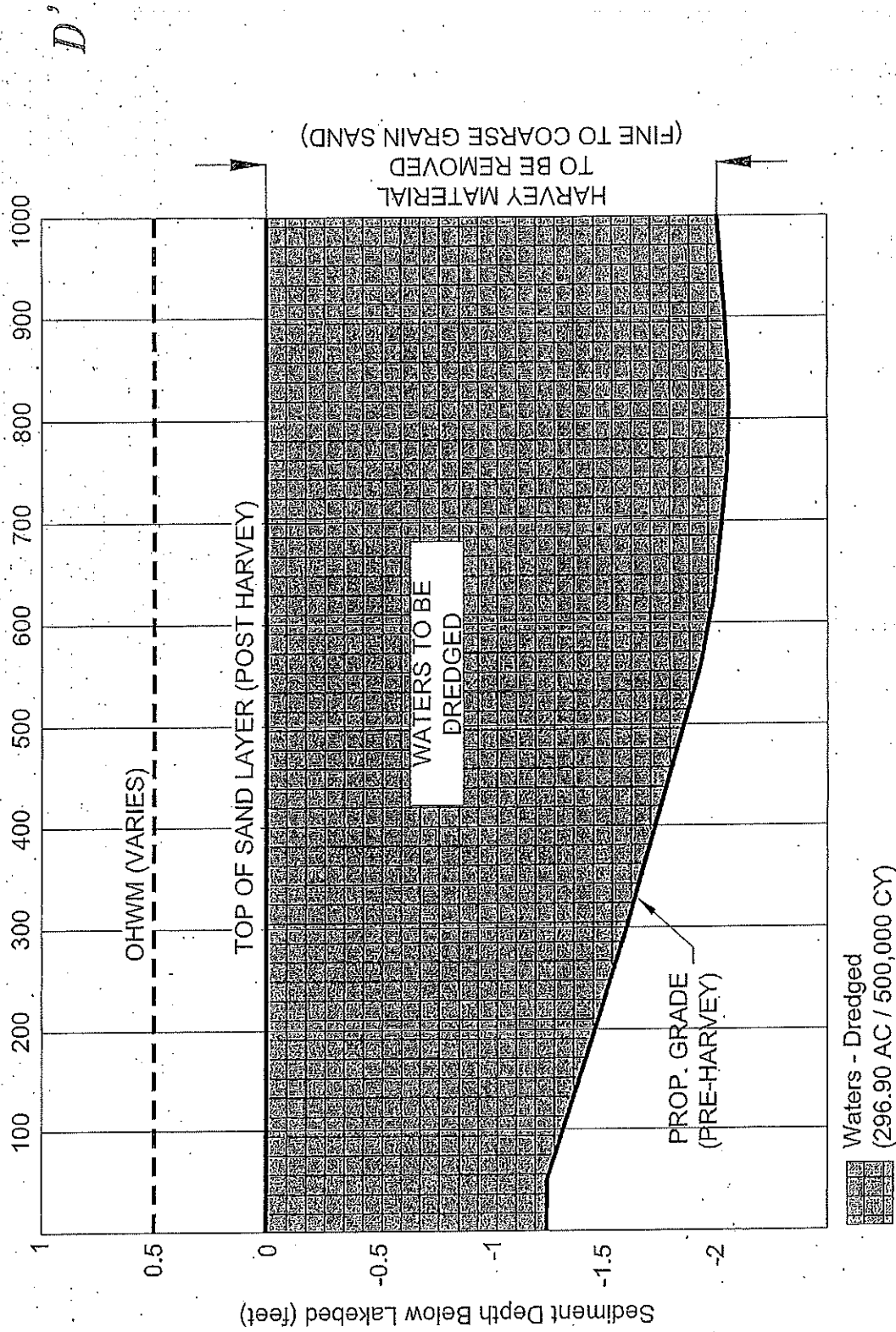
PROJECT #: 11014N-NWP

FOR: C. Berry Madden

LOCATION: Diamond M Dr & S of San Jacinto River
Harris County, Texas

REVISIONS:

Oct. 30, 2018 by MGB
April 8, 2019 by MGB
May 6, 2019 by MGBBERG[®] OLIVER ASSOCIATES, INC.ENVIRONMENTAL SCIENCE &
LAND USE CONSULTANTS14701 ST. MARY'S LANE, SUITE 400 HOUSTON, TX 77079
PHONE (281) 588-0898 <http://www.bergoliver.com>



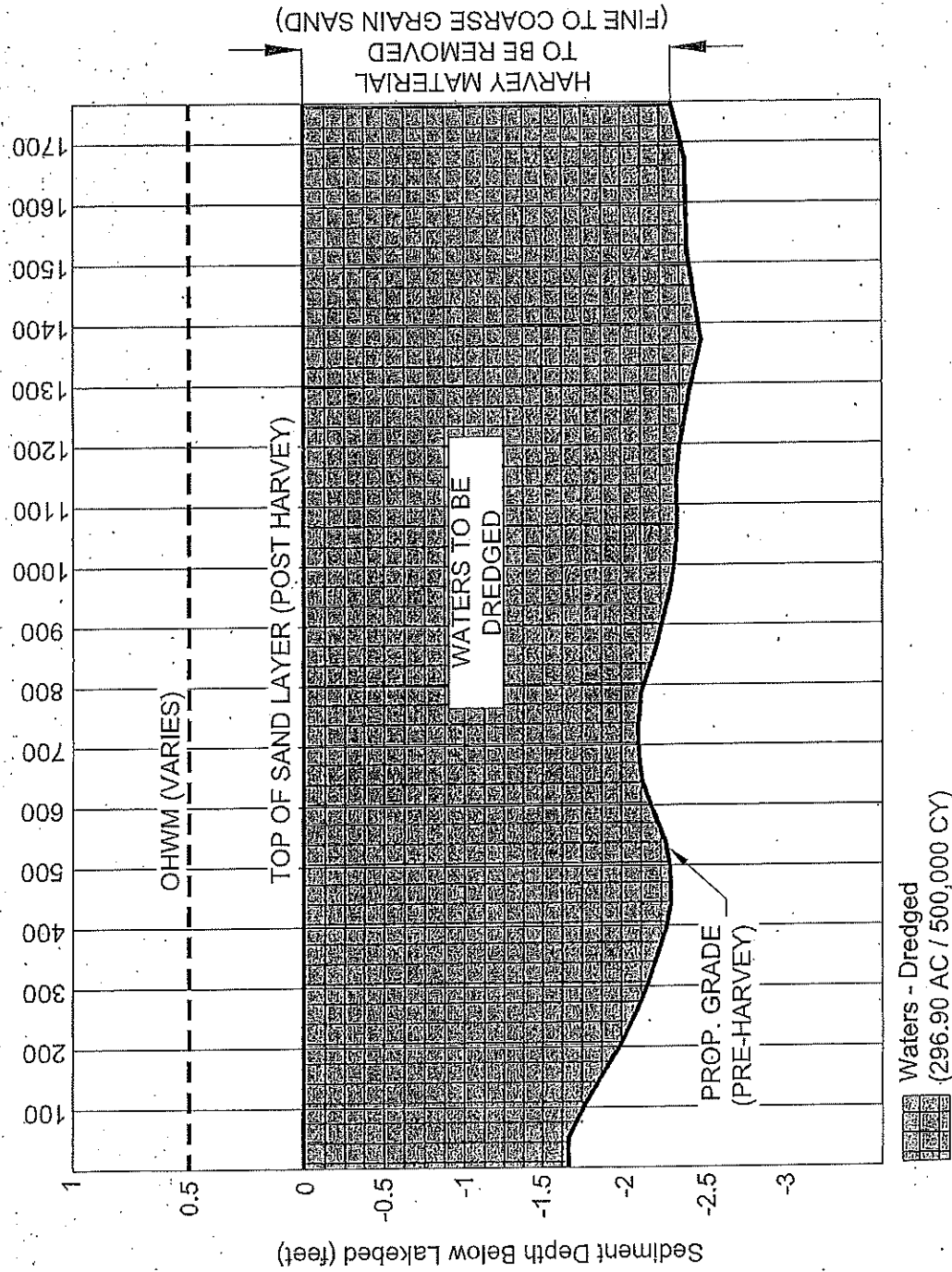
PROPOSED DREDGE PLAN
 CROSS SECTION D-D'



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 PHONE (281) 569-0898 <http://www.bergoliver.com>

REVISIONS:
March 28, 2019 BY MGB
April 8, 2019 BY MGB
May 8, 2019 BY MGB

PROJECT #: 11014N-NWP
 FOR: C. Berry Madden
 LOCATION: Diamond M Dr & S of San Jacinto River
 Harris County, Texas



PROPOSED DREDGE PLAN
CROSS SECTION E-E'



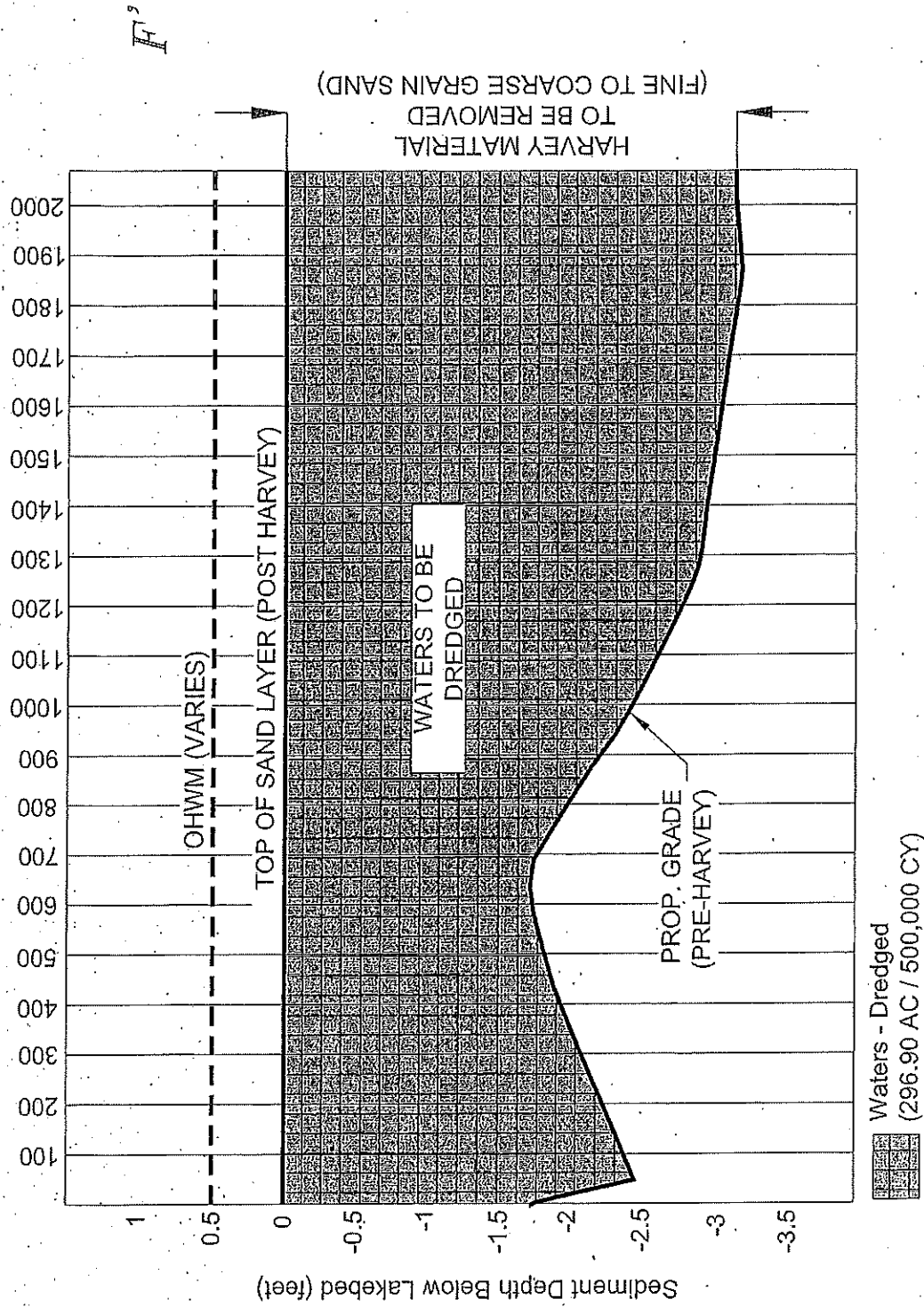
BERG-OLIVER ASSOCIATES, INC.
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LAND USE CONSULTANTS
14701 ST. MARY'S LANE, SUITE 400 HOUSTON, TX 77079
PHONE (281) 569-0898 <http://www.bergoliver.com>

REVISIONS:
March 22, 2019 BY: MJB
April 2, 2019 BY: MJB
May 6, 2019 BY: MJB

PROJECT #: 11014N-NWP

FOR: C. Barry Madden

LOCATION: Diamond M Dr. & S. of San Jacinto River
Harris County, Texas



PROPOSED DREDGE PLAN
CROSS SECTION F-F'

REVISIONS:
MAY 28, 2013 BY JMB
APR 8, 2013 BY JMB

PROJECT #: 11014N-NWP
FOR: C. Berry Madden
LOCATION: Diamond M Dr. & S of San Jacinto River
Harris County, Texas

BERG[®]OLIVER ASSOCIATES, INC.
ENVIRONMENTAL SCIENCE &
LAND USE CONSULTANTS
14701 ST. MARY'S LANE, SUITE 400 HOUSTON, TX 77079
PHONE (281) 569-0898 <http://www.bergoliver.com>



EXHIBIT B – PRICING
FEES

All prices noted in this form are considered baseline estimates. All costs must be based upon actual work performed. Under no circumstances will actual prices exceed the hourly rates included in this form. The fees will be based on the actual hours of services furnished multiplied by Tetra Tech's hourly rates plus all project related non-labor expenses. Table 1 shows the estimated cost breakdown by task, and Table 2 outlines the staff positions and level of effort for these services.

NAME OF BUSINESS:

Tetra Tech, Inc

CONTACT PERSON:

Jonathan Burgiel, Business Unit President

EMAIL ADDRESS:

betty.kamara@tetratech.com

AUTHORIZED
SIGNATURE:

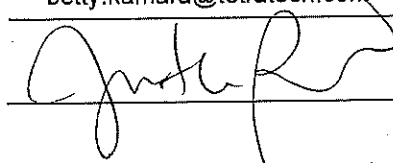


Table 1: Estimated Cost Breakdown by Task
(Includes labor, materials, and travel expenses)

Project Task	Estimated Cost
Task 1: Data Review and Summary Memo	\$23,954.00
Task 2: Preparation of Project Plans and Specifications:	
- 2a. Preliminary Draft Submittal	\$74,825.00
- 2b. Draft Submittal	\$74,825.00
- 2c. Final Submittal	\$96,442.00
Task 3: Meetings:	
- 3a. Design Coordination Meetings	\$20,245.00
Task 4: Program Management and Administration	\$2,625.00
Estimated Total	\$292,916.00

Table 2: Estimated Cost Breakdown by Labor Category

Project Task	Hourly Rate	Estimated Hours	Estimated Cost
Subject Matter Expert	\$244.00	574	\$140,056.00
Principal Consultant/Scientist	\$195.00	62	\$12,090.00
Senior Program Manager	\$175.00	212	\$37,100.00
Supervising Consultant/Scientist	\$158.00	96	\$15,168.00
Senior Consultant/Scientist	\$145.00	488	\$70,760.00
Senior Public Assistance Consultant	\$135.00	10	\$1,350.00
Consultant/Scientist	\$125.00	104	\$13,000.00
Estimated Labor			\$289,524.00
Estimated Expenses [2]			\$3,392.00
Estimated Total			\$292,916.00

[1] The above estimated costs are based on available information at the time the estimates were prepared and do not represent the actual cost of the project. If, during the performance of this work, it is determined additional funding is required in order to complete the project, Tetra Tech and the City will mutually agree on a new/revised estimated cost.

[2] Non-labor expenses shall be invoiced as follows: (1) travel expenses including airfare and car rental shall be invoiced at cost without mark-up; (2) lodging shall be invoiced up to the per diem rate according to the General Services Administration (GSA) rates established at www.gsa.gov (3) meals and incidentals shall be invoiced at the GSA per diem rate (no receipts are required); (4) mileage shall be invoiced at the federally published rate; and (5) other required non-labor expenses as may be applicable to the project and pre-approved by the City and Tetra Tech shall be invoiced at cost without mark-up.

PROJECT ASSUMPTIONS AND CONSTRAINTS

For successful implementation of the scope of work described, the following assumptions apply. Deviations from these assumptions could impact proposed costs as well as schedule and will be addressed with the City immediately.

- The project will not be competitively bid by the City. The City shall utilize the Contract Documents prepared under the scope of work to negotiate with a Contractor under contract for debris removal with the City.
- The design plans will specify the Contractor obtain a Section 401 Water Quality Certification from TCEQ for the effluent water associated with the DMPA after placement of hydraulically dredged material.
- The deliverables will be limited to the list presented above. We assume that the permits do not require submittal of a design report, design calculation documents or any construction Contractor's plans (e.g., Water Quality Monitoring Plan, Accident Prevention Plan, Quality Control (QC) Plan, Environmental Protection Plan).
- Engineer's construction cost estimate for the debris removal construction is not included.
- Tetra Tech will prepare the Project specifications in the Construction Specifications Institute (CSI) format. USACE's Specs Intact will not be utilized.
- Project specifications will be limited to the Technical Specifications. The City will include Division 00 - Procurement and Contractual Requirements in its solicitation documents. Alternatively, the City can provide Division 00 to Tetra Tech to include into the Project specifications.
- No coordination or meetings are required of Tetra Tech beyond the meetings identified in the scope of work.
- No survey services including no topographic, bathymetric, existing improvements, wetland delineation, archaeological, or other surveys. Tetra Tech understands Lidar topographic data will be provided by the City.
- The City shall notify regulatory agencies prior to start of the work.
- City shall coordinate all DMPA activities with the Contractor, DMPA property owner, USACE, TCEQ, and any entity or agency for permit compliance, limits of work, wetland delineations, levee alignment, dewatering structure locations, perimeter erosion and sedimentation control plan, approved ingress and egress points (landward and waterward) for the Contractor including Maintenance of Traffic Plans, phasing dewatering operations, and spoils disposal.
- Construction bidding and construction-related services such as construction administration, management, or inspections services are not included at this time.
- The City will assign a primary point of contact to serve as project sponsor to address administrative and functional issues.
- Tetra Tech estimates to accomplish this scope of work within 45 days from the effective date of a notice to proceed. To the extent the period of performance is required to be extended due to reasons beyond Tetra Tech's control, such unforeseen circumstances may result in an increase in the project timeline or budget.

- Deliverables will be submitted to the City in draft format. The City's comments should be provided within three (3) calendar days in order to meet the period of performance timeframe. Upon incorporation of revisions to the draft deliverables and one final resubmission to the City, the deliverables will be considered accepted.
- The City will be invoiced monthly for labor expended and expenses incurred in the prior calendar month. Invoice payment terms are net 30 days. The City will review invoices for acceptance within ten (10) calendar days of the date of the invoice to which City shall immediately notify Tetra Tech of any invoice discrepancies. Tetra Tech and City will work in good faith to resolve any such discrepancies within ten (10) days after notification. Should a discrepancy result in a partial rejection of any item(s) invoiced, City shall proceed with partial payment within net 30 days of the date of the invoice.
- The City's Grant Agreement number is FC77376A 20 17-0810.

EXHIBIT "C"

DRUG POLICY COMPLIANCE AGREEMENT

I, Jonathan Burgiel, Business Unit President
(Name) (Title)

as an owner or officer of Tetra Tech, Inc. (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.

January 23, 2020
Date

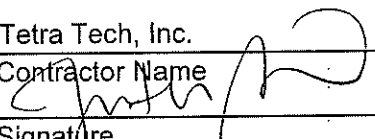
Tetra Tech, Inc.
Contractor Name

Signature
Jonathan Burgiel, Business Unit President
Title

EXHIBIT "D"

CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT

I, Jonathan Burgiel, Business Unit President
(Name) (Title)

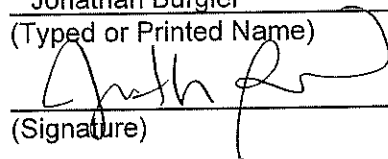
as an owner or officer of Tetra Tech, Inc. (Contractor)
(Name of Company)

have authority to bind the Contractor with respect to its bid, and 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 West Fork San Jacinto River and Lake Houston Debris Removal Plan
(Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Human Resources if any safety impact positions are established to provide services in performing this City Contract.

January 23, 2020
(Date)

Jonathan Burgiel
(Typed or Printed Name)


(Signature)

Business Unit President
(Title)

EXHIBIT "E"

DRUG POLICY COMPLIANCE DECLARATION

I, Jonathan Burgiel, Business Unit President as an owner or
(Name) (Print/Type) (Title)
officer of Tetra Tech, Inc. (Contractor) (Name of Company), have personal knowledge and full
authority to make the following declarations:

This reporting period covers the preceding 6 months from August 23, 2019 to January 23, 2020.

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

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

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

 Initials Appropriate safety impact positions have been designated for employee positions
performing on the City of Houston contract. The number of employees in safety impact
positions during this reporting period is 0.

 Initials From 8/23/19 [Start date] to 1/23/20 [End date] the following test has occurred:

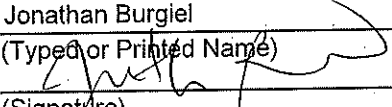
	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Number Employees Positive	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Percent Employees Positive	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

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

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

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

January 23, 2020
(Date)

Jonathan Burgiel
(Typed or Printed Name)

(Signature)
Business Unit President
(Title)



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date:

L29375 - Electrical Maintenance, Repair, Automation
Support and Technical Services - ORDINANCE

Agenda Item#: 22.

Summary:

ORDINANCE awarding contract to **SABER POWER SERVICES, LLC** for Electrical Maintenance, Repair, Automation Support and Technical Services for Houston Public Works; providing a maximum contract amount - 3 Years with two one-year options - \$9,341,477.37 - Enterprise Fund

Background:

Formal Bids Received April 30, 2020 for S89-L29375 - Approve an ordinance awarding a contract to Saber Power Services, LLC in the maximum contract amount not to exceed \$9,341,477.37 for Electrical Maintenance, Repair, Automation Support and Technical Services for Houston Public Works.

Specific Explanation:

The Director of Houston Public Works and the Chief Procurement Officer recommend that City Council approved an ordinance awarding a **three-year contract, with two -one-year options** to **Saber Power Services, LLC** on its low bid meeting specifications for Electrical Maintenance, Repair, Automation Support and Technical Services in the maximum contract amount not to exceed **\$9,341,477.37** for Houston Public Works.

The scope of work requires the contractor to furnish all management, supervision, labor, equipment, supplies, tools, parts and materials required to provide electrical maintenance and repair and automation support and technical services for the City's Water and Wastewater treatment facilities. These supplemental services will improve the facility operation, efficiency, availability and regulatory compliance.

This Invitation to Bid (ITB) was advertised in accordance with the requirements of the State of Texas bid laws. Thirteen prospective bidders downloaded the solicitation document from SPD's e-bidding website, and seven bids were received. Prior to issuing the solicitation, the Strategic Procurement Division canvassed the City's registered vendor data base, as well as the market, to identify potential bidders who could possibly provide the type of services needed.

<u>Company</u>	<u>Total Amount</u>
1. Aim2Please, LLC	\$ 5,128,501.44 (Incomplete Bid)
2. Zadok Technologies	\$ 9,334,577.35 (Non-Registered HHF Designee)

3.	Saber Power Services, LLC	\$ 9,341,477.37
4.	Wingo Service Co.	\$10,102,788.35
5.	Boyer, Inc.	\$10,266,662.80
6.	TDIndustries	\$11,420,673.45
7.	All-Pump & Equip. Co.	\$14,770,482.80

M/WBE Subcontracting:

This Invitation to Bid was issued as a goal-oriented contract with an 11% MWBE participation level. Saber Power Services, LLC has designated the below-named companies as its certified MWBE subcontractors.

SUBCONTRACTOR	TYPE OF WORK	AMOUNT	%
Emerald Standard Services, Inc	Electrical Services	\$513,781.26	5.5%
Sterling Electrical Services	Electrical Services	\$256,890.63	2.75%
Globe Electrical Supply Company, Inc	Electrical Supplier	\$256,890.63	2.75

Pay or Play Program:

The proposed contract requires compliance with the City's 'Pay or Play' ordinance regarding health benefits for employees of City contractors. In this case, the contractor provides health benefits to eligible employees in compliance with City policy.

Hire Houston First:

The proposed contract requires compliance with the City's "Hire Houston First" (HHF) ordinance that promotes economic opportunity for Houston businesses and supports job creation. In this case Saber Power Services, LLC is a designated HHF Company and was awarded the contract based on their designation.

Fiscal Note:

Funding for this item is included in the FY2021 Adopted Budget. Therefore, no Fiscal Note is required as stated in the Financial Policies.

Jerry Adams, Chief Procurement Officer
Finance/Strategic Procurement Division

Carol Ellinger Haddock, P.E., Director
Houston Public Works

Estimated Spending Authority

--	--	--	--

Department	FY2021	Out-Years	Total Amount
Houston Public Works	\$1,859,195.47	\$7,482,281.90	\$9,341,477.37

Amount of Funding:

\$9,341,477.37

Water & Sewer System Operating Funds

Fund No.: 8300

Contact Information:

NAME:	DEPARTMENT/DIVISION	PHONE
Richard Morris, Division Manager	FIN/SPD	832.393.8736
SueEllen Arredondo, Procurement Specialist	FIN/SPD	832.393.9131
Jedediah Greenfield, Assistant Director	HPW	832.395.3754

ATTACHMENTS:

Description

Revised Cover sheet

2020-661 Executed Ordinance

Type

Signed Cover sheet

Signed Cover sheet



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date:

L29375 - Electrical Maintenance, Repair, Automation Support and Technical Services -
ORDINANCE

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DocuSigned by:

 0DD350139A6F4C8...

Jerry Adams, Chief Procurement Officer
 Finance/Strategic Procurement Division

Carol Ellinger Haddock, P.E., Director
 Houston Public Works

Estimated Spending Authority

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Jedediah Greenfield, Assistant Director	HPW	832.395.3754

ATTACHMENTS:

Description

Ownership Form
 Drug Policy Forms
 Campaign Finance Ordinance
 POP 1 & 2
 COF
 Linebarger
 Bid Tab
 Legal package backup docs
 Form B
 HHF - Saber
 Funding Verification
 Signed Coversheet
 Ordinance
 MWSBE

Type

Backup Material
 Backup Material
 Backup Material
 Backup Material
 Financial Information
 Backup Material
 Backup Material
 Backup Material
 Backup Material
 Backup Material
 Financial Information
 Signed Cover sheet
 Ordinance/Resolution/Motion
 Backup Material

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

Date: 7-28, 20 20 City Controller of the City of Houston, Texas

FUND REF: 0300 0000 520124 AMOUNT: \$1,859,195.47 ENCUMB. NO. SP04500328730

CA46-16/61

City of Houston, Texas Ordinance No. 2020-661

AN ORDINANCE AWARDING A CONTRACT TO SABER POWER SERVICES, LLC FOR ELECTRICAL MAINTENANCE, REPAIR, AUTOMATION SUPPORT AND TECHNICAL 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 Saber Power Services, LLC in the amount of \$9,341,477.37 (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 \$9,341,477.37 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 29th day of July, 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 AUG - 4 2020.

ATQ. Harris
City Secretary

Funding Source:

\$9,341,477.37 – from fund 8300 – Water & Sewer Operating Funds

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: AUG - 4 2020

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.

7-15-2020
Date


Legal Assistant

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

AYE	NO	
<input checked="" type="checkbox"/>		MAYOR TURNER
....	....	COUNCIL MEMBERS
<input checked="" type="checkbox"/>		PECK
<input checked="" type="checkbox"/>		DAVIS
<input checked="" type="checkbox"/>		KAMIN
<input checked="" type="checkbox"/>		EVANS-SHABAZZ
<input checked="" type="checkbox"/>		MARTIN
<input checked="" type="checkbox"/>		THOMAS
<input checked="" type="checkbox"/>		TRAVIS
<input checked="" type="checkbox"/>		CISNEROS
<input checked="" type="checkbox"/>		GALLEGOS
<input checked="" type="checkbox"/>		POLLARD
<input checked="" type="checkbox"/>		MARTHA CASTEX-TATUM
<input checked="" type="checkbox"/>		KNOX
<input checked="" type="checkbox"/>		ROBINSON
<input checked="" type="checkbox"/>		KUBOSH
<input checked="" type="checkbox"/>		PLUMMER
<input checked="" type="checkbox"/>		ALCORN
CAPTION	ADOPTED	

Rev. 5/18

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BID # **L29375**
ORDINANCE # _____
CONTRACT# _____

**AGREEMENT FOR ELECTRICAL MAINTENANCE, REPAIR, AUTOMATION SUPPORT AND
TECHNICAL SERVICES**

ARTICLE 1. PARTIES

**THIS AGREEMENT FOR ELECTRICAL MAINTENANCE, REPAIR, AUTOMATION
SUPPORT AND TECHNICAL 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 **Saber Power Services, LLC**
("Contractor"), a Texas Corporation 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
Houston Public Works
City of Houston
P. O. Box 1562
Houston, Texas 77251

Contractor

Saber Power Services, LLC
984 Saber Power Lane
Rosharon, Texas 77534

Attention: Mike McDaniel

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]

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- "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: **DEBRA AMUNDSEN**
Title: **CONTRACTS MGR.**

CONTRACTOR:
Saber Power Services, LLC

By: 
Name: **Rau Pena**
Title: **CFO**
Federal Tax ID Number: **272783614**

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

City Secretary

Mayor

APPROVED:


COUNTERSIGNED BY:


Director, _____ Department **CS**


City Controller

APPROVED:


COUNTERSIGNATURE DATE:


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: **7/15/2020**

APPROVED AS TO FORM:


Assistant City Attorney
L.D. File No. _____

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 **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:

CHANGE ORDER

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of Notice]
SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

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

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

Signed:
[Signature of 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 **\$1,859,195.47** 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 each of the City of Houston Departments 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. "Contractor Administrator" means the representative of the Department who is responsible for the administration for the Contract.
13. "Contract Award Notice" means the official notification substantiated by the Notice to Proceed issued by the City Purchasing Agent to the Contractor.
14. "Contract Charges" means charges that accrue during a given month as defined in Article III. "Contract Term" is defined in Article IV.

15. "Governing Body" means the Mayor and City Council of the City of Houston.
16. "Hazardous Materials" is defined in Article II (Environmental Laws).
17. "CTR" means Contract Technical Representative.
18. "UDR" means User Department Representative.
19. "OEM" means Original Equipment Manufacturer.
20. "PCB" Oil means Polychlorinated Biphenyls.
21. "Normal business hours" are between 7 a.m. to 5 p.m.

ELECTRICAL MAINTENANCE REPAIR & AUTOMATION SERVICES ABBREVIATION DESCRIPTIONS

AS	Almeda Sims
BW	Beltway
CB	Cedar Bayou
CH	Chocolate Bayou
CP	Clinton Park
EH	Easthaven
F23	FWSD 23
Forest C	Forest Cove
GR	Greenridge
HS	Homestead
IAH	Intercontinental Airport
IV	Imperial Valley
KB	Keegans Bayou
M203	MUD 203
M48	MUD 48
MC	Metro Central
MUD	Municipal Utility District
NB	Northborough
NE	Northeast
NG	Northgate
NS-IA	Northside West Area
NS-II	Northside East Area
NT	Northbelt
NW	Northwest
SB	Sims Bayou
SE	Southeast
SM	Sagemont
SW	Southwest
TK	Turkey Creek
UB	Upper Brays Bayou
WB	Willowbrook
WD	West District
WO	White Oak
WWF	Waste Water Facility

WWTP	Waste Water Treatment Plant
LS	Lift Station
CFS	Chemical Feed Station
SC	Service Center
UP	Under Pass
RP	Repump
GW	Ground Water
E/T	Elevated Tank
WS	Well Site

EXHIBIT "B"

SCOPE OF SERVICES

1.0 GENERAL REQUIREMENTS

- 1.1** The Contractor shall be required to furnish all management, supervision, labor, equipment, supplies, tools, parts (unless otherwise specified) and materials required to provide electrical maintenance and repair and automation support and technical services for the City's Water and Wastewater treatment facilities. These supplemental services will improve the facility operation, efficiency, availability and regulatory compliance.
- 1.2** The services are separated into four categories based on the specific expertise and qualification requirements of each category:
 - 1.2.1** Electrical Services, which includes but not limited to the maintenance, testing, repairs, replacement, and installation of electric power equipment.
 - 1.2.2** Generator Services, which includes but is not limited to the transportation, fueling and maintenance of electric power generators.
 - 1.2.3** Automation Services, which includes but is not limited to maintenance and technical support of automated facility control systems, the Supervisory Control and Data Acquisition Communications Systems (SCADA) and ancillary equipment;
 - 1.2.4** Hazardous Waste, which includes the proper disposal of electrical items and accessories.
- 1.3** The Contractor shall be required to provide for all four categories and shall meet the qualifications specified, and minimum performance requirements for each category and/or retain the services of subcontractor(s) who shall meet the requirements herein.
- 1.4** The City of Houston shall have final approval of all subcontractors to be utilized in the performance of the services under this contract. Subcontractors are subject to the same standards as the Contractor.
- 1.5** This specification defines the minimum acceptable requirements for performing the services under this contract. The Contractor shall observe the highest standards of diligence and care in the performance of the services and shall comply with the standards and procedures required by the equipment manufacturer.
- 1.6** All test equipment required for test results shall be calibrated at least annually against standards traceable to the National Institute of Standards and Technology (NIST) or equivalent standards laboratories. The Contractor shall establish, document, and maintain calibration records for test and measuring

equipment used to demonstrate conformance of product/equipment to specified requirements. The Contractor may be requested by the City representative to provide calibration records for testing and measuring equipment.

- 1.7 The Contractor shall coordinate work activities as directed by the Contact Technical Representative (CTR) and/or the User Department Representative (UDR) so as to avoid interference with ongoing operations and maintain regulatory permit compliance. Services involving shut down of equipment shall be approved by UDR and coordinated with operations supervisor of the facility. Granting of a shutdown is subject to Operation conditions at the time. Any tools or materials left at the plant site or facility remains the responsibility of the contractor.
- 1.8 The apparent silence of these specifications as to any detail, or 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.

2.0 REFERENCES STANDARDS

All workmanship, materials and services being carried out under this contract shall comply with all relevant sections of the latest editions of the following, unless otherwise specified or instructed by the CTR.

- 2.1 International Electro-Technical Commission (IEC) 801-2, 801-4, 255-4
- 2.2 National Fire Protection Association (NFPA 70), National Electrical Code (NEC)
- 2.3 Occupational Safety and Health Administration (OSHA)
- 2.4 National Institute of Standards and Technology (NIST)
- 2.5 State and Local codes and Ordinances
- 2.6 City of Houston Electrical Code

3.0 ELECTRICAL SERVICES

- 3.1 The Contractor shall be required to furnish all supervision, labor, parts, tools, materials, transportation, equipment, supplies, personal protection equipment and facilities necessary to provide precision repairs, installations, replacements, inspections, testing, and calibration services for electrical equipment at the facilities listed in **EXHIBIT "BB"**. This shall include on-site repairs at City facilities as well as shop repairs at Contractor's facility.
- 3.2 The equipment includes but is not limited to power distribution centers, motor control centers, motor starters, control panels, subpanels, system installations, the disconnection of motors from feeders, the reconnection of motors to feeders, replacement and repair of conduit for electrical and automation piping systems and lighting equipment both inside and outside of facility and building structures.

3.3 Per direction of the CTR and/or UDR the Contractor shall provide energy efficiency evaluation, electrical coordination studies and analysis, and infrared implementation. This shall be a part of this contract.

3.4 Unit Repair and Replacement

3.4.1 The Contractor shall inspect, repair, and/or troubleshoot assemblies and subassemblies of the equipment in lieu of replacement unless the repair cost of the equipment exceeds seventy (70) percent of the cost for replacing it with a new unit. Generally, the seventy (70) percent rule applies, but the City reserves the right to purchase or repair units based on economic evaluation and various operational considerations.

3.4.2 The CTR must approve, in writing, the purchase of a new, reconditioned and/or remanufactured unit in lieu of repair. Replacement unit shall be identical to the unit being replaced. If the identical unit is no longer offered by the manufacturer, the replacement unit shall have the same characteristics, capacity and dimensions as the one being replaced and shall have a "Premium" or best available "Efficiency" motor, if applicable, unless otherwise authorized, in writing, by CTR. The replacement cost of each unit shall be incorporated into the reconditioned, remanufacturer or replacement cost of the unit. Replacement shall be authorized in writing by the CTR.

3.4.3 The Contractor shall attach quote(s) for CTR to review when submitting the scope of work. For all major components such as impellers, shafts, gears, and gear assembly the repair scope of work shall include the cost of a new item as well as the estimated cost to repair such item. Every Cost Estimate shall include the purchase price of a new, reconditioned, and/or remanufactured unit identical to and/or exceeding existing performance and capabilities to the one being repaired.

3.4.4 If the unit is considered to be "non-repairable", the Contractor shall use the schedule in Exhibit "F", titled Fees and Cost Schedule under "Non-Repairable Shop Cost" to invoice for the work performed by the Contractor to include all costs associated with teardown, reports, and Demo & Install.

3.4.4.1 Non-repair cost (Exhibit F, Group1, Line item 18) is to be used for units that are not repaired or replaced.

3.4.5 If the unit can be repaired, the Contractor shall complete the needed repairs as follows:

3.4.5.1 The Contractor shall disassemble the unit, inspect it and prepare the scope of work for approval by the CTR. If additional parts and materials are needed, the Contractor shall notify the CTR and include the estimated time for delivery of parts and expected time for completion of the services in the scope of work.

- 3.4.5.2** The Contractor shall use new OEM parts or where applicable, new NON-OEM parts approved by the CTR. The cost of inspection recommendations and preparation of the scope of work shall be a part of the base cost of any job per Fees and Costs as outlined in the Fee Schedule (Exhibit F) and shall be approved by the CTR.
- 3.4.5.3** All repair or replacement parts shall equal or exceed OEM specifications.
- 3.4.5.4** If the Contractor plans to use any part other than an OEM part, the Contractor shall obtain written confirmation from the contract technical representative (CTR). Based on independent testing as set out below that the non-OEM part(s) are equal or of better material and craftsmanship and performance standards and will not require modification to other parts. The Contractor shall submit specifications and documentation on the proposed substitution.

 - 3.4.5.4.1** Upon request by the City, at the expense of the contractor, testing may be required by an independent third party chosen by the UDR. The onus shall be upon the contractor to prove that non-OEM parts meet the required specifications in fit, form and function as OEM parts.
 - 3.4.5.4.2** Testing data provided to the City's CTR must show if parts exceed or are equivalent to OEM requirements.
 - 3.4.5.4.3** All Repair or replacement parts shall equal or exceed specifications for OEM repair or replacement parts.
- 3.4.6** The Contractor shall provide an "Equipment Teardown and Recommended Repair Report" showing the condition of the unit upon receipt, the repair work done, and the final test results.
- 3.4.7** Assembled repaired equipment shall be tested for vibration. The vibration level shall not exceed manufacturer recommendation. The vibration measurements shall be recorded on the Final Test Sheet. All costs associated with the vibration test shall be included as a part of the base cost of any repair work.
- 3.4.8** If requested by the CTR, the Contractor shall furnish parts needed for maintenance activities for the equipment, by City personnel. Contractor shall charge the same price for these parts as outlined in the fee schedule, Parts and Materials (Exhibit F).
- 3.4.9** Spare parts and assemblies shall be purchased at the discretion of the CTR when considered for the benefit of the City.
- 3.4.10** The City reserves the right to pick up or purchase parts quoted by the

Contractor to be replaced. This includes but not limited to seals, bearings, motors, shafts, and other items of any equipment undergoing repair work.

3.4.11 Upon acceptance of cost estimate by the CTR, the CTR will issue a Work Order. Upon receipt of the work order, the Contractor shall proceed with repairs. The Contractor shall commence to work on the unit and complete the repair within the allocated time for delivery of such item:

3.4.11.1 The Contractor, upon receipt of work order, shall complete the repair of the unit within allocated time and release/return the unit to Operation.

3.4.11.2 The Contractor shall notify the CTR immediately if the Contractor cannot complete the job within the contractually agreed time period detailed in the authorizing Work Order. The Contractor shall submit to CTR a detailed explanation for the delay with a new schedule to complete the job.

3.4.12 At a City location, all machinery and equipment that are undergoing maintenance and repair shall be lock-out/tagged-out (LOTO) to protect against accidental or inadvertent operation when such operation could cause injury to personnel or damage to equipment. Only authorized City of Houston personnel whom may include, but not limited to qualified electricians, mechanics and operators shall carry out LOTO.

3.5 Service and Repair Technicians

3.5.1 The Contractor shall have and maintain Texas Electrical Contractor's License. Contractor must also possess a minimum of five (5) years experience in electrical maintenance and repair of the equipment covered under this contract. The technicians performing electrical tests, inspections, maintenance and repairs shall be by education, training, and experience, be well-rounded in all aspects of electrical maintenance. They shall be trained and experienced concerning the equipment and systems being serviced under this contract. They must be capable of carrying out the services herein, in a safe manner and with complete knowledge of the hazards involved.

3.5.2 The technicians of the Contractor shall have a minimum of three (3) years of work experience with the equipment covered under this contract and must be electrical safety qualified in accordance with the relevant electrical codes, laws and regulations. They must have and maintain valid licenses required to perform electrical services herein.

3.5.3 Maintenance and/or repair services shall be carried out under the supervision of a licensed Master Electrician, who must be employed full time by the Contractor.

3.5.4 Proof of qualifications, licenses and certifications shall be required at the time of contract award and upon request thereafter.

3.6 Acceptance of Electrical Maintenance and/or Repair Work

- 3.6.1** The Contractor shall ensure that test of equipment that have undergone Maintenance and/or Repair work meet the acceptance standards set by MTS- 2001 and NFPA 70-B-1998.
- 3.6.2** The Contractor shall ensure communication has been established with the UDR for witnessing of any performance test. Contractor shall record all test results on Shop Acceptance Form and submit as supporting documentation for invoicing purposes.
- 3.6.3** After the unit has run continuous for at least four (4) hours, the Contractor shall record the vibration at the same spots as the beginning of the test run. The acceptable allowable (maximum) vibration reading the blower manufacture shall meet all OEM specifications.
- 3.6.4** If deficiencies are detected, the repair work shall be rejected, and the contractor shall make the necessary repairs, adjustments or replacements.
- 3.6.5** A copy of the Repair Data Sheet covering the results of any specific test such as electrical testing results, shall be included with the shipment of all repaired testing and inspection of any and all repaired units.
- 3.6.6** All units must be run at their highest rated voltage.
- 3.6.7** The City shall not make payment to the Contractor until ALL corrective actions are made testing is performed and the equipment is accepted by the City.

4.0 GENERATOR SERVICES

- 4.1** In the event of emergency situations, at the request of the UDR, the contractor shall provide resources for the preparation, transportation, fueling and maintenance of generators that are to be delivered to those facilities listed in **EXHIBIT "BB"**. The Contractor shall have standby resources on hand which shall include but are not limited to: journeyman electrician(s), apprentice electrician(s), mechanic(s), welding technician(s), fueling trucks rated to 1200 gallons, tractor trailer trucks, heavy duty cranes trucks with lift capacities of 40 tons, digger derrick trucks and bucket trucks with insulated booms to 100 ft.
- 4.2** Service and Repair Technicians:
 - 4.2.1** The Contractor shall have a minimum of five (5) years experience with the work specified in this section as well as licensed personnel for fueling, electrical Journeyman and master), plumbing, gas, Professional Engineer (PE) in electrical, mechanical, structural.
- 4.3** Load Bank Testing
 - 4.3.1** The Contactor shall provide a load bank tester to test up to, but not limited

to, a 1050KW 480-volt generator. Contractor's load bank tester shall be able to provide 240 volts as well in the event that it is needed.

4.3.2 The Contractor may use if necessary, a City owned load bank tester when available.

4.3.3 The Contractor shall document test results and provide all test related documents to the City of Houston, as well as keep a copy of their own in the event that the City should require it at a later date.

4.4 Preventive Maintenance

4.4.1 The Contractor shall provide a mechanic for onsite and shop preventive maintenance. Services to be provided include but are not limited to changing oil, filters, belts and hoses. The Contractor shall dispose of used oil in accordance to Environmental Protection Agency (EPA) regulations and provide proof of such if deemed necessary.

4.4.1.1 The Contractor shall run a fuel analysis to determine if the fuel is good or bad. If the fuel is bad, the Contractor shall filter the fuel and recalculate the fuel on site to be put back into the generator.

4.4.1.2 The Contractor shall completely remove and dispose of fuel from tank if the fuel is no longer able to be filtered in place.

5.0 AUTOMATION SERVICES

5.1 The Contractor shall meet the qualifications in this section or hire an Automation Subcontractor (ASC) who meets the specified qualifications to provide all labor, materials, test equipment and supervision necessary to perform the following automation support services in accordance with the requirements of this contract. The Contractor shall not terminate the subcontract agreement or hire any other ASC for the specified work without the prior written consent of the CTR.

5.2 The Contractor/ASC shall provide technical support for the automated systems used throughout the City's water and wastewater treatment, collection and distribution facilities. Many of these automated systems are interconnected subsystems that perform complex process control and monitoring functions. The automated systems at each facility are also connected to the City-wide SCADA system. The quality of the automated systems is critical to public health, employee safety, regulatory compliance, and cost management. The Contractor/ASC must have the technical and process expertise to maintain, repair, retrofit and refine these automated systems, subsystems, subsystem devices, networking components and associated software and programs that make the entire system functional and manageable.

5.3 Quality Assurance and Contractor/ASC Qualifications.

5.3.1 The Contractor/ASC shall have and maintain a professional

engineering license and/or a professional software engineering license with the State of Texas, to carry out analysis, inspection, design and test of the electrical control systems of the City facilities.

5.3.2 The Contractor/ASC shall have and maintain a valid Texas Electrical Contractor License as required by state law for the work associated with alteration, repair, maintenance and installation of the associated electrical components.

5.3.3 The Contractor/ASC must have and maintain an office within the City of Houston to ensure timely responses to requests for immediate repair.

5.3.4 The Contractor/ASC shall have a five (5) year history with SCADA network security and maintain that expertise throughout the duration of this contract to address the changing SCADA-related security concerns related to the scope of work herein.

5.3.5 The Contractor/ASC shall have a minimum of five (5) years of experience and expertise in the support of the water and wastewater facilities, processes and technologies as listed herein.

5.4 Compliance with Homeland Security and software quality requirements.

5.4.1 According to the National Strategy for Homeland Security, Water and Wastewater Treatment Facilities are part of the nation's critical infrastructure and the government agencies that are responsible shall take specific steps to improve SCADA security. For all SCADA software related services, the contractor and the ASC shall comply with the Water and Wastewater Operations SCADA Software Engineering Security and Quality Requirements.

5.4.2 The water and wastewater systems are recognized as potential targets of cyber- attacks. Therefore, the City is vigilant in the distribution of any information related to the control and SCADA systems and requires the same vigilance of the Contractor/ASC. The Contractor/ASC shall not distribute, or share any information related to the automated systems including the City's SCADA system without written consent from the CTR.

5.5 The Contractor/ASC shall provide automation support services related to the following processes and technologies:

5.5.1 Water and Wastewater Facility processes to be supported include but are not limited to:

5.5.1.1 Water and wastewater related processes: lift station, screening, aeration, oxygen generation, filtration, chlorination, de-chlorination, clarification and thickening.

5.5.1.2 Advanced water and wastewater solid processes: centrifuge

and belt press dewatering, polymer distribution, sludge heat drying and biosolids fertilizer production, cake and dry product conveying and storage.

5.5.1.3 Contractor/ASC shall provide supplementary support to these processes as requested by the City.

5.5.1.4 The City may also direct the Contractor/ASC to take complete and full responsibility for the management of the automation support services, including 24/7 calls for a designated facility or specific process at a designated facility, to ensure the automation and control systems are fully functional and operational under a critical or emergency period.

5.5.2 Instrumentation and control technologies to be supported and maintained include but are not limited to: Pneumatic and electromechanical actuators and valves; Pneumatic and electric transducers and transmitters; Variable frequency drives; Motor controls, Thermocouple and Resistance Temperature Detectors (RTD), temperature sensors and transmitters; Flow, motion, level, speed, position and pressure sensors and transmitters; Flame control and safety circuits; Process analyzers and Programmable Logic Controller, (PLC) components.

5.5.3 Computing and networking technology to be maintained and supported include but are not limited to; PROFIBUS and industrial Ethernet networks components; Modems, switches, routers, firewalls, industrial operator interface devices, PC based operator interface devices; Thin client operator interface devices; Application and data acquisition servers.

5.5.4 Software technologies to be supported by the Contractor/ASC include, but are not limited to: Operator interface development software, GE iFIX, Wonderware Intouch, Archestra, Siemens Protocol; PLC application development software, Softshop Siemens PLC Workshop for Modicon and SquareD PLCs, Siemens Step-7, Siemens Microwin, Allen-Bradley RS Logix and all software required to ensure the proper functionality of these software packages including operating systems and networking software.

5.5.4.1 When additional software tools and applications not listed above are required of the Contractor/ASC, but Contractor/ASC lacks expertise and/or resources to resolve the problem, Contractor/ASC may engage the services of a subcontractor to carry out the services, upon receiving prior approval of the by the CTR/UDR.

5.6 Specific Automated System Support Activities include, but are not limited to:

5.6.1 Assess process performance, process problems, process faults and process variances to identify non-functional hardware and/or software,

to determine and take corrective action to restore and/or improve process performance.

5.6.2 Assess, evaluate, design, refine and repair complex automated systems software and hardware in efforts to identify and correct system failure and to identify and correct SCADA security related issues.

5.6.3 Retrofit obsolete and nonfunctional automated systems: design, install, program, and test and document hardware and software modification to replace obsolete components; improve performance, improve safety, ease support requirements.

5.6.3.1 Develop and/or modify automated systems operations and support documentation, including but not limited to software and network diagrams, electrical systems schematics and one-line diagrams, operations and technical support manuals.

5.6.4 Procure, calibrate, repair, install, connect, configure, program and test automation related components and software as required.

5.6.5 Document and communicate automation related opportunities, problems and accomplishments.

5.6.7 Develop and maintain software to enhance process control, operation and maintenance of the processes and automated systems.

5.6.8 Procure, replace, and configure, test and document changes to the Water and Wastewater facilities network components.

5.6.9 Refine historical process data server configuration and reports.

5.6.10 Telemetry system installation and remote monitoring of sensing devices for water distribution and collection systems. The Contractor shall perform turnkey project to procure parts, perform system installations, and develop software application and commissioning.

5.6.11 Procurement of Parts and Materials

5.6.11.1 The Contractor/ASC shall use best efforts to secure best prices for this work. This may include investigating alternate vendors and negotiating for reseller pricing discounts. The Contractor/ASC shall use a Government or City contract when the cost is lower than the contract vendor's price.

5.6.12 Cost for Automation Services will be as shown in the Contract Fee Schedule.

6.0 HAZARDOUS MATERIAL AND WASTE DISPOSAL

6.1 The Contractor shall dispose of Hazardous Material and Waste (including, but not

limited to items electrical in nature, ballasts, light bulbs, Polychlorinated Biphenyls-PCB Oil Filled Transformers) in accordance with EPA guidelines.

7.0 WORK ORDERS

7.1 The UDR shall issue a Work Order request when services are required. The Contractor shall provide a scope of work to the UDR, which shall include a good faith and detailed cost estimate of the work required. The UDR shall approve all estimates. Any changes in scope of services must be approved by the UDR prior to the work being performed.

7.1.1 The work schedule will be coordinated with the UDR so as not to interfere with plant operations.

7.1.2 The Contractor will not commence work until the UDR has approved the work schedule.

7.1.3 The Contractor must commence the work in accordance with the agreed schedule and complete the work within the allocated time.

8.0 ADDITIONAL SERVICES

8.1 Prior to commencement of any Additional Services, the Contractor shall submit a written proposal for approval by the CTR describing the work to be done and include a "Not to Exceed" estimate of the cost. The proposal shall include as a minimum a list of repairs, sub-contractor(s), schematics(s), design plans and a schedule of the repairs. Additional work shall not be performed without written approval from the CTR.

8.2 The Contractor shall perform Additional Services using the unit rates and any applicable markup/discount in the Fee Schedule as specified for the type of service provided. If the Fee Schedule does not cover the work needed, the Contractor shall submit detailed cost estimate for such work, inclusive of any additional labor required, for which rates are not included on the Fee Schedule, for review and approval by the CTR. Markups shall be allowed for parts and materials only, based on the part vendor's or subcontractor's original invoices, and must be billed in accordance with the percentages allocated in the Fee Schedule. No markups will be allowed on labor rates for the Contractor or Subcontractor.

8.3 If during the execution of the Additional Services the Contractor determines that the good faith estimate will be exceeded, the Contractor must immediately stop work and discuss and receive written approval for additional costs from the CTR.

9.0 RESPONSE TIMES

9.1 The Contractor shall be accessible to the City via telephone during normal business hours (7:00 a.m. – 5:00 p.m., M – F). The Contractor shall be ready to start work on any unit within two (2) hours of receiving routine call for the service.

9.2 The Contractor shall be available and accessible to the City via telephone to work overtime per request of the UDR. All overtime work must be coordinated and approved by the UDR.

- 9.3 The Contractor shall be available and accessible to the City via telephone and to provide emergency services twenty-four (24) hours per day, seven (7) days per week. Contractor will also be required to provide a 24/7 emergency contact to respond to any such request. Contractor shall start emergency job within one (1) hour of service call without scheduling delays and shall not be restricted to normal working hours. UDR must approve all emergency work, number of hours worked and materials receipt for payment to be made for these services.
- 9.4 Charges for services required beyond normal working hours shall not begin until contractor arrives at site to perform the services.

10.0 LABOR RATES

- 10.1 The labor rate shall cover ALL costs for a qualified person to perform any of the functions in this document and shall include wages, all company benefits, and company profits. Materials of any value, tool, instruments, testing equipment and transportation required for carrying out the services herein, shall be deemed to be included in the itemized rates of the Fee Schedule.
- 10.2 No travel time charges are permitted under this contract. The Contractor shall include the associated costs for transportation under labor rate and/or the rate cost to perform the services to be provided under this contract.

11.0 REPORTING AND DOCUMENTATION

- 11.1 Any equipment removed from City property shall be documented on an "Equipment Release Authorization Form". The Department of Houston Public Works may use a log in conjunction with the Equipment Release Authorization form. The department requesting services shall provide the Equipment Release Authorization Form. The user department shall adjust the Form to reflect the Contract Number and Ordinance Numbers pertaining to this Contract.
- 11.2 CTR and the Contractor's project manager shall meet once a month to review the records of the completed works, works in progress, and any other matter related to this contract. The Contractor shall provide a current status of all Work Orders utilizing the "Progress and Status Report Form" to the CTR at each meeting. Any discrepancies shall be resolved at that time and all backlogs shall be completed by the tenth of the following month.
- 11.3 Upon completion of any repair work the Contractor shall provide to the City, a full set of completed "Equipment Teardown and Recommended Repair Report(s)", work performed on the unit, test and data sheets including Electrical, Machinist and Mechanical Report. (Electrical, Machinist and Mechanical Report Forms are to be provided by the Contractor with CTR having final approval of the format.) The Contractor shall establish and maintain records for at least three (3) years that the product has passed inspection and/or test with defined acceptance criteria. Additional form(s) may be required during the term of this contract at the direction of the CTR.

12.0 INVOICING

- 12.1** The Contractor shall submit invoices for payment, that are on Contractor's company stationary with the original signed by an authorized agent of the company, via e-mail. ALL SUPPORTING DOCUMENTS SHALL BE PROVIDED WITH EACH INVOICE. The invoice number shall not be duplicated during the term of the contract. Each invoice shall include the following information:
- 12.1.1** The City Contractor Number, City Ordinance Number, City Release Number, and Contractor's Job Number.
 - 12.1.2** The Contractor's Job Number and Contract year shall appear clearly on all time sheets [showing hours worked, break(s) and lunch time], invoices, and supplier's invoices.
 - 12.1.3** The Contractor's name and address and where the service was performed.
 - 12.1.4** The City Equipment EI (Asset) Number, and City Work Order Number.
 - 12.1.5** The City Facility Number and address where equipment had been prior to service.
 - 12.1.6** City Facility where equipment was installed/delivered after completion of repair.
 - 12.1.7** Detailed description of services rendered.
 - 12.1.8** Description of Parts or Components repaired or replaced. Provide part numbers, listing before and after discount. If parts are new OEM, reconditioned or new Non-OEM, the costs must be listed as well as the cost of new OEM replacement parts.
 - 12.1.9** Subcontractor's invoices shall meet the same requirements of the Prime Contractor.
 - 12.1.10** City delivery and pickup tickets.
 - 12.1.11** Subtotal costs for Parts and Labor hours must be shown separately.
 - 12.1.12** Shop Teardown and Recommended Repair form, Equipment Release Authorization form, Recommended Repair Estimate form, Field Acceptance Tests form and Progress and Status Report form, shall be submitted by the Contractor.
 - 12.1.13** Total invoice costs of the job.
 - 12.1.14** Subtotal costs for alignments, repairs, replacements and/or overhauls, parts and/or material, and labor rates separately.
 - 12.1.15** Shop Acceptance form, Teardown and Recommended Repair form, UL Certification form (when applicable), Equipment Release Authorization Form, Recommended Repair Estimate form, Fits and Indicated Run-out Form, Final Acceptance Tests Form, shall be submitted by the Contractor.

- 12.1.16** A clear indication of the cost of the repair of the unit in a percentage compared to the cost of a new unit.
- 12.1.17** All unit prices for labor and parts shall be easily identified utilizing the item number and the quoted contract pricing.
- 12.1.18** The Contractor shall submit the completed invoice check list with invoice to ensure all documents are submitted in total, per invoice.
- 12.1.19** All unit prices for labor and parts shall be easily identified against the quoted contract pricing.
- 12.1.20** All discounts/markups shall be based on work performed by contractor and/or sub- contractor that was approved and accompanied with actual original invoiced documents. The contractor shall submit original supporting documentation with all invoices, as attachments, with the final invoice for payment by City for the work performed by the Contractor.
- 12.1.21** Freight for special order repair parts and/or repair parts ordered from another state or country is the responsibility of the contractor. The vendor must provide invoice(s) detailing freight costs with no markup. Freight for all other repair parts is the responsibility of the contract vendor.
- 12.1.22** Where hourly work is performed on behalf of the City, the Contractor (and Subcontractors of the Contractor) shall fully document the start of the work, the time spent on the job, and completion of each job. The documentation shall be punch card/time clock or shop record or any other mutually agreed method. The field TIME SHEETS should be signed DAILY by a City of Houston Supervisor at the facility location, if a City supervisor is available. ALL TIME SHEETS shall be approved by the CTR on the last working day of each week.
- 12.1.23** The City reserves the right to review all payments made to the Contractor by auditing any and all documents associated with this contract at a later date. Subject to such audit, any overpayments shall be recovered from the Contractor.
- 12.1.24** The City shall be billed only for the hours the contractor works on City equipment whether at City facility or at Contractor's facility. No itemized travel time is allowed or reimbursable.
- 12.1.25** Mail invoices to Accounts Payable:

City of Houston
Department of Houston Public Works Accounts Payables
-Service Contracts
P.O. Box 61449, Houston, TX 77208-1489

E-mail invoices to Accounts Payable:

finaccounts payable@houstontx.gov

13.0 WARRANTIES

13.1 Warranty of Services

13.1.1 Definitions: "Acceptance" as used in this clause, means the act of a City authorized representative approving specific services, as partial or complete performance of the contract. "Correction" as used in this clause, means the elimination of a defect.

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

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

13.2 The Contractor shall observe the highest standards of diligence and care in the performance of repair services and shall meticulously follow the standards and procedures required by the equipment manufacturer. The Contractor further warrants that all service and replacement parts it provides shall be in strict compliance with all applicable regulations.

13.3 A minimum full warranty of 12 months is required upon completion of repair/replacement services. The warranty period shall begin after satisfactory four (4) hours test run and the day the City officially accepts the repaired/replaced unit. The Contractor shall fully warrant its installation, replacement, repair and maintenance of all parts and equipment from the date of acceptance by the City of Houston.

13.4 During the warranty period ALL related work shall be started by Contractor within twenty- four (24) hours after notification and shall be completed within fifteen (15) days, unless otherwise state in writing to UDR.

13.4.1 If the unit undergoing warranty work is out of service more than fifteen (15) additional days, then warranty period will extend to the exact amount of days the unit was out of service for warranty.

13.5 During the warranty period ALL failed units shall be re-repaired at

Contractor's expense if failure occurs under normal operating conditions or if the failure is due to faulty parts or negligence of the Contractor.

14.0 ADDITIONS & DELETIONS

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 Contract Fees and Costs schedule.

15.0 ESTIMATED QUANTITIES NOT GUARANTEED

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

16.0 SITE VISITS

When deemed necessary an inspection may be made by the Department of Houston Public Works at the Contractor's facility or facilities listed at the time of submission of the initial bid.

17.0 CONTRACT COMPLIANCE

17.1 The Department of Houston Public Works reserves the right to monitor this contract for compliance to ensure legal obligations are fulfilled and that acceptable level of services are provided.

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

17.1.1.1 Site visits

17.1.1.2 Review of deliveries received for accuracy and timeliness

17.1.1.3 Review of contractor's invoices for accuracy

17.2 The responsibility for monitoring compliance rests with the Contract Compliance Section of the Office of the Director, Department of Houston Public Works.

18.0 INTERLOCAL AGREEMENT

18.1 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 "BB" - Location List

WASTEWATER LOCATIONS

Service Area	Facility Type	Facility Name	Facility No.	Facility Address		
AS	WWTP	ALMEDA SIMS	6	12319 1/2	ALMEDA RD.	77053
AS	LS	MAC GREGOR WAY, N.#1	188	2000	MAC GREGOR WAY, N.	77030
AS	SLG	ALMEDA SIMS	5	12319 1/2	ALMEDA RD.	77045
AS	LS	SLEEPY HOLLOW	441	3425 1/2	SLEEPY HOLLOW	77027
AS	LS	LANDMARK	23	13030	LANDMARK	77045
AS	LS	INVERNESS	390	3987 1/2	INVERNESS	77027
AS	LS	KIRBY DRIVE#1	114	8500	KIRBY DR.	77054
AS	UP	U-FANNIN, UP	67	6800	FANNIN	77030
AS	UP	U-HOLCOMBE, UP	185	2102	HOLCOMBE	77005
AS	LS	AMBROSE	91	11300	SUBURBAN	77045
AS	LS	ARDMORE	466	7750	ARDMORE	77021
AS	LS	ASHVILLE	8	9630	ASHVILLE	77051
AS	LS	CIELO	607	14750	MESA VILLAGE DR.	77053
AS	LS	CHISWICK	548	1000	KILKENNY	77085
AS	LS	FUQUA	81	4035	FUQUA, W.	77053
AS	LS	FWSD#34 (WEST OREM)	84	12500	ZAVALLA	77085
AS	LS	GALLERIA AREA	546	322 1/2	N. POST OAK	77024
AS	LS	HAVILAND	104	11555	HAVILAND	77085
AS	LS	KIRBY DRIVE#3	184	9103	KIRBY DR.	77054
AS	LS	MAGNET	128	2710	MAGNET	77054
AS	LS	PAMELA HEIGHTS	537	4402	KNOTTY OAKS TRAIL	77045
AS	LS	SCOTT#3	337	10718 1/2	SCOTT	77047
AS	LS	WILLOWICK	362	3719	WILLOWICK	77019
AS	LS	WILLOW PARK APARTMENTS	599	14001	FONDREN	77085
AS	LS	INVERNESS PATH	624	3414 1/2	INVERNESS PATH LANE	77053
BLACK HAWK	LS	BAY AREA	621	1801 1/2	WEST BAY AREA BLVD.	77058
BW	WWTP	BELTWAY	242	10518	BELLAIRE	77072
BW	LS	ALIEF VILLAGE DR.	359	4237	AMIR	77072
BW	LS	BELLE PARK #1	302	7615	BELLE PARK DR.	77072
BW	LS	HIGH STAR	323	12843 1/2	HIGH STAR	77082
BW	LS	RICHMOND AVE. #1	349	10880	RICHMOND AVE.	77042
BW	LS	ROARK#2	418	7602	ROARK RD.	77099
BW	LS	ROARK #3	419	8702	ROARK RD.	77099
BW	LS	SHARPVUE	339	12103	SHARPVUE	77072

BW	LS	STROUD	379	9900	STROUD	77072
BW	LS	SYNOTT RD. #1	316	7330	SYNOTT RD.	77072
BW	LS	W.C.I.D. #78	275	4414	BUGLE	77072
BW	LS	W.C.I.D. #94	277	7120	IMPERIAL POINT	77072
BW	LS	WESTPARK #3	592	10601 1/2	WESTPARK DR.	77042
CB	WWTP	CEDAR BAYOU	244	2804	HUFFMAN EASTGATE	77336
CB	LS	W.C.I.D. #73	230	11510	F.M. 1960, E.	77336
CB	LS	SUNNYGLEN DR.	192	24435	SUNNYGLEN DR.	77336
CB	LS	GLENGYLE	90	24017	GLENGYLE CT.	77336
CB	LS	COVECREST	582	23000 1/2	LAGOON LANE	77336
CB	LS	FAIRLAKE	580	23504	FAIRLAKE DRIVE	77336
CB	LS	FIR RIDGE	70	204	FIR RIDGE	77336
CB	LS	G.A.TROTT'S	604	23815	LOGAN LANE	77065
CB	LS	HAPPY HIDEAWAY	605	1709	WILDCATLN.	77336
CB	LS	HIDDEN ECHO	578	225	CORDES	77336
CB	LS	SCOTTS POINT	462	130 1/2	DEER LAKE	77339
CB	LS	SHOREWOOD	581	22627 1/2	WEST SHOREWOOD DRIVE	77336
CB	LS	SPANISH COVE	606	1500	NOGALUS DR.	77532
CB	LS	W.C.I.D. #82	234	1621	SHORE SHADOWS	77336
CD	LS	LAKE LIVINGSTON DR	622	13846 1/2	LAKE LIVINGSTON DRIVE	77044
CH	WWTP	CHOCOLATE BAYOU	39	9600	MARTIN LUTHER KING	77048
CH	LS	AUTUMN GLEN	601	4000	SCHURMIER	77048
CH	LS	COFFEE	44	7450	COFFEE AVE.	77051
CH	LS	FOXTON	470	13106	FOXTON	77048
CH	LS	SEGREST DR.	481	13550 1/2	SEGREST DR.	77047
CH	LS	SOUTHRIDGE CROSSING	612	6276 1/2	SHURMIER RD.	77047
CH	LS	WEBERCREST	625	12515 1/2	WEBERCREST	77048
CHELFORD CITY	LS	GREENCREST DR.	434	3180	HIGHWAY6	77082
CHELFORD CITY	LS	PANAGARD	298	2525	PANAGARD	77077
CHELFORD CITY	LS	WEST HOLLOW DR.	297	3335	WEST HOLLOW DR.	77082
CP	WWTP	CLINTON PARK	40	9030	CLINTON DR.	77029
CP	LS	MISSISSIPPI	43	245	MISSISSIPPI	77029
CP	LS	ZACHARY	536	113	ZACHARY	77029
EH	WWTP	EASTHAVEN	59	8545	SCRANTON	77075
EH	LS	EASTHAVEN	165	9947	EASTHAVEN BLVD.	77075
EH	LS	MINNESOTA ST	602	9555 1/2	MINNESOTA	77075
EH	LS	SOUTHRIDGE	463	10038	RADIO Rd.	77075
F#23 (FB)	WWTP	F.W.S.D. #23	83	8219	KELLETT	77028
F#23 (FB)	LS	BRETSHIRE #2	22	7550	BRETSHIRE	77016
F#23 (FB)	LS	ANNUNCIATION	435	11300	ANNUNCIATION	77016

F#23 (FB)	LS	BRETSHIRE #1	78	6920	BRETSHIRE	77016
F#23 (FB)	WWF	BRETSHIRE	560	6920	BRETSHIRE	77016
F#23 (FB)	LS	CHATWOOD	34	9345	CHAGWOOD	77078
F#23 (FB)	LS	GREEN RIVER DR.	327	8927	GREEN RIVER DR. N	77028
F#23 (FB)	LS	HOMESTEAD (LEEDALE)	461	10939	HOMESTEAD	77016
F#23 (FB)	LS	HOPPER Rd.	464	5715 1/2	HOPPER Rd.	77016
F#23 (FB)	LS	MAPLE LEAF	465	11505	MAPLE RELIEF	77016
F#23 (FB)	LS	RED GULLY	160	9505	POCHYLA	77078
F#23 (FB)	LS	SPOTTSWOOD	555	11200	SPOTTSWOOD	77016
F#23 (FB)	LS	TAMWORTH	556	10901 1/2	TAMWORTH	77016
F#23 (FB)	LS	TAUTENHAHN RD.	436	5501 1/2	TAUTENHAHN RD.	77016
F#23 (FB)	LS	TIDWELL RD. #1	199	7406	TIDWELL	77016
FOREST C.	WWTP	FOREST COVE	565	21951	TRAIL TREE LANE	77339
FOREST C.	LS	AQUA VISTA	493	972	AQUA VISTA	77339
FOREST C.	LS	BURNING TREE	489	1000 1/2	BURNING TREE	77339
FOREST C.	LS	CYPRESS LN.	495	1307	CYPRESS LN.	77339
FOREST C.	LS	FOREST COVE DR. #1	490	226	FOREST COVE DR.	77339
FOREST C.	LS	FOREST COVE DR. #2	491	510	FOREST COVE DR.	77339
FOREST C.	LS	GOLDEN BEAR LN	488	914	GOLDEN BEAR LN	77339
FOREST C.	LS	KINGWOOD DR.	494	1717	KINGWOOD DR.	77339
FOREST C.	LS	MARINA	492	1068	MARINA	77339
FOREST C.	LS	TRAIL TREE LANE	566	21900	TRAIL TREE LANE	77339
GR	WWTP	GREENRIDGE	240	6301 #1	FUQUA, W.	77053
GR	LS	AMY RIDGE RD.	375	16601 1/2	AMY RIDGE RD.	77053
GR	LS	BOONRIDGE RD.	376	15899	BOONRIDGE RD.	77053
GR	LS	CHASEWOOD	303	6983 1/2	CHASEWOOD	77089
GR	LS	HILLCROFT	377	14501	HILLCROFT, E.	77089
GR	LS	HIRAM CLARK	378	16599 1/2	HIRAM CLARKE RD	77053
GR	LS	PINE ISLAND	391	6225	WEST BEND	77085
GR	LS	POST OAK #1	280	15900	POST OAK RD., S.	77053
GR	LS	POSTOAK#2	308	16500	POST OAK RD., S.	77053
GR	LS	QUAIL GLEN	422	17134	QUAIL GLEN	77059
GR	LS	QUAIL VIEW	423	8500	QUAIL VIEW	77089
GR	LS	WESTBURY	576	15270	HILLCROFT	77089
HS	WWTP	HOMESTEAD	107	5565	KIRKPATRICK	77028
HS	LS	E. HOUSTON Rd.	409	8440	ATTWATER	77028
HS	UP	U-MESA RD., U.P.	155	5405	MESA RD.	77013
HS	LS	DOCKAL	54	8300	DOCKAL	77028
IC	WWTP	INTERCONT. AIRPORT	238	2450	RANKIN	77073
IC	LS	CHANUTE	456	18550	CHANUTE	77032
IC	LS	JOHN F. KENNEDY	113	17130	JOHN F. KENNEDY	77032

IC	LS	GREENVIEW MANOR	389	16146	GREENVIEW	77032
IC	LS	JFK # 2 (CRCF)	583	16936 1/2	J.F.K. BOULEVARD	77032
IV	WWTP	IMPERIAL VALLEY	268	15500	COTILLION	77060
IV	LS	ALDINE BENDER	300	438	ALDINE BENDER	77060
IV	LS	PLAZA VERDE	396	11811 1/2	N. FREEWAY	77038
KB	WWTP/CFS	KEEGANS BAYOU	250	9400	WHITE CHAPEL LN.	77074
KB	LS	BISSONNET #4	474	8620	BISSONNET	77071
KB	LS	BEECHNUT	12	9213	BEECHNUT	77036
KB	LS	BELLE PARK #2	322	8003	BELLE PARK DR.	77072
KB	LS	BELLE PARK #3	348	8647	BELLE PARK DR.	77099
KB	LS	BISSONNET #1	16	7700	BISSONNET	77074
KB	LS	BISSONNET #2	228	8730	BISSONNET	77071
KB	LS	BROOKLET	306	11126	BROOKLET	77099
KB	LS	M.U.D. #123	223	12010	BELLFORT, W.	77099
KB	LS	ROARK#1	335	11435	ROARK RD.	77077
KB	LS/CFS	WINDSWEEP LN.	193	9667	WINDSWEEP LN.	77042
KINGWOOD	WWTP	KINGWOOD CENTRAL	518	3928	KINGWOOD DR.	77339
KINGWOOD	LS	AG FARM	516	2323 1/2	WOODLAKE LANE	77339
KINGWOOD	LS	BASSINGHAM	526	4202	BASSINGHAM	77339
KINGWOOD	LS	BEN'S BRANCH	503	2423	LAKE HOUSTON PKWY	77339
KINGWOOD	LS	BROOKDALE	527	2807	BROOKDALE	77339
KINGWOOD	LS	CHESTNUT RIDGE	512	2511	CHESTNUT RIDGE	77339
KINGWOOD	LS	CLOVER VALLEY	505	3415	CLOVER VALLEY	77345
KINGWOOD	LS	DEER RIDGE ESTATES	510	22	DEER RIDGE ESTATES	77339
KINGWOOD	LS	DEER SPRINGS	513	2230	DEER SPRINGS	77339
KINGWOOD	LS	ELMWOOD HILL	519	5938	ELMWOOD HILL LANE	77345
KINGWOOD	LS	FOREST GARDEN	501	1815	FOREST GARDEN	77345
KINGWOOD	LS	FOREST SHORES	509	2714	ROYAL CIRCLE	77339
KINGWOOD	LS	GOLF COURSE	521	1300	PINE BEN	77339
KINGWOOD	LS	KINGWOOD CENTRAL	517	3928	KINGWOOD DR.	77339
KINGWOOD	LS	KINGWOOD FOREST, NORTH	590	5510	ROCKY TRAIL DR.	77339
KINGWOOD	LS	LADBROOK	514	2307	LADBROOK	77339
KINGWOOD	LS	LAKE VILLAGE	508	1802	LAKE VILLAGE	77339
KINGWOOD	LS	LAKE WILDERNESS	507	1602	LAKE WILDERNESS LANE	77345
KINGWOOD	LS	PINE PRAIRIE	523	5014	PINE PRAIRIE	77345
KINGWOOD	LS	RIVER	504	1313	LAKE HOUSTON PKWY	77339
KINGWOOD	LS	RIVERCHASE TRAIL	591	5725	RIVERCHASE TRAIL	77345
KINGWOOD	LS	RIVERLAWN	524	3326	RIVERLAWN	77339
KINGWOOD	LS	SHADY MAPLES	525	4911	SHADY MAPLES	77339
KINGWOOD	LS	STATELY OAKS	506	2302	STATELY OAKS	77345
KINGWOOD	LS	STP RETURN	522	4006	KINGWOOD DR.	77339
KINGWOOD	LS	TRAIL RIVER	520	2100	TRAIL RIVER	77345

KINGWOOD	LS	TRAILWOOD	515	2451	TRAILWOOD VILLAGE	77339
KINGWOOD	LS	WOODLAND GROVE	511	1966	WILLOW POINT	77339
KINGWOOD	LS	WOODLAND RIDGE	502	2603	WOODLAND RIDGE	77345
KINGWOOD	LS	WOODSTREAM	528	4923	WOODSTREAM	77345
KINGWOOD	LS	ROYAL SHORES	616	1102 1/2	SOUTH ROYAL POINT DRIVE	77345
KINGWOOD	WWTP	WEST LAKE HOUSTON	627	16880 1/2	WEST LAKE HOUSTON PARKWAY	77346
M #203	WWTP	M.U.D. #203	243	1215	GEARS RD.	77067
M #203	LS	GREENS CROSSING #1	254	950	GREENS PARKWAY	77038
M #203	LS	GREENS CROSSING #2	255	1430	GREENS PARKWAY	77038
M #203	LS	GREENS CROSSING #3	257	29584	GEARS	77067
M #203	LS	GREENS LANDING #1	262	342	WEST RD.	77038
M #203	LS	GREENS LANDING #2	263	634	WEST RD.	77038
M #48	WWTP	KINGWOOD WEST	451	5900	SORTERS RD.	77365
M #48	LS	CRESCENT SPRINGS	453	19001	CRESCENT SPRINGS	77339
M #48	LS	KINGWOOD PLACE SOUTH	455	200	SORTERS Rd.	77339
M #48	LS	M.U.D. #58	452	22405	LOOP 494	77339
M #48	LS	NORTH PARK	454	22405	LOOP#494 & NORTH PARK	77339
MC	WWTP	METRO CENTRAL	397	12815	GALVESTON RD.	77062
MC	LS	HORSEPEN GULLEY	448	12875	GALVESTON RD.	77546
MC	LS	BAYFIELD UD LS	402	495	EI TORO	77598
MC	LS	GULFWAY UD LS	403	14026	HIGHWAY3	77062
MC	LS	M.U.D. #67	404	15503	GULF FREEWAY	77034
MUD #25	SWPS	N.W.H.C.M.U.D. #25	484	10704	LITTLE YORK, W.	77041
MUD #25	LS	N.W.H.C.M.U.D. #25	483	10702	LITTLE YORK, W.	77041
N/A	SC/LS	SOUTH SERVICE CENTER	985	7440	CULLEN	77051
NB	LS	NORTHBOROUGH DR. #1	425	12880	NORTHBOROUGH DR.	77090
NB	LS	NORTHBOROUGH DR.#2	426	13100	NORTHBOROUGH DR.	77090
NB	LS	RANKIN ROAD	427	750	RANKIN RD., W.	77067
NE	WWTP	NORTHEAST	146	655	MAXEY ROAD	77013
NE	LS	GREENS BAYOU	96	12872	GREENS BAYOU	77015
NE	LS	NORTH SHORE	222	13093 1/2	NORTH SHORE #2	77015
NE	LS	WESTMONT	210	802 1/2	WESTMONT	77015
NE	LS	MAXEY RD.	411	909	MAXEY RD.	77015
NE	LS	EAST TEN PARK	449	275	GELLHORN	77029
NE	LS	TASFIELD	615	3315	LITTLE YORK	77093
NE	LS	MESA DR.	261	3875 1/2	MESA DR.	77013
NE	LS	MYRTLE STREET	614	255	MYRTLE STREET	77009
NE	LS	BANNER ROAD	221	4072 1/2	BANNER	77013
NE	LS	BEAVER DRIVE	41	3650 1/2	BEAVER DR.	77029
NE	LS	GREEN DOLPHIN	95	12870	GREEN DOLPHIN	77013
NE	LS	HUNTER WOOD M.U.D.	482	6230	S. LAKE HOUSTON PKWY	77339

NE	LS	LEAR	119	900	LEAR DRIVE	77013
NE	LS	MARKET ST.#2	384	13400	MARKET	77506
NE	LS	MC CARTY#2	357	3925 1/2	MCCARTY, N.	77013
NE	LS	SONGWOOD	457	1900	JOHN ALBERT	77029
NE	LS	WOOD FOREST	535	12507	WOOD FOREST	77015
NE	CFS	BURRESS ODOR CONTROL ST.	563	808	E. BURRESS	77022
NG	WWTP	NORTHGATE	270	303	E NORTH BELT	77060
NG	LS	BRIARWILLOW	360	725	BRIARWILLOW	77060
NG	LS	NORTH BELT	315	555	NORTH BELT, EAST	77060
NS-IA	LS	LONGWOODS LN.	328	314 1/2	LONGWOODS LN.	77024
NS-IA	LS	AFTON VILLAGE	3	1100	ANTOINE	77055
NS-IA	LS	CURLING	191	8515	CURLING	77055
NS-IA	LS	FARTHER POINT	109	23	FARTHER POINT	77024
NS-IA	LS	PORTWEST DR.	370	6867	PORTWEST DR.	77007
NS-IA	LS	SADDLEBROOK	170	10040	MEMORIAL DR.	77024
NS-IA	LS	SHIRKMERE	589	815	SHIRKMERE	77008
NS-IA	LS	STABLEWOOD	127	8855	HARNESS CREEK LN.	77056
NS-IA	LS	TRANSTAR	531	6922	OLD KATY RD.	77007
NE	LS/CFS	MARKET ST. #1	131	7909 1/2	MARKET ST.	77029
NE	LS	MAGNOLIA (HEDRICK)	129	1707	HEDRICK	77012
NE	UP	U-NECHES, UP	467	3500	KELLEY	77093
NE	UP	U-JENSEN DRIVE #2, UP	112	6514	JENSEN DRIVE	77026
NE	LS	CHERRY STREET	35	5016	CHERRY	77026
NE	LS	DAUGHERTY	157	1808	DAUGHERTY	77029
NE	LS	DORSETT SLG TRANSFER	138	7909 1/2	MARKET ST.	77029
NE	LS	HALL PARK #1	529	4210	LANGLEY	77016
NE	LS	HALL PARK #2	530	10500	PEACH	77016
NE	LS	MC CARTY#1	369	243	MC CARTY	77029
NE	LS/CFS	PARKER RD.	542	2606	PARKER RD.	77016
NE	LS	WILLIE	80	10440	WILLIE	77016
NS-II	WWTP	69TH STREET	400	2525	MAGARIO GARCIA	77011
NS-II	LS	CLINTON DRIVE #2	399	4309	CLINTON DR.	77020
NS-II	SLG	69TH STREET	401	2525	MAGARIO GARCIA	77020
NS-II	LS	LOCKWOOD	125	698	LOCKWOOD	77020
NS-II	LS	BUCKINGHAM (FRIAR TUCK)	28	314 1/2	FRIAR TUCK LN., E.	77024
NS-II	LS	ASBURY	7	204	ASBURY	77007
NS-II	UP	U-ALLEN PARKWAY #1, UP	4	2402	ALLEN PARKWAY	77002
NS-II	UP	U-ALLEN PARKWAY #2, UP	367	3100	ALLEN PARKWAY	77019
NS-II	UP	U-KELLY STREET, UP	352	1802	E. NORTH LOOP	77022
NS-II	UP	U-JENSEN DRIVE #1, UP	111	1700	JENSEN DRIVE	77020
NS-II	UP	U-CROSSTIMBERS, UP	392	7506 1/2	HARDY, E.	77093

NS-II	LS	5TH STREET	220	212	5TH ST., W.	77007
NS-II	LS	BAYOU PLACE	569	600	BAGBY	77002
NS-II	LS	BAYOU TIMBER	10	5100 1/2	BAYOU TIMBER LN.	77056
NS-II	LS	BENBROOK	105	819	BENBROOK	77076
NS-II	LS	BLUE BELL	472	501	BLUE BELL	77037
NS-II	LS	CANINO RD., W.	353	101	CANINO RD., W.	77076
NS-II	LS	COTTAGE GROVE	543	5210	KIAM	77007
NS-II	LS	CRESTWOOD	48	25	CRESTWOOD	77007
NS-II	LS	DURHAM	56	734	DURHAM DR.	77007
NS-II	LS	FRAWLEY	334	1100	FRAWLEY	77099
NS-II	LS	HEIGHTS	544	248	HEIGHTS	77007
NS-II	LS	IROQUOIS	284	12903	IROQUOIS	77037
NS-II	LS	JANISCH RD.	203	342	JANISCH RD., E.	77022
NS-II	LS	JOHN ALBER RD.	354	621	JOHN ALBER RD.	77037
NS-II	LS	KNOX	116	8200	KNOX	77088
NS-II	LS	MELROSE PARK	609	1207	MESA VILLAGE DR.	77037
NS-II	LS	MITCHELL	473	602	MITCHELL	77037
NS-II	WWF	NORTHSIDE	567	100	JAPHET	77020
NS-II	LS	PARKER	151	2007	PARKER	77007
NS-II	LS	RANDOLPH	159	820	RANDOLPH	77088
NS-II	LS	RUNNELS ST	603	2014 1/2	RUNNELS STREET	77003
NS-II	LS	SHEPHERD, N.	344	600	SHEPHERD, N.	77007
NS-II	LS	STUDEMONT ADDITION	289	611 1/2	WENDEL	77009
NS-II	LS	TEXAS	198	3502	TEXAS	77023
NS-II	LS	THRELKELD	408	503	THRELKELD	77007
NS-II	LS	WOODWAY#1	153	4750	WOODWAY	77056
NS-II	LS	VELASCO	620	801 1/2	N. VELASCO	77003
NS-II	LS	WALDEN PLACE	387	855	CANINO RD.	77076
NS-II	LS	BONNER	538	1516 1/2	BONNER	77007
NT	WWTP	NORTH BELT	252	14506	SMITH	77396
NT	LS	IAH TERMINAL	584	4211	WILL CLAYTON PARKWAY	77032
NT	LS	WILL CLAYTON	480	18095	LEE RD.	77396
NT	LS	HEATHER RIDGE	290	6130	ROCKY NOOK	77396
NT	LS	BORDERSVILLE	533	19409	SEARS	77338
NT	LS	INTERWOOD M.U.D.	251	4150	ALDINE BENDER	77032
NT	LS	M.U.D. #266	407	15021	CROSSWINDS	77032
NT	LS	VICKERY	358	15479	VICKERY	77032
NW	WWTP/CFS	NORTHWEST	145	5423	MANGUM	77091
NW	LS/CFS	CHERRY OAK	235	4142	CHERRY OAK CIRCLE	77088
NW	LS/CFS	FWSD #028 (HEMPSTEAD)	52	12001	SOWDEN	77040
NW	LS	GULF BANK RD. #1	351	5400	GULF BANK RD., W.	77088
NW	LS	STREAMSIDE	626	7659	STREAMSIDE DRIVE	77088

NW	LS/CFS	DOLLYWRIGHT	311	1825 1/2	DOLLYWRIGHT	77088
NW	LS	FERGUSON WAY	69	2103	FERGUSON WAY	77088
NW	LS	GULF BANK RD. #2	442	3750	GULF BANK RD., W.	77088
NW	LS	HEMPSTEAD RD. #2	439	14926 1/2	HEMPSTEAD RD.	77040
NW	LS	HOLLISTER	371	5901 1/2	HOLLISTER	77040
NW	LS	LANG	118	4401	LANG	77092
NW	LS	LANGFIELD RD.	381	4998 1/2	LANGFIELD RD.	77040
NW	LS	N. HOUSTON- ROSSLYN	124	9326	HOUSTON-ROSSLYN, N.	77088
NW	LS	NORTHCOURT	554	8175	NORTHCOURT	77025
NW	LS	PINEMONT	224	4600	PINEMONT	77092
NW	LS	SCENIC GREEN	428	8406	SCENIC GREEN DR.	77088
NW	LS	WINDFERN	386	6350	WINDFERN Rd.	77040
NW	CFS	11TH STREET	63	2100	W. 11TH	77008
NW	CFS	YALE ST. ODOR CONTROL	564	5200	YALE ST.	77091
NW	LS	NORTHBOROUGH DR. #3	619	13131	NORTH FREEWAY	77060
PARK TEN	WWTP	PARK TEN	245	16500	PARK ROW	77084
PARK TEN	LS	PARK TEN #1	264	5350	PARK ROW	77084
PARK TEN	LS	PARK TEN #2	265	1622	BARKER CYPRESS	77084
SB	WWTP	SIMS BAYOU- SOUTH	283	3005	GALVESTON RD.	77017
SB	WWTP	SIMS BAYOU	183	9500	LAWNDALE	77017
SB	LS	CENTRAL	183	9500	LAWNDALE	77017
SB	SLG	SIMS BAYOU	182	9570 1/2	LAWNDALE	77017
SB	LS	GULF FREEWAY #2	98	8209	GULF FREEWAY	77061
SB	LS	GOODYEAR	356	9850 1/2	GOODYEAR	77017
SB	WWLS	BELMONT	559	5901	CONLEY	77021
SB	LS	BROCK	26	3510	BROCK	77021
SB	WWLS/CFS	SCOTT#1	172	3100	SCOTT	77004
SB	LS	PLUM CREEK	156	8307	SOUTH LOOP, E.	77012
SB	UP	U-GULF FREEWAY #1, UP	64	4401 1/2	GULF FREEWAY	77023
SB	UP	U-GALVESTON ROAD.UP	85	5005	GALVESTON	77017
SB	LS	BEEKMAN	133	5105	BEEKMAN	77087
SB	LS	BELVEDERE	444	4925 1/2	BELVEDERE	77021
SB	LS	BERKLEY	272	2518	BERKLEY	77017
SB	LS	CYPRESS	355	8500	CYPRESS	77012
SB	LS/CFS	EDDINGTON	459	1425	EDDINGTON	77011
SB	LS	EPPE	365	6949	EPPE	77087
SB	LS	FAIRWAY	92	7342	FAIRWAY	77087
SB	LS	FINDLAY	150	8542	FINDLAY	77017
SB	LS/CFS	GARDEN VILLAS	86	7375	SIMS	77087
SB	LS	GRAND	94	6333	GRAND BLVD.	77021

SB	LS	HOWARD (SE) SLG TRANSFER	100	8513 1/2	HOWARD	77017
SB	LS	KELLOGG (HARRISBURG)	103	502	KELLOGG	77087
SB	UP	LAWNDALE	608	9701	LAWNDALE ST	77017
SB	LS	LYDIA	187	3512	LYDIA	77051
SB	LS	MAC GREGOR WAY, N. #2	458	3030	MAC GREGOR WAY, N.	77021
SB	LS	MAC GREGOR WAY, N. #3	186	4377 1/2	FACULTY LANE	77021
SB	LS	MYKAWA	345	8400	MYKAWA	77048
SB	WWLS	OAK MEADOWS (SIMS AREA)	568	1200	OAK MEADOWS	77017
SB	LS	PEERLESS	152	6929	PEERLESS	77021
SB	LS	REVEILLE	169	4901	REVEILLE	77087
SB	LS	SCOTT #2	173	8123 1/2	SCOTT	77033
SB	WWF	SCOTT ST. WWF	540	4728	STARWAY	77023
SB	LS	SOUTH RICHEY	374	3229 1/2	RICHEY, S.	77017
SB	LS	TELEPHONE RD. #1	11	3545	TELEPHONE RD.	77023
SB	LS	WEST COURT DR.	207	2	WEST COURT DR.	77017
SB	LS	WHEELER	212	3537	WHEELER	77004
SB	LS	WINGTIP	215	9555	WINGTIP	77075
SB	PS	BELMONT FORCE MAIN	561	4470	N. MACGREGOR	77004
SE	WWTP	SOUTHEAST	189	9610	KINGSPPOINT	77089
SE	LS	DURHAM PARK	600	10934	KESS WAY	77075
SE	LS/CFS	BALLENTINE	532	10590	BALLENTINE	77061
SE	LS	KINGSPPOINT	117	10801	KINGSPPOINT	77075
SE	LS	SWEETWATER POINT	596	11217	HALL RD.	77089
SE	LS	TELEAN	478	6840	TELEAN	77075
SE	LS	TORRINGTON LN.	166	10123	TORRINGTON LN.	77075
SE	LS	EL TESORO	610	6102 1/2	EL ORO DRIVE	77048
SE	LS	SCARSDALE BLVD	623	13251 1/2	SCARSDALE BLVD	77034
SM	WWTP	SAGEMONT	171	11700	SAGEARBOR	77089
SM	LS	HIGHLAND MEADOW	443	11901	HIGHLAND MEADOW	77089
SM	LS	SCARSDALE	336	12501	SCARSDALE	77089
SW	WWTP	SOUTHWEST	190	4211	BEECHNUT	77096
SW	LS/CFS	GULFTON	99	5905	GULFTON	77081
SW	LS	WESTHEIMER #1	209	5882	WESTHEIMER	77056
SW	LS/CFS	CHIMNEY ROCK #2	53	11677	CHIMNEY ROCK	77035
SW	LS	BINTLIFF	15	6810	BINTLIFF	77074
SW	LS	BERING DR.	14	1801	BERING DRIVE	77057
SW	LS/CFS	SAN FELIPE	140	5910	SAN FELIPE	77057
SW	LS	FONDREN #2	77	10900	FONDREN	77096
SW	LS	CHIMNEY ROCK #1	25	352 1/2	CHIMNEY ROCK	77056
SW	LS	KIRBY DRIVE #2	350	7552	KIRBY	77030
SW	LS	W.C.I.D. #051	226	4900	GALLAGHER	77085

SW	LS	ALDER	363	7275 1/2	ALDER	77401
SW	LS	AYRESHIRE	388	3715	BRAESWOOD, N.	77025
SW	LS	BELLFORT, W. #2	332	9105	RUFFINO	77031
SW	LS	BELLFORT, W. #3	307	9817	BELLFORT, W.	77031
SW	LS	BRADFORD	17	3545	BRADFORD	77025
SW	LS	BRAESWOOD, N.(MEYERLAND)	141	2707	BRAESWOOD, N.	77030
SW	LS	BRAESWOOD, S. #1	137	5502	BRAESWOOD, S.	77096
SW	LS	BROMPTON	27	7250	BROMPTON	77025
SW	LS	CARVEL LANE	31	6913	CARVEL LANE	77074
SW	LS	CLIFFWOOD	547	11310	CLIFFWOOD	77035
SW	LS	FONDREN MEADOW	366	8903 1/2	DEER MEADOW DR., N.	77071
SW	LS	GARDEN,S.(NORTHBROOK)	330	12414 1/2	GARDEN, S.	77071
SW	LS	GREENWILLOW	574	9915	GREENWILLOW	77035
SW	LS	LINKWOOD	123	3623 1/2	LINKWOOD	77025
SW	LS	MAIN ST., S.	115	9000 1/2	MAIN,S.	77054
SW	LS	MILLBANKS	329	12564	MILLBANKS	77071
SW	LS	RIDING	167	10840 1/2	CRAIGHEAD DR.	77025
SW	LS	ROYALTON	364	6198 1/2	ROYALTON	77081
SW	LS	STELLALINK	575	8826 1/2	STELLALINK	77025
SW	LS/CFS	WESTPARK#1	208	4307	WESTPARK DR.	77027
SW	LS	WESTRIDGE	346	2417	WESTRIDGE	77054
SW	LS	W. FONDREN PLACE	573	8903 1/2	DEER MEADOW	77071
SW	LS	WILLOW MEADOW	18	8623 1/2	WILLOW MEADOW	77031
SW	LS/CFS	WILLOWBEND	213	6331	WILLOWBEND BLVD.	77096
SW	LS	TREEWATER	618	7321	TREEWATER	77072
SW	LS	RIDGEROE LANE	613	15926	RIDGEROE LANE	77053
SW	CFS	REVERE	551	3100	REVERE @ W. ALABAMA	77098
SW	LS	SOUTH KIRKWOOD	617	4418	SOUTH KIRKWOOD	77072
TIDWELL T	WWTP	TIDWELL TIMBERS	498	10545	TIDWELL RD.	77078
TIDWELL T.	LS	TIDWELL TIMBERS	499	10546	TIDWELL RD.	77078
TK	WWTP	TURKEY CREEK	201	1147	ENCLAVE PARKWAY	77079
TK	LS/CFS	KIRKWOOD#3	340	1235	KIRKWOOD DR., S.	77077
TK	LS	FLEETWOOD	416	15702	FOXGATE	77079
TK	LS	MEMORIAL DR. #5	415	15350	MEMORIAL DR.	77079
TK	LS	BRIAR FOREST	479	13031	BRIAR PATCH	77077
TK	LS	DAIRY ASHFORD RD. #1	347	1318	DAIRY ASHFORD RD.	77077
TK	LS	ELDRIDGE, N.	445	609	ELDRIDGE RD., N.	77079
TK	LS	GRISBY STREET	417	14834	GRISBY	77079
TK	LS	HARVEST MOON	236	709	HARVEST MOON LANE	77077
TK	LS	LAKES OF PARKWAY #1	468	13955	BARNHART	77077

TK	LS	LAKES OF PARKWAY#2	597	2415	LEATON	77077
TK	LS	M.U.D. #107	395	13702	TRAILVILLE DR.	77079
TK	LS	M.U.D. #175-1	281	1090	ENCLAVE PARKWAY	77079
TK	LS	M.U.D. #175-2	282	840	HWY6 SOUTH	77079
TK	LS	M.U.D. #90	405	2082	GENTRYSIDE	77077
TK	LS	OLD STONE TRAIL	176	15531	OLD STONE TRAIL	77079
TK	LS	PARKWAY PLAZA	249	13355	RINCON	77077
TK	LS	PIPING ROCK	295	13910	PIPING ROCK	77082
TK	LS	TANYA CIRCLE	177	15726	TANYA CIRCLE	77079
UB	WWTP	UPPER BRAYS BAYOU	286	13525	OLD WESTHEIMER	77082
UB	LS	GESSNER #2	88	1017	GESSNER, S.	77042
UB	LS	ALIEF CENTRAL	545	12950 A	SKYMEADOW DR.	77082
UB	LS	DAIRY ASHFORD RD.#4	430	3600	DAIRY ASHFORD RD.	77082
UB	LS	DAIRY ASHFORD RD. #5	432	3303	DAIRY ASHFORD RD., N.	77082
UB	LS&CFS	ELDRIDGE PARKWAY	593	3840	ELDRIDGE PARKWAY S.	77083
UB	LS	GESSNER #1	197	118	GESSNER	77024
UB	LS	HUDSON CT	108	9100	BRIAR FOREST	77024
UB	LS	SHADOW LAKES	570	3225	SHADOW BRIAR DR.	77082
UB	LS	SYNOTT RD.#2	429	3800	SYNOTT RD.	77082
UB	LS	VOSS #2 (Hammersmith)	101	2234	VOSS, S.	77057
UB	LS	WHITTINGTON DR.	433	12951	WHITTINGTON DR.	77077
UB	LS/CFS	WOODWAY#2	33	7700	WOODWAY DR	77063
W #111(WJ)	WWTP	W.C.I.D.#111	279	10601	HUNTINGTON POINT	77099
W #111(WJ)	LS	COOK RD (BROOKFIELD)	598	8701	COOK RD.	77099
W #47(WC)	WWTP	W.C.I.D.#47	225	7410	GALVESTON	77034
W #47(WC)	LS	GENOA	477	9900	KOENIG	77034
W #47(WC)	LS	GILPIN	313	300	GILPIN	77034
W #47(WC)	LS	GULF PALMS	476	11614 1/2	DUMA	77034
W #47(WC)	LS	SOUTH POINT	205	10385	GULF PALMS	77034
W #47(WC)	LS	THETA	196	2326	THETA	77034
W.C.I.D. #76	WWTP	W.C.I.D.#76	485	13535	RIVER TRAIL DR.	77396
W.C.I.D. #76	LS	RIVERWOOD ESTATES #1	496	12425	FRAZIER RIVER DR.	77050
W.C.I.D. #76	LS	RIVERWOOD ESTATES #2	497	6901	LAKEMONT DR.	77050
WB	WWTP	WILLOWBROOK	469	7101	W. GREENS RD.	77066
WB	LS	M.U.D.#159	294	17402	WEST MONTGOMERY RD.	77064
WD	WWTP	WEST DISTRICT	237	255	ISOLDE	77042
WD	LS	RANCHO BAUER	539	529 1/2	RANCHO BAUER	77077
WD	SWF	CONRAD SAUER	571	10150	OLD KATY RD.	77024
WD	LS	ADDICKS DAM	475	13200	OLD KATY RD.	77079
WD	LS	BRAYMORE DR.	440	10848 1/2	BRAYMORE DR.	77043
WD	LS	EMNORA#1	29	9642	EMNORA LN.	77080
WD	LS	EMNORA#2	65	10662	EMNORALN.	77043

WD	LS	LEGEND LANE	121	20	LEGEND LN.	77079
WD	LS	OLD KATY ROAD	2	12502	OLD KATY RD.	77079
WD	LS	SHERWOOD OAKS	181	11333	CHATTERTON	77084
WD	LS	WICKCHESTER	319	11807	WICKCHESTER	77079
WESTWAY	WWTP	WESTWAYMUD	398	10273	GENARO	77041
WESTWAY	LS	LARSTON	410	1058	LUMPKIN	77043
WESTWAY	LS	WESTWAYUD	406	4650	BRITTMORE	77043
WILLOWS	LS	M.U.D.#237	299	8225	F.M.1960W.	77064
WILLOW B	LS	WILLOW CHASE M.U.D.	385	8350	F.M. 1960 W.	77064
WILLOW R	WWTP	WILLOW RUN	585	1818 1/2	MOSHER LN	77088
WILLOW R	LS	RUTHERFORD LN	586	8814	RUTHERFORD LN	77088
WILLOW R	LS	GRENSHAW ST	587	878	GRENSHAW ST	77088
WILLOW R	LS	W. MOUNT HOUSTON RD	588	1819	W. MOUNT HOUSTON RD	77088
WO	WWTP	WHITE OAKS	274	7103	GULF BANK RD., W.	77088
WO	LS	JADEWOOD	324	7205	JADEWOOD	77088
WO	LS	WOODSMAN TRAIL	258	7027	WOODSMAN TRAIL	77092

DRINKING WATER LOCATIONS

Service Area	Facility Type	Facility Name	Facility No.	Address	
NE	RP	Acres Homes Plant	001	1810 Dolly Wright	77088
NE	RP	Acres Homes II Plant	001	1820 Dolly Wright	77088
NW	RP	Bellaire Braes Plant	002	12423 Bellaire Blvd	77072
NE	GW	Belleau Woods Plant	016	3422 White Deer Lane	77339
NE	GW	Braeswood Plant	018	9100 Bob White	77474
NW	GW	Braes U/D Plant	125	3710 Eldridge	77082
NW	GW	Brookfield Plant	069	9007 Dairy View	77099
NE	GW	District - 73 #1 Plant	050	24120 E. Lake Houston	77336
NE	GW	District - 73 #2 Plant	099	306 Blue Tail	77336
NE	GW	District - 203 Plant	127	1304 Grears Road	77067
NW	GW	District - 175 Plant	129	1206 Arrow Hill	77077
NW	GW	District - 51 #2 Plant	057	4000 Wilcrest	77072
NE	GW	District - 159 Plant	132	16838 Tomball Parkway	77369
NE	E/T	District - 42 #2 Plant	087	7501 Langley Road	77016
NW	GW	District - 223 Plant	126	13301 Sand Bridge	77077
SW	GW	District - 123 Plant	084	10003 Kirkwood	77099
NE	GW	District - 254 Plant	131	13685 Breton Ridge	77470
SE	GW	District - 54 Plant	047	8108 Richmond	77063
SW	GW	District - 218 Plant	106	12705 Brant Rock	77082
NE	GW	District - 237 Plant	133	8755 Mills Road	77064
NE	GW	District - 266 Plant	138	4950 Aero Park	77332
SW	GW	District - 71 Plant	074	1610 Hayes Road	77077
SW	GW	District - 184 Plant	085	10518 Beechnut	77072
SW	GW	District - 90 #2 Plant	082	11607 Herald Square	77099
SW	GW	District - 111 #2 Plant	083	10301 Sun City Court	77099
NW	GW	Enclave #2 Plant	137	13135 Forkland	77077
NW	GW	Jersey Village Plant	077	7207 Fairview	77041
NW	GW	Katy Addicks Plant	005	11500 Old Katy Road	77043
NW	RP	Katy Repump Plant	98	1456 Brittmoore	77043
NE	GW	Interwood Plant	130	4631 Aldine Bender	77032
NE	GW	Plantation Hills Plant	078	26902 Plantation Hills	77535
NW	E/T	Park Ten West E/T	107	1300 Lanqham Creek	77084
NW	E/T	Park Ten East E/T	106	1300 Lanqham Creek	77084
NW	GW	Park Ten Central Plant	128	1300 Langham Creek	77084
SW	GW	Parkglen West Plant	066	10630 South Kirkwood	77099
SW	GW	Parkglen #1 Plant	033	10923 Standcliff	77099
NW	GW	Rosewood Plant	108	12844 Westheimer	77077
SW	GW	Ridqemont Plant	089	15089 Ridqeroe	77053
NW	RP	Spring Branch Plant	011	9400 Kempwood	77080

SW	GW	Sharpstown #1 Plant	023	6910 Bintliff	77081
SW	RP	Southwest Plant	010	4410 Westpark	77082
SW	RP	Sims Bayou Plant	008	13840 Croquet	77085
NW	GW	Willowchase Plant	134	13135 Misty Willow	77070
NW	GW	West Houston #3 Plant	111	14925 South Richmond	77082
NE	GW	Moonshine Hills Plant	016	19000 Moonshine Loop	77338
SW	GW	Westbury #2 Plant	103WL3	10602 1/2 Braewick	77496
NE	WS	Acres Homes #1	001WL1	1210 W. Little York	77088
NE	WS	Acres Homes #2A	001WL2A	1810 Dolly Wright	77088
NE	WS	Acres Homes #2B	001WL2B	1810 Dolly Wright	77088
NE	WS	Acres Homes #2SB	001WL2S B	1810 Dolly Wright	77088
NE	WS	Acres Homes #3	001WL3	2110 Esther	77088
NE	WS	Acres Homes #3A	001WL2A	2110 Esther	77088
NE	WS	Acres Homes #4	001WL4	2300 Ellington	77088
NE	WS	Acres Homes #5	001WL5	9805 W. Montgomery	77088
NE	WS	Antipollution #1	997	22615 W. Shorewood	77532
SW	WS	Ashford Point (D-218) #1	106	12705 Brant Rock	77082
SW	WS	Ashford Point (D-218) #2	106	12930 Ashford Point Dr.	77082
NW	WS	Barkers North (Mem.W. Mud-2) #3	086WL3	16005 Katy Frwy.	77094
SW	WS	Bellaire Braes #1	002WL1	12423 Bellaire Blvd.	77072
SW	WS	Bellaire Braes #2	002WL2	11331 Carvel Ln.	77072
SW	WS	Bellaire Braes #3	002WL3	11818 Corona Ln.	77072
SW	WS	Bellaire Braes #4	002WL4	7803 S. Dairy Ashford	77072
SW	WS	Bellaire Braes #5	002WL5	12885 Carvel Ln.	77072
SW	WS	Bellaire Braes #6A	002WL6A	8222 S. Dairy Ashford	77072
SW	WS	Bellaire Braes #6B	002WL6B	8222 S. Dairy Ashford	77072
SW	WS	Braeburn West #1	017	10711 Silkwood	77031
SW	WS	Braeswood #1	018	9100 Bob White	77072
SW	WS	Brays Village-1 (D-51) #1	044	4325 Baynard	77072
SW	WS	Brays Village-2 (D-51) #2	057	4000 Wilcrest	77082
SW	WS	Briar Hills-2 #2 (D- 175)	129	1206 Arrow Hill	77072
SW	WS	Brookfield #1	069	9007 Dairy View Ln.	77072
SW	WS	Centerfield #1 (D-254)	131	13685 Breton Ridge	77070
SW	WS	Concourse #1 (D-184)	085	10518 Beechnut	77036
NE	WS	Crosswinds Plaza #1 (D-266)	138	4950 Aeropark Or.	77032
NE	WS	Eisenhower Park (Lake Houston) #1	995	13501 Aqueduct	77044
SW	WS	Enclave (0-90) #2	137	13135 Forkland	77077
SW	WS	Fleetwood (D-10) #1	093	931 IvyWall	77079
NE	WS	Greens Crossing (D-203)#1		1304 Gears Rd.	77067
NE	WS	Greens Crossing (D-203) #2	127	1500 Greens Pkwy.	77032

SW	WS	Huntington Village-1 (D-111)#1	060WL1	9603 Cook Rd.	77099
SW	WS	Huntington Village-2 (D-111) #2	060WL2	10301 Sun City Crt.	77092
NE	WS	Intercontinental-1 #1	014WL1	3102 McKaughan	77032
NE	WS	Intercontinental-1 #2	014WL2	18300 JFK Blvd.	77067
NE	WS	Interwood (Interwood MUD) #2	130WL2	4631 Aldine Bender	77032
NW	WS	Jersey Village #2	077	11201 Spencer Rd.	77041
NW	WS	Jersey Village #3	077	11905 Spencer Rd.	77041
NW	WS	Jersey Village #4	077	7012 Maynard	77064
NW	WS	Jersey Village #5	077	13410 Spencer Rd.	77041
NW	WS	Jersey Village #6	077	13802 Spencer Rd.	77041
NW	WS	Jersey Village #7	077	6750 Addicks- Satsuma	77084
NW	WS	Jersey VillaQe #8	077	15531 Spencer Rd.	77041
NW	WS	Katy Addicks #1	005	11500 Old Katy Rd.	77043
NW	WS	Katy Addicks #2	005	12210 Old Katy Rd.	77079
NW	WS	Katy Addicks #6	005	1800 Sherwood Forest	77043
NW	WS	Katy Addicks #7	005	10907 Ridgeview	77043
NW	WS	Katy Addicks #9	005	2821-1/2 Brittmore	77043
NW	WS	Katy Addicks #10	005	12835 Clay Rd.	77043
NW	WS	Katy Addicks #11	005	1100-1/2 N. Eldridge	77077
NW	WS	Katy Addicks #12	005	11060 Timberline	770
NW	WS	Katy Addicks #13	005	10981 Hammerly Blvd.	770
SW	WS	Keegans Glen (D-123) #1	084WL1	10003 South Kirkwood	77099
SW	WS	Keegans Glen (D-123) #2	084WL2	10103 Berrylimb	77099
SW	WS	Lakeside Place (D-71) #1	074WL1	1610 Hayes Rd.	77077
SW	WS	Lakeside Place (D-71)#2	074WL2	12220 Whittington Dr.	77077
SW	WS	Lakeside Place (D-71) #3	074WL3	1610 Haves Rd.	77077
NE	WS	Lakewood Heights-1 (D-73) #1	050WL1	24120 E. Lake Houston	77336
NE	WS	Lakewood Heights-2 (D-73) #3	099WL3	306 Blue Tail	77336
NW	WS	Park Ten Place (Prk 10 MUD) #1	128WL1	1300 Langham Creek	77084
NW	WS	Park Ten Place (Prk 10 MUD) #2	128WL2	1300 Langham Creek	77084
NW	WS	Park Ten Place (Prk 10 MUD) #3	128WL3	18324 Addicks Levee Dr.	77084
NW	WS	Park Ten Place (Prk 10 MUD) #4	128WL4	14315 Park Row Blvd.	77079
SW	WS	ParkQlen-1 #1	033WL1	10923 Standliff	77099
SW	WS	ParkQlen West #1	066WL1	10630 S. Kirkwood	77099
SW	WS	Parkridge (Braes UD) #1	125WL1	3710 Eldridrige	77082
SW	WS	Parkridge (Braes UD) #2	125WL2	3710 Eldridge	77082
SW	WS	Parkway Plaza (D2-223)	126WL1	13300 Sandbridge Dr.	77077
NE	WS	Plantation Hills #2	XXXWL2	Wolf Road	77336
SW	WS	Rosewood-1 #3	613WL1	12844 Westheimer	77077
SW	WS	Sharpstown-1 (D-24) #1	023WL1	6910 Bintliff	77074
SW	WS	Sharpstown-1 (D-24) #3A	023WL3	6910 Bintliff	77074

SW	WS	Sharpstown-2 (D-24)#4	030WL4	8619 Bellaire Blvd.	77036
SW	WS	Sims Bayou #1	008WL1	13840 Croquet	77085
SW	WS	Sims Bayou #2	008WL2	6400 W. Orem	77085
SW	WS	Sims Bayou #3	008WL3	13825 Blue Ridge	77085
SW	WS	Sims Bayou #4	008WL4	12445 Hodges	77085
SW	WS	Sims Bayou #5A	008WL5	12434 Settemont Rd.	77085
SW	WS	Sims Bayou #7	008WL7	13896 1/2 Blue Ridge Rd.	77085
SW	WS	Southwest #1A	010WL1A	5210 Westpark	77056
SW	WS	Southwest #3A	010WL3A	5730 Westpark	77081
SW	WS	Southwest #3SB	010WL3S B	5730 Westpark	77081
SW	WS	Southwest #4A	010WL4A	6002 Westpark	77057
SW	WS	Southwest #5A	010WL5A	6302 Westpark	77057
SW	WS	Southwest #6A	010WL6A	3975 Hillcroft	77057
SW	WS	Southwest #8	010WL8	8700 Westpark	77063
SW	WS	Southwest #9	010WL9	4410 Westpark	77027
SW	WS	Southwest #10	010WL10	4426 Southwest Frwy.	77027
SW	WS	Southwest #11	010WL11	9120 Westpark	77063
NW	WS	Spring Branch #1SB	011WL1S B	9400 Kempwood	77080
NW	WS	Spring Branch #2	011WL2	9420 Emnora	77080
NW	WS	Spring Branch #3A	011WL3A	9531 Kempwood	77080
NW	WS	Spring Branch #4	011WL4	4105 Campbell	77080
NW	WS	Spring Branch #4A	011WL4A	4105 Campbell	77080
NW	WS	Spring Branch #5	011WL5	9107 Kempwood	77080
NW	WS	West Houston-1 #1	110WL1	15306 Westheimer	77082
NW	WS	West Houston-3 #3	110WL3	14925 S. Richmond	77082
NW	WS	West Lake Park (D-21) #1	094WL1	14322 Grisby	77079
NW	WS	White Oak #1	064WL1	9702 Deanwood	77040
NW	WS	Willowbrook Mall (D-159) #1	132WL1	16838 Tomball Pkwy.	77086
NW	WS	Willowbrook Mall (D-159) #2	132WL2	16838 Tomball Pkwy.	77086
NW	WS	Willowbrook West (D-237) #1	133WL1	8755 Mills Rd.	77064
NW	WS	Willowchase Park (Willowchase MUD)#1	134WL1	13135 Misty Willow	77070
N/A	WPP	N/A	N/A	3100 Genoa-Red Bluff	77034
N/A	WPP	N/A	N/A	12550 Water Works Way	77396
N/A	WPP	N/A	N/A	2300 Federal Road	77015

EXHIBIT "C"

DRUG POLICY COMPLIANCE AGREEMENT

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

Saber Power Services, LLC (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 2, 2020
Date

Contractor Name Saber Power Services, LLC

Signature

Title

Chief Financial Officer

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

I, N/A 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.

6-8-2020

Date

Contractor Name

Saber Power Services LLC

Signature

[Signature]

Title

CEO

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

I, N/A 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.

6-8-2020

Date

Contractor Name

Saber Power Services LLC

Signature

[Signature]

Title

CEO

DRUG POLICY COMPLIANCE DECLARATION

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

Saber Power Services, LLC (Contractor)
 (Name of Company)

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

This reporting period covers the preceding six months from 01/01 to 06/01 20 20

RP 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).

RP 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.

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

RP 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 _____

RP From 01/2020 to 06/2020 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

69	0	0	69
0	0	0	0
0	0	0	0

RP 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.

RP 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.

June 2, 2020

Date

Contractor Name

Saber Power Services, LLC

Signature

Title

Chief Financial Officer

EXHIBIT "F"

FEES AND COSTS

Item #	Description	U/M	Unit Price
YR 1 - Group 1 / Electrical Services Labor, Equipment Rental / Rates - Hourly & Shop Costs			
1	Regular Labor Rate: Supervision.	HR	\$78.58
2	Regular Labor Rate: Electrician Journeyman.	HR	\$63.26
3	Regular Labor Rate: Electrical Apprentice.	HR	\$53.59
4	Regular Labor Rate: Laborer.	HR	\$40.86
5	Overtime Labor Rate: Supervisor.	HR	\$117.87
6	Overtime Labor Rate: Electrician/Journeyman.	HR	\$94.89
7	Overtime Labor Rate: Electrical Apprentice.	HR	\$80.39
8	Overtime Labor Rate: Laborer.	HR	\$61.29
9	Emergency Labor Rate: Supervisor.	HR	\$157.16
10	Emergency Labor Rate: Electrician Journeyman.	HR	\$126.52
11	Emergency Labor Rate: Electrical Apprentice.	HR	\$107.18
12	Emergency Labor Rate: Laborer.	HR	\$81.72
13	Equipment Rate: Crane - Digger Truck, 20 Ton.	HR	\$82.50
14	Equipment Rate: Crane - Truck, 20 Ton.	HR	\$30.00
15	Equipment Rate: Crane - Bucket Truck, 70 FT.	HR	\$55.00
16	Equipment Rate: Crane - Tractor Haul Truck, 45 FT.	HR	\$30.00
17	Regular Labor (Engineer w/PE License).	HR	\$155.00
18	Non-Repairable Shop Cost.	EA	\$105.00
YR 1 - Group 2 / Generator Services Labor Rates - Hourly			
1	Generator SRVCS Labor Rate: Regular Labor.	HR	\$125.00
2	Generator SRVCS Labor Rate: Overtime Labor.	HR	\$187.50
YR 1 - Group 3 / Automation Services Labor Rates - Hourly			
1	Automation SRVCS Labor Rate: Regular Labor (Engineer w/PE License).	HR	\$155.00

2	Automation SRVCS Labor Rate: Regular Labor (Programmer).	HR	\$143.00
3	Automation SRVCS Labor Rate: Regular Labor (Technician).	HR	\$100.00
4	Automation SRVCS Labor Rate: Overtime Labor (Engineer w/PE License).	HR	\$175.00
5	Automation SRVCS Labor Rate: Overtime Labor (Programmer).	HR	\$143.00
6	Automation SRVCS Labor Rate: Overtime Labor (Technician).	HR	\$232.50
YR 1 - Group 4 / Hazardous Waste Disposal Fees			
1	Fluor. Lamps	EA	\$5.00
2	PCB Ballast.	EA	\$10.00
3	PCB Oil Filled Transformers.	GAL	\$100.00
4	Oil and Recovery Disposal.	DR	\$100.00
YR 1 - Group 5 / Additional Parts, Materials & Replacements, based on Percentage Mark Up from Original Invoice			
1	Electrical/Automation: Additional Parts and Materials as needed @ Actual Cost plus Mark-Up Percentage.		\$355,000.00
2	Generator: Additional Parts, Materials and Equipment as needed @ Actual Cost plus Mark- up Percentage.		\$1,840.00
3	Cost to Replace a Unit.		\$10,275.00
4	Additional Services.		\$445,000.00
YR 2 - Group 1 / Electrical Services Labor, Equipment Rental / Rates - Hourly & Shop Costs			
1	Regular Labor Rate: Supervision.	HR	\$79.76
2	Regular Labor Rate: Electrician Journeyman.	HR	\$64.21
3	Regular Labor Rate: Electrical Apprentice.	HR	\$54.39
4	Regular Labor Rate: Laborer.	HR	\$41.47
5	Overtime Labor Rate: Supervisor.	HR	\$119.64
6	Overtime Labor Rate: Electrician/Journeyman.	HR	\$96.31
7	Overtime Labor Rate: Electrical Apprentice.	HR	\$81.59
8	Overtime Labor Rate: Laborer.	HR	\$62.21
9	Emergency Labor Rate: Supervisor.	HR	\$159.52
10	Emergency Labor Rate: Electrician Journeyman.	HR	\$128.42
11	Emergency Labor Rate: Electrical Apprentice.	HR	\$108.79
12	Emergency Labor Rate: Laborer.	HR	\$82.95

13	Equipment Rate: Crane - Digger Truck, 20 Ton.	HR	\$83.74
14	Equipment Rate: Crane - Truck, 20 Ton.	HR	\$30.45
15	Equipment Rate: Crane - Bucket Truck, 70 FT.	HR	\$55.83
16	Equipment Rate: Crane - Tractor Haul Truck, 45 FT.	HR	\$30.45
17	Regular Labor (Engineer w/PE License).	HR	\$157.33
18	Non-Repairable Shop Cost.	EA	\$106.58
YR 2 - Group 2 / Generator Services Labor Rates - Hourly			
1	Generator SRVCS Labor Rate: Regular Labor.	HR	\$126.88
2	Generator SRVCS Labor Rate: Overtime Labor.	HR	\$190.31
YR 2 - Group 3 / Automation Services Labor Rates - Hourly			
1	Automation SRVCS Labor Rate: Regular Labor (Engineer w/PE License).	HR	\$157.33
2	Automation SRVCS Labor Rate: Regular Labor (Programmer).	HR	\$145.15
3	Automation SRVCS Labor Rate: Regular Labor (Technician).	HR	\$101.50
4	Automation SRVCS Labor Rate: Overtime Labor (Engineer w/PE License).	HR	\$177.63
5	Automation SRVCS Labor Rate: Overtime Labor (Programmer).	HR	\$145.15
6	Automation SRVCS Labor Rate: Overtime Labor (Technician).	HR	\$235.99
YR 2 - Group 4 / Hazardous Waste Disposal Fees			
1	Fluor. Lamps	EA	\$5.08
2	PCB Ballast.	EA	\$10.15
3	PCB Oil Filled Transformers.	GAL	\$101.50
4	Oil and Recovery Disposal.	DR	\$101.50
YR 2 - Group 5 / Additional Parts, Materials & Replacements, based on Percentage Mark Up from Original Invoice			
1	Electrical/Automation: Additional Parts and Materials as needed @ Actual Cost plus Mark-Up Percentage.		\$360,000.00
2	Generator: Additional Parts, Materials and Equipment as needed @ Actual Cost plus Mark-up Percentage.		\$1,840.00
3	Cost to Replace a Unit.		\$10,275.00
4	Additional Services.		\$455,000.00
YR 3 - Group 1 / Electrical Services Labor, Equipment Rental / Rates - Hourly & Shop Costs			

1	Regular Labor Rate: Supervision.	HR	\$80.94
2	Regular Labor Rate: Electrician Journeyman.	HR	\$65.16
3	Regular Labor Rate: Electrical Apprentice.	HR	\$55.20
4	Regular Labor Rate: Laborer.	HR	\$42.09
5	Overtime Labor Rate: Supervisor.	HR	\$121.41
6	Overtime Labor Rate: Electrician/Journeyman.	HR	\$97.74
7	Overtime Labor Rate: Electrical Apprentice.	HR	\$82.80
8	Overtime Labor Rate: Laborer.	HR	\$63.13
9	Emergency Labor Rate: Supervisor.	HR	\$161.87
10	Emergency Labor Rate: Electrician Journeyman.	HR	\$130.32
11	Emergency Labor Rate: Electrical Apprentice.	HR	\$110.40
12	Emergency Labor Rate: Laborer.	HR	\$84.17
13	Equipment Rate: Crane - Digger Truck, 20 Ton.	HR	\$84.98
14	Equipment Rate: Crane - Truck, 20 Ton.	HR	\$30.90
15	Equipment Rate: Crane - Bucket Truck, 70 FT.	HR	\$56.65
16	Equipment Rate: Crane - Tractor Haul Truck, 45 FT.	HR	\$30.90
17	Regular Labor (Engineer w/PE License).	HR	\$159.65
18	Non-Repairable Shop Cost.	EA	\$108.15
YR 3 - Group 2 / Generator Services Labor Rates - Hourly			
1	Generator SRVCS Labor Rate: Regular Labor.	HR	\$515.00
2	Generator SRVCS Labor Rate: Overtime Labor.	HR	\$775.50
YR 3 - Group 3 / Automation Services Labor Rates - Hourly			
1	Automation SRVCS Labor Rate: Regular Labor (Engineer w/PE License).	HR	\$159.65
2	Automation SRVCS Labor Rate: Regular Labor (Programmer).	HR	\$147.29
3	Automation SRVCS Labor Rate: Regular Labor (Technician).	HR	\$103.00
4	Automation SRVCS Labor Rate: Overtime Labor (Engineer w/PE License).	HR	\$180.25
5	Automation SRVCS Labor Rate: Overtime Labor (Programmer).	HR	\$147.29
6	Automation SRVCS Labor Rate: Overtime Labor (Technician).	HR	\$239.48

YR 3 - Group 4 / Hazardous Waste Disposal Fees			
1	Fluor. Lamps	EA	\$5.15
2	PCB Ballast.	EA	\$10.30
3	PCB Oil Filled Transformers.	GAL	\$103.00
4	Oil and Recovery Disposal.	DR	\$103.00
YR 3 - Group 5 / Additional Parts, Materials & Replacements, based on Percentage Mark Up from Original Invoice			
1	Electrical/Automation: Additional Parts and Materials as needed @ Actual Cost plus Mark-Up Percentage.		\$365,000.00
2	Generator: Additional Parts, Materials and Equipment as needed @ Actual Cost plus Mark-up Percentage.		\$1,840.00
3	Cost to Replace a Unit.		\$10,275.00
4	Additional Services.		\$465,000.00
YR 4 - Group 1 / Electrical Services Labor, Equipment Rental / Rates - Hourly & Shop Costs			
1	Regular Labor Rate: Supervision.	HR	\$82.12
2	Regular Labor Rate: Electrician Journeyman.	HR	\$66.11
3	Regular Labor Rate: Electrical Apprentice.	HR	\$56.00
4	Regular Labor Rate: Laborer.	HR	\$42.70
5	Overtime Labor Rate: Supervisor.	HR	\$123.17
6	Overtime Labor Rate: Electrician/Journeyman.	HR	\$99.16
7	Overtime Labor Rate: Electrical Apprentice.	HR	\$84.00
8	Overtime Labor Rate: Laborer.	HR	\$64.05
9	Emergency Labor Rate: Supervisor.	HR	\$164.23
10	Emergency Labor Rate: Electrician Journeyman.	HR	\$132.21
11	Emergency Labor Rate: Electrical Apprentice.	HR	\$112.00
12	Emergency Labor Rate: Laborer.	HR	\$85.40
13	Equipment Rate: Crane - Digger Truck, 20 Ton.	HR	\$86.21
14	Equipment Rate: Crane - Truck, 20 Ton.	HR	\$31.35
15	Equipment Rate: Crane - Bucket Truck, 70 FT.	HR	\$57.48
16	Equipment Rate: Crane - Tractor Haul Truck, 45 FT.	HR	\$31.35
17	Regular Labor (Engineer w/PE License).	HR	\$161.98
18	Non-Repairable Shop Cost.	EA	\$109.73
YR 4 - Group 2 / Generator Services Labor Rates - Hourly			

1	Generator SRVCS Labor Rate: Regular Labor.	HR	\$130.63
2	Generator SRVCS Labor Rate: Overtime Labor.	HR	\$195.94
YR 4 - Group 3 / Automation Services Labor Rates - Hourly			
1	Automation SRVCS Labor Rate: Regular Labor (Engineer w/PE License).	HR	\$161.98
2	Automation SRVCS Labor Rate: Regular Labor (Programmer).	HR	\$149.44
3	Automation SRVCS Labor Rate: Regular Labor (Technician).	HR	\$104.50
4	Automation SRVCS Labor Rate: Overtime Labor (Engineer w/PE License).	HR	\$182.88
5	Automation SRVCS Labor Rate: Overtime Labor (Programmer).	HR	\$149.44
6	Automation SRVCS Labor Rate: Overtime Labor (Technician).	HR	\$242.96
YR 4 - Group 4 / Hazardous Waste Disposal Fees			
1	Fluor. Lamps	EA	\$5.23
2	PCB Ballast.	EA	\$10.45
3	PCB Oil Filled Transformers.	GAL	\$104.50
4	Oil and Recovery Disposal.	DR	\$104.50
YR 4 - Group 5 / Additional Parts, Materials & Replacements, based on Percentage Mark Up from Original Invoice			
1	Electrical/Automation: Additional Parts and Materials as needed @ Actual Cost plus Mark-Up Percentage.		\$370,000.00
2	Generator: Additional Parts, Materials and Equipment as needed @ Actual Cost plus Mark- up Percentage.		\$1,840.00
3	Cost to Replace a Unit.		\$10,275.00
4	Additional Services.		\$475,000.00
YR 5 - Group 1 / Electrical Services Labor, Equipment Rental / Rates - Hourly & Shop Costs			
1	Regular Labor Rate: Supervision.	HR	\$83.29
2	Regular Labor Rate: Electrician Journeyman.	HR	\$67.06
3	Regular Labor Rate: Electrical Apprentice.	HR	\$56.81
4	Regular Labor Rate: Laborer.	HR	\$43.31
5	Overtime Labor Rate: Supervisor.	HR	\$124.94
6	Overtime Labor Rate: Electrician/Journeyman.	HR	\$100.58
7	Overtime Labor Rate: Electrical Apprentice.	HR	\$85.21
8	Overtime Labor Rate: Laborer.	HR	\$64.97

9	Emergency Labor Rate: Supervisor.	HR	\$166.59
10	Emergency Labor Rate: Electrician Journeyman.	HR	\$134.11
11	Emergency Labor Rate: Electrical Apprentice.	HR	\$113.61
12	Emergency Labor Rate: Laborer.	HR	\$86.62
13	Equipment Rate: Crane - Digger Truck, 20 Ton.	HR	\$87.45
14	Equipment Rate: Crane - Truck, 20 Ton.	HR	\$31.80
15	Equipment Rate: Crane - Bucket Truck, 70 FT.	HR	\$58.30
16	Equipment Rate: Crane - Tractor Haul Truck, 45 FT.	HR	\$31.80
17	Regular Labor (Engineer w/PE License).	HR	\$164.30
18	Non-Repairable Shop Cost.	EA	\$111.30
YR 5 - Group 2 / Generator Services Labor Rates - Hourly			
1	Generator SRVCS Labor Rate: Regular Labor.	HR	\$132.50
2	Generator SRVCS Labor Rate: Overtime Labor.	HR	\$198.75
YR 5 - Group 3 / Automation Services Labor Rates - Hourly			
1	Automation SRVCS Labor Rate: Regular Labor (Engineer w/PE License).	HR	\$164.30
2	Automation SRVCS Labor Rate: Regular Labor (Programmer).	HR	\$151.58
3	Automation SRVCS Labor Rate: Regular Labor (Technician).	HR	\$106.00
4	Automation SRVCS Labor Rate: Overtime Labor (Engineer w/PE License).	HR	\$185.50
5	Automation SRVCS Labor Rate: Overtime Labor (Programmer).	HR	\$151.58
6	Automation SRVCS Labor Rate: Overtime Labor (Technician).	HR	\$246.45
YR 5 - Group 4 / Hazardous Waste Disposal Fees			
1	Fluor. Lamps	EA	\$5.30
2	PCB Ballast.	EA	\$10.60
3	PCB Oil Filled Transformers.	GAL	\$106.00
4	Oil and Recovery Disposal.	DR	\$106.00
YR 5 - Group 5 / Additional Parts, Materials & Replacements, based on Percentage Mark Up from Original Invoice			
1	Electrical/Automation: Additional Parts and Materials as needed @ Actual Cost plus Mark-Up Percentage.		\$375,000.00

2	Generator: Additional Parts, Materials and Equipment as needed @ Actual Cost plus Mark- up Percentage.		\$1,840.00
3	Cost to Replace a Unit.		\$10,275.00
4	Additional Services.		\$476,444.00



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

District B

Item Creation Date: 6/11/2020

25DSGN123 – Professional Architectural Services Contract
– Perkins & Will, Inc. - New North Belt Police Station

Agenda Item#: 23.

Summary:

ORDINANCE appropriating \$1,403,641.25 out of Police Consolidated Construction Fund; approving and authorizing Professional Architectural Services Contract between City of Houston and **PERKINS & WILL, INC** for Design and Construction Phase Services for the new North Belt Police Station Project; providing funding for Civic Art financed by the Police Consolidated Construction Fund - **DISTRICT B - DAVIS**

Background:

RECOMMENDATION: Approve professional architectural services contract and appropriate funds for the project.

SPECIFIC EXPLANATION: The General Services Department (GSD) recommends that City Council approve a professional architectural services contract with Perkins & Will, Inc. to perform design and construction phase services for a new North Belt Police Station for the Houston Police Department. The new North Belt Police Station will replace the existing undersized lease space at 100 Glenborough Drive.

On June 14 and June 21, 2019, GSD advertised a Request for Qualifications containing selection criteria that ranked respondents on experience, key personnel experience, proposed design team consultants, and project approach. The Statements of Qualifications were due on July 11, 2019 and 13 firms responded. GSD formed a selection committee comprised of representatives from GSD and the Houston Police Department to evaluate the respondents. The selection committee short-listed and interviewed five firms. Perkins & Will, Inc. received the highest points based on the advertised criteria and offers the best value for the City.

PROJECT LOCATION: 320 Gears Rd., Houston, TX 77067

PROJECT DESCRIPTION: The newly constructed facilities will include a 29,000 S.F. police station and a 2,000 S.F. Fleet Building. This facility will be a first of its kind for the City of Houston sharing land and amenities with Fire Station No. 84. This model will improve operational processes between police and fire creating more efficient efforts and responses as first responders. Program spaces will include patrol, administration, investigative functions and opportunities for community relations, as well as a Fleet Building for the maintenance of HPD vehicles. Site improvements will include landscaping, parking, storm water detention if required, fencing, exterior lighting, and a

back-up generator.

The project will incorporate the LEED™ (Leadership in Energy and Environmental Design) Green Building Rating System for New Construction (LEED-NC).

SCOPE OF CONTRACT AND FEE: The contract provides for a Basic Services Fee to be paid as a lump sum and certain Additional Services to be paid on a reimbursable basis.

\$ 1,050,000.00	Basic Services Fee
\$ 269,000.00	Additional Services Fee
\$ 60,500.00	Reimbursable Expenses
\$ 1,379,500.00	Total Contract Services
\$ 24,141.25	Civic Art (1.75%)
\$ 1,403,641.25	Total Funding

M/WBE INFORMATION: A 24% M/WBE goal has been established for this contract. The architect has submitted the following certified firms to achieve the goal:

Firm	Work Description	Amount	% of Contract
JQ Infrastructure, LLC	Civil Engineering Services	\$124,155	9%
Four and One, LLC	Landscape Architectural Services	\$ 55,180	4%
Infrastructure Associates, Inc.	MEP Engineering Services	\$151,745	11%
Total		\$331,080	24%

PAY OR PLAY PROGRAM: The proposed contract requires compliance with the City's 'Pay or Play' Ordinance regarding health benefits for employees of City contractors. In this case, the architect elects to play; providing health benefits to eligible employees in compliance with City policy.

CIP FISCAL NOTE: The five-year projected operating and maintenance costs for this project are as noted below:

Capital Project Information: See attached Form A for a breakdown of capital costs.

Estimated Fiscal Operating Impact

Project	FY 21	FY 22	FY 23	FY 24	FY 25	Total FY 21-25
North Belt Police Station	\$0	\$0	\$186,500	\$373,000	\$373,000	\$932,500
WBS No: G-000165-0001-3						

DIRECTOR'S SIGNATURE/DATE:

C. J. Messiah, Jr.
General Services Department

Art Acevedo
Chief of Police
Houston Police Department

Amount of Funding:

\$ 1,403,641.25 Police Consolidated Construction Fund (4504)

Contact Information:

Jacquelyn L. Nisby
Council Liaison
Phone: 832.393.8023

ATTACHMENTS:

Description

Client Department Signature
25DSGN123 - Maps
2020-672 Executed Ordinance

Type

Backup Material
Backup Material
Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

District B

Item Creation Date: 6/11/2020

25DSGN123 – Professional Architectural Services Contract – Perkins & Will, Inc. - New North Belt Police Station

Agenda Item#: 15.

Background:

RECOMMENDATION: Approve professional architectural services contract and appropriate funds for the project.

SPECIFIC EXPLANATION: The General Services Department (GSD) recommends that City Council approve a professional architectural services contract with Perkins & Will, Inc. to perform design and construction phase services for a new North Belt Police Station for the Houston Police Department. The new North Belt Police Station will replace the existing undersized lease space at 100 Glenborough Drive.

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SCOPE OF CONTRACT AND FEE: The contract provides for a Basic Services Fee to be paid as a lump sum and certain Additional Services to be paid on a reimbursable basis.

\$ 1,050,000.00	Basic Services Fee
\$ 269,000.00	Additional Services Fee
<u>\$ 60,500.00</u>	Reimbursable Expenses
\$ 1,379,500.00	Total Contract Services
<u>\$ 24,141.25</u>	Civic Art (1.75%)
\$ 1,403,641.25	Total Funding

M/WBE INFORMATION: A 24% M/WBE goal has been established for this contract. The architect has submitted the following certified firms to achieve the goal:

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Total		\$331,080	24%

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CIP FISCAL NOTE: The five-year projected operating and maintenance costs for this project are as noted below:

Capital Project Information: See attached Form A for a breakdown of capital costs.

Estimated Fiscal Operating Impact

Project	FY 21	FY 22	FY 23	FY 24	FY 25	Total FY 21-25
North Belt Police Station	\$0	\$0	\$186,500	\$373,000	\$373,000	\$932,500
WBS No: G-000165-0001-3						

DIRECTOR'S SIGNATURE/DATE:

DocuSigned by:

C.J. Messiah, Jr. 7/16/2020

C. J. Messiah, Jr.
General Services Department

DocuSigned by:

Art Acevedo

7/19/2020

Art Acevedo
Chief of Police
Houston Police Department

Amount of Funding:

\$ 1,403,641.25 Police Consolidated Construction Fund (4504)

Contact Information:

Jacquelyn L. Nisby
Council Liaison
Phone: 832.393.8023

DS

JLN

ATTACHMENTS:

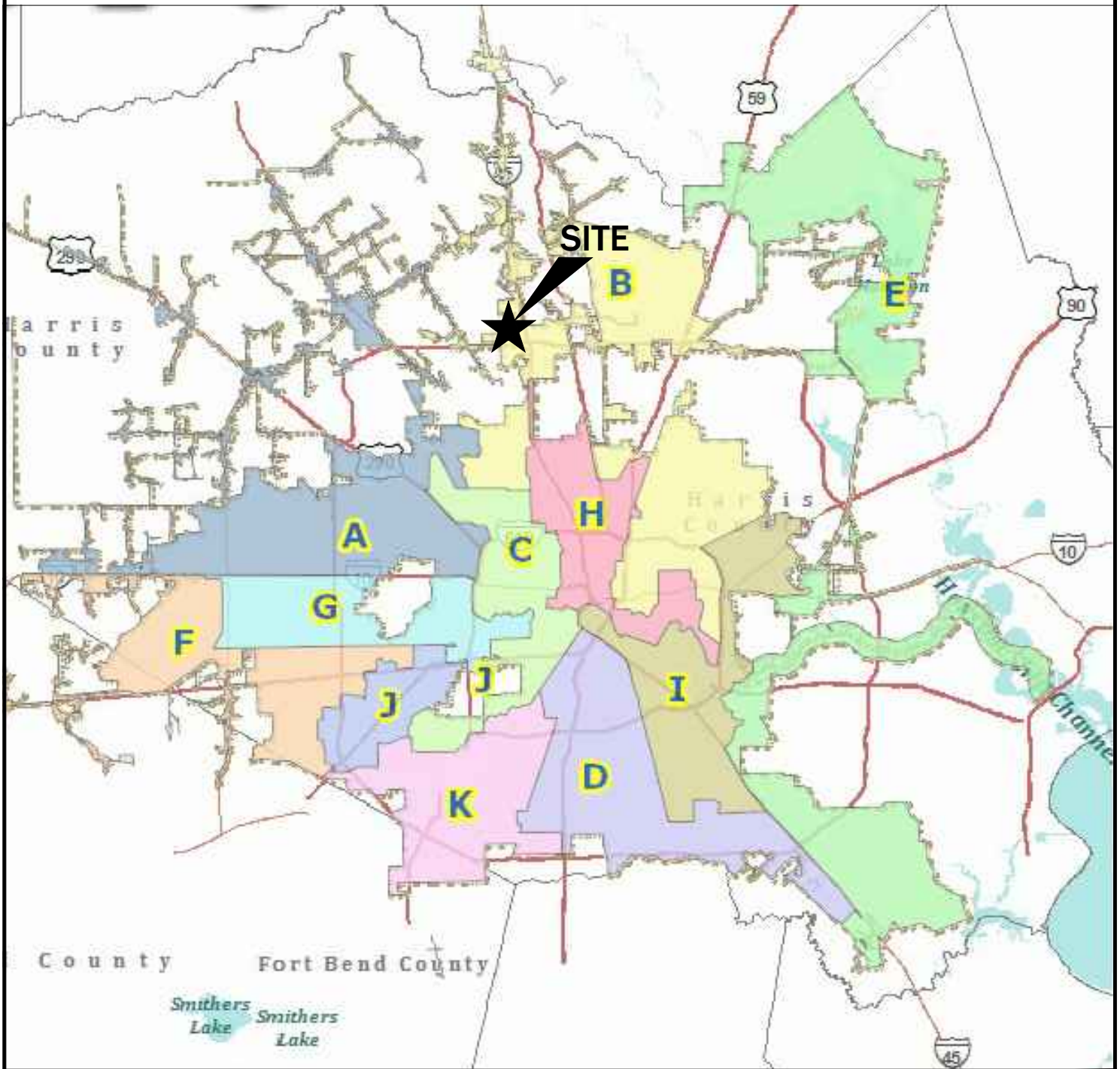
Description

[25DSGN123 - Doc 00455](#)
[25DSGN123 - Maps](#)
[25DSGN123 - Tax Delinquent](#)
[25DSGN123 - 1295](#)
[25DSGN123 - CIP Form A](#)

Type

Backup Material
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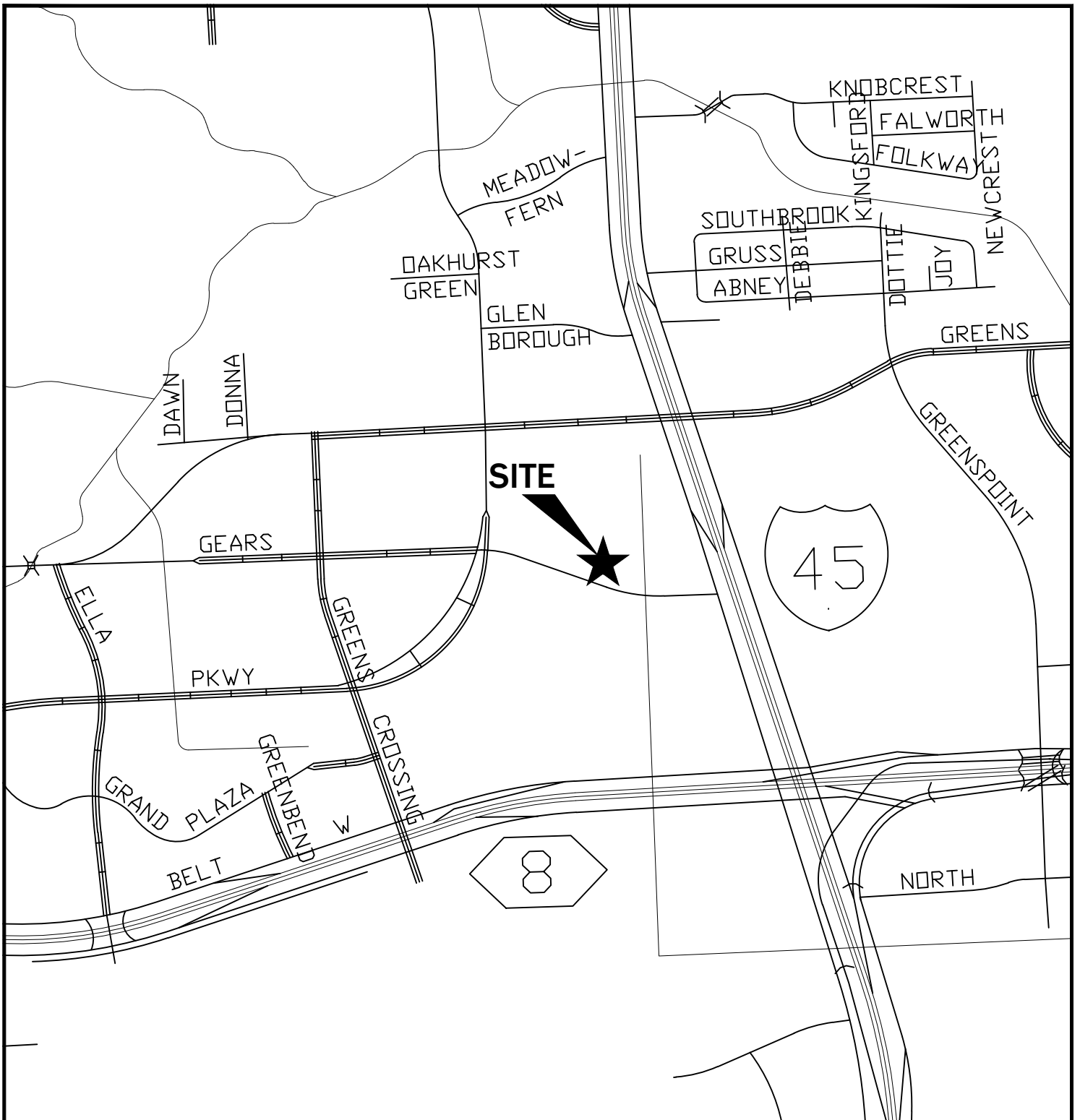
CITY OF HOUSTON
HARRIS COUNTY, TEXAS



NEW NORTH BELT POLICE STATION
320 GEARS RD. HOUSTON, TEXAS 77067

COUNCIL DISTRICT "B"

KEY MAP NO. 372Q



NEW NORTH BELT POLICE STATION
320 GEARS RD. HOUSTON, TEXAS 77067

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.
- (x) A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- () Other - Grant Funds Available

Date: 7-28, 2020

[Signature]
City Controller of the City of Houston, Texas

mg
SCC
FUND REF: 4504-1000 ~ AMOUNT: \$1,403,641.25 ENCUMB. NO.: PO 42-9542
52-0106
530140
CA 46-16309 *FR 3-0383*

City of Houston, Texas Ordinance No. 2020-672

[Signature]
AN ORDINANCE APPROPRIATING \$1,403,641.25 OUT OF THE POLICE CONSOLIDATED CONSTRUCTION FUND; APPROVING AND AUTHORIZING A PROFESSIONAL ARCHITECTURAL SERVICES CONTRACT BETWEEN THE CITY OF HOUSTON AND PERKINS & WILL, INC. FOR DESIGN AND CONSTRUCTION PHASE SERVICES FOR THE NEW NORTH BELT POLICE STATION PROJECT; PROVIDING FUNDING FOR CIVIC ART FINANCED BY THE POLICE CONSOLIDATED CONSTRUCTION FUND; 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. The City Council hereby appropriates the sum of money set out in the title of this Ordinance, out of the fund set out in such title, as follows: \$1,379,500.00 is appropriated for architectural services related to the project described in the title; \$24,141.25 is appropriated for civic art.

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 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 agreement, agreements or other undertaking described in the title of this ordinance, 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. 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 29th day of July, 2020.
APPROVED this _____ day of _____, 20____.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.

Pat J. Haniel
City Secretary

DocuSigned by:
Joe Nwaokoro
A7B91A9275E147C...

(Prepared by Legal Dept. _____)
(JN:yjs 7/20/2020) Sr. Assistant City Attorney
(Requested by C. J. Messiah, Director, General Services Department & Art Acevedo, Chief, Houston Police Department)
(L.D. File No. 0332000084001)

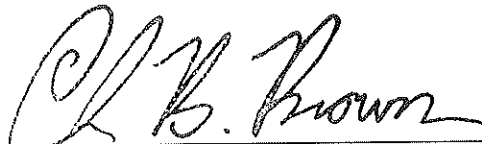
CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: AUG - 4 2020

CERTIFICATE OF CITY CONTROLLER

I, Chris Brown, City Controller of the City of Houston, Texas, pursuant to Article II, Section 19a of the Charter of the City of Houston, with respect to the sum of **\$1,403,641.25** required for the project referenced in the title of this ordinance, do hereby certify as follows:

(1) The sum of **\$1,403,641.25** will be funded from public improvement bond proceeds and/or public improvement commercial paper proceeds (first-in-first-out basis) pursuant to Ordinance No. 94-405 authorizing the creation of the **Police Consolidated Construction Fund**. To the extent that this sum will be paid with bond proceeds, it is in the treasury in the said fund, and is not appropriated for any other purpose.

(2) To the extent that the **\$1,403,641.25** will be paid by commercial paper proceeds, funds will be received into the treasury and available before the maturity of said obligation, and such anticipated funds have not already been appropriated for any other purpose. Such sum will be received as a cash draw(s) to the City of Houston pursuant to the General Obligation Commercial Paper Ordinance, Ordinance No. 93-1149.


City Controller *General Public*

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	

PROFESSIONAL ARCHITECTURAL SERVICES CONTRACT

BETWEEN

CITY OF HOUSTON

AND

PERKINS & WILL, INC.

FOR

CONSTRUCTION OF

NORTH BELT POLICE STATION

WBS No. G-000165-0001-3



**REQUEST FOR QUALIFICATIONS
FOR PROFESSIONAL ARCHITECTURAL SERVICES
Project Name: North Belt Police Station
Project Number: G-000165-0001-3**

6 – CONTRACT FORM

CONTRACT

FOR

PROFESSIONAL ARCHITECTURAL SERVICES

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

WHEREAS, the City of Houston, a Texas home-rule municipality (the "City") proposes to construct the following:

**North Belt Police Station
320 Gears Rd.
WBS NO.: G-000165-0001-3**

(the "Project").

WHEREAS, the City liaison for this Contract is:

**DIRECTOR
GENERAL SERVICES DEPARTMENT
P. O. BOX 1562
HOUSTON, TEXAS 77251**

WHEREAS, the City desires to enter into an agreement with the following architect to perform certain professional architectural and other professional services in connection with the Project, as described herein and in Exhibit "A," which is attached hereto and incorporated herein for all purposes:

**Perkins & Will, Inc.
1001 McKinney Street, Suite 1300
Houston, Texas 77002**

(the "Architect").

NOW THEREFORE, in consideration of the mutual covenants and agreements of the parties, the City and the Architect agree as set forth below:

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"B"	PROJECT SCHEDULE
"C"	EQUAL EMPLOYMENT OPPORTUNITY
"D"	DIRECT SALARIES
"E"	DRUG POLICY COMPLIANCE AGREEMENT
"F"	ARCHITECT'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS IN PERFORMANCE OF A CITY CONTRACT
"G"	DRUG COMPLIANCE DECLARATION
"H"	CERTIFICATE OF INSURANCE
"I"	FORM POP 2 - CERTIFICATION OF AGREEMENT TO COMPLY WITH PAY OR PLAY PROGRAM
"J"	MWBE PROGRAM CONTRACT COMPLIANCE FORMS

Definitions

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

"Additional Services" are those defined in Section 1.6 of this Contract.

"Architect" is defined in the preamble of this Contract and includes the firm's successors and assigns which are jointly and severally liable for the obligations and liabilities under this Contract.

"Basic Services" are those Phase I, II, III and IV services defined in Sections 1.2 through 1.5 of this Contract.

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

"City Engineer" is defined as the engineer so appointed by General Services Department.

"Construction Cost" is defined in Article 3.

"Contractor" means the construction contractor to whom the City has awarded all or part of a construction contract for this Project.

"Contract Documents" are as described in Section 1.3.

"Director" means the Director of the General Services Department or of a successor department or such other person as may be designated from time to time by the Director, by notice to the Architect, to administer this Contract on behalf of the City.

"Documents" means reports, charts, analyses, maps, letters, tabulations, exhibits, notes, models, photographs, specifications, AutoCAD and PDF files of all drawings and plans, and other submittal documents obtained by or prepared by the Architect as instruments of its services under this Contract.

"Effective Date" is the date this Contract comes into force and shall be the date the City Controller countersigns it.

"Maximum Total Construction Cost" is the specific amount as defined in Section 1.1.2 that may not be exceeded by any estimate of Construction Cost for the Project by the Architect without the express written approval of the Director or an acting Director as appointed by the Mayor.

"MWBE" is defined as Minority and/or Woman Business Enterprise as more clearly defined in Chapter 15, Article V of the City of Houston Code of Ordinances.

"Notice to Proceed" means a written communication from the Director to the Architect instructing Architect to begin performance.

"OBO Director" means the Director of the Mayor's Office of Business Opportunity or of a successor department or such other person as may be designated from time to time by the Mayor.

"Program" means all those quantitative and/or qualitative requirements for the Project that must be met or satisfied by the design for the Project.

"Project Schedule" (Form attached as Exhibit "B" and incorporated herein) means a schedule of Project activities and events, showing initiation point, duration and ending points. The schedule will also indicate time to be allowed for reviews by the City staff.

"Reimbursable Expense" is defined in Article 5.

"Subcontract Cost" means the ordinary and reasonable cost of subcontracts made by the Architect and approved by the Director for the principal purpose of obtaining the professional services of others in connection with the performance of any service under this Contract.

"Substantial Completion" is that point in the construction of a project or designated portion thereof where the City Engineer certifies that construction is sufficiently complete, in accordance with the Contract

Documents, that the City may occupy the project, or a designated portion thereof, for the use for which it was intended.

ARTICLE 1

ARCHITECT'S SERVICES AND RESPONSIBILITIES

1.1 GENERAL

1.1.1 The Architect agrees to provide prompt and efficient professional services as herein defined for the fees hereinafter specified and in accordance with the Project Schedule. The Project Schedule shall be drafted by the Architect, in consultation with the City staff, approved by the Director and updated monthly at the time of invoice submittal. The Architect shall coordinate his performance of the services hereunder with the Director and such other persons as the Director may specify. The Architect shall make periodic verbal or written reports and recommendations to the Director with respect to conditions, transactions, situations or circumstances encountered by the Architect relating to the services to be performed under this Contract and shall attend meetings which the Director determines to be necessary. The Architect shall, upon written request, provide the Director with a copy of Documents prepared by the Architect or made available to it as a result of its performance under this Contract.

1.1.2 The Architect shall proceed with performance of its services hereunder with full knowledge and understanding that the Maximum Total Construction Cost for this Project shall not exceed the sum of **\$15,344,500.00** without the express written approval of the Director. The Architect shall plan and design this Project in such a manner that the Architect's best professional estimate of probable Construction Cost does not exceed the Maximum Total Construction Cost. If at any time during the course of this Project, the Architect's estimate of Construction Cost, for all work designed and specified, exceeds this amount, the Architect shall immediately notify the Director. The Director may by written notice either increase the Maximum Total Construction Cost or obtain an agreed upon reduction in the Project scope. For any Maximum Total Construction Cost or budget revision, without an increase in the scope of the Project as defined in Exhibit A, there shall be no increase in the Architect's fee. In the event the parties cannot agree on a revised Maximum Construction Cost this Contract may be terminated according to Article 9 of this Contract. For the purpose of this Section 1.1.2, no person other than the Director is authorized to provide such written agreement to exceed the Maximum Total Construction Cost specified herein.

1.1.3 The Architect shall designate a project manager who will be the Architect's liaison for this Project.

1.1.4 The Architect's Basic Services consist of those services performed by the Architect, Architect's employees and Architect's subcontractors as enumerated in the four phases described in Sections 1.2 through 1.5 and include normal civil, structural, mechanical and electrical engineering services; and landscape architectural services to meet the minimum requirements of the City Code of Ordinances. The Architect agrees to perform the services set forth below for each Phase as authorized by the Director. In addition, the Architect agrees to perform the particular scope of services as are set forth in Exhibit "A." In the event of an inconsistency between the terms of this Article and the terms of Exhibit "A," the terms of Exhibit "A" shall control with respect only to

the content of the scope of services.

1.1.5 Unless otherwise specifically provided herein, Architect shall obtain and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder. Architect shall maintain all required professional licenses during the term of this Contract. Any failure of the Architect to maintain such professional licenses or any revocation or suspension thereof, even if probated, shall entitle the Director in his sole discretion, to immediately terminate this Contract. Architect shall immediately notify the Director of any suspension, revocation or other detrimental action against his license.

1.1.6 If an actual or potential conflict arises between the interests of the City and the interests of the Architect or other clients represented by Architect, Architect shall immediately notify the Director by fax transmission or telephone. If the Director in his sole discretion consents to Architect's continued representation of such other clients, he shall so notify the Architect in writing. If the Director does not issue written consent within three business days of receipt of Architect's notice, Architect shall immediately terminate its representation of the other client whose interests are or may be in conflict with those of the City.

1.1.7 Architect shall notify the Director promptly of any factor, occurrence or event coming to its attention that Architect believes is likely to adversely affect its ability to meet any of its obligations hereunder or to materially delay delivery of any Document or service provided for herein and in the Project Schedule, in such event, promptly consult with the Director regarding a plan of action to prevent, eliminate or remedy such default or delay. Any request by Architect to modify the Project Schedule shall be made in accordance with this Section 1.1.7.

1.1.8 Architect shall make timely payments to all subcontractors, persons and entities supplying labor, materials or equipment for the performance of this Contract. **ARCHITECT AGREES TO PROTECT, DEFEND, AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF ARCHITECT'S FAILURE TO MAKE SUCH PAYMENTS.**

1.1.9 Architect shall be responsible for services performed by subcontractors to the same extent as if the services were performed by Architect. Architect shall replace any subcontractor when requested by the Director to do so, who shall state the reasons for such request. Architect shall provide the Director with a copy of any of its subcontractor's subcontracts at Director's request.

1.1.10 Confidentiality: Architect, 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. Architect, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Architect shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section.

1.1.11 Architect shall comply with all applicable state, federal and local laws and regulations and the City Charter and Code of Ordinances.

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

1.2 PHASE I: DESIGN

1.2.1 **General.** Phase I Design shall be divided into two stages designated as Schematic Design and Design Development. For each stage, the Architect shall furnish to the Director **three** copies of all drawings, specifications, reports and other required documents.

- .1 The Architect shall proceed with Phase I upon receipt of written authorization by the Director. The Architect shall submit to the Director, within 10 days of the Notice to Proceed with Phase I, a revised Project Schedule, updated to reflect firm dates for activities and reviews set forth therein.
- .2 The Architect has developed Master Adjacency Plan (Program), Space Planning/Room Schedule, and the scope of services as set forth in Exhibit "A" attached hereto, determined its feasibility within established budgetary constraints, and arrived at an understanding of such requirements with the Director. The Architect acknowledges that the Maximum Total Construction Cost is reasonable for this Project.
- .3 Based on the Program and Project budget requirements, the Architect shall prepare, for approval by the Director, the Phase I - Schematic Design.
- .4 The Architect shall commission and direct registered professional engineers to assume responsibility for the civil, structural, mechanical, and electrical engineering aspects of the Project throughout its design and construction.
- .5 The Architect shall, on behalf of the City, file all applications for utilities commitments and furnish any additional information necessary to obtain utility commitments.

1.2.2 **Schematic Design.** The Architect shall furnish to the Director **three** copies of documents that fully illustrate the scope, scale, and relationship of all Project components representing the Architect's design solution to the criteria set forth in the Program. This submittal shall include but not be restricted to the following where applicable:

- .1 General listing of the types, quantities and sizes of spaces included in the design. Prepare a comparison of these spaces with those listed in the Program, if there is a variance.
- .2 Scaled drawings of the site plan, floor plan(s), exterior elevations and transverse and longitudinal sections through the building.
- .3 Preliminary estimate of the probable Construction Cost of the Project based on proposed systems and quantities.
- .4 General statement or schedule of proposed interior finishes.
- .5 General statement of proposed structural system or systems in sufficient detail to demonstrate that spatial requirements have been accommodated and to provide a valid basis for the preliminary estimate of Construction Cost.
- .6 General statement of proposed mechanical, electrical and plumbing systems, in sufficient detail to demonstrate that spatial requirements have been accommodated and to provide a valid basis for the preliminary estimate of Construction Cost.

1.2.3 **Design Development.** The Architect shall attend review conferences with the Director and such others as the Director may designate to assure consensus with respect to the Architect's development of the Schematic Design of the Project. Completion of Design Development shall

indicate that the Architect has substantially solved the details of the design solution and is prepared to start Contract Documents. The Architect shall furnish to the Director **three** copies of drawings, outline specifications, a preliminary estimate of Construction Cost, based on approval by the Director of the Architect's Phase I Schematic Design. This submittal shall include but not be restricted to the following where applicable:

- .1 Scaled drawings of the site plan, floor plans(s), exterior elevations and such sections and/or details necessary to demonstrate the Schematic Design. The floor plan(s) shall show all furniture, fixtures, equipment, door swings and main dimensions.
- .2 Plan layout of the proposed structural system showing preliminary main member sizes.
- .3 Plan layouts, each on a separate sheet, of the proposed mechanical, electrical and plumbing systems in sufficient detail to show equipment, fixtures, lighting, devices and distribution/gathering systems.
- .4 Outline specifications of principal materials, systems and equipment proposed for inclusion into the project. Provide a schedule of proposed interior finishes.
- .5 Updated estimate of the probable Construction Cost of the Project in sufficient detail to demonstrate its inclusiveness and the proposed level of quality throughout all aspects of the Project.

1.2.4 **Revisions.** The Architect shall make modifications to the Phase I Design Documents as may be required to obtain approval of the Director and submit to the Director **three** additional sets of revised Phase I Design Documents.

1.3 PHASE II: DESIGN

1.3.1 The Architect shall proceed with the Phase II Contract Documents upon the Director's written approval of the Phase I Design and upon Director's written authorization to proceed.

1.3.2 Based upon approved Phase I Design Documents and any adjustments authorized by the Director in the Program or Project budget, the Architect shall prepare, for approval by the Director, Contract Documents suitable for solicitation of competitive construction bids, for incorporation into a contract for construction of the Project and shall make clarifications and revisions necessary to obtain the building permit. Contract Documents are those Documents prepared for the purpose of obtaining bids and guiding the construction of the Project. Contract Documents shall generally include but not be restricted to the following.

- .1 Drawings of plans, elevations, sections and details defining the dimensions and spatial relationships of all elements of the Project.
- .2 A written Project manual, which includes bidding requirements, sample forms, conditions of the construction contract and specifications. The City will provide the Architect bidding requirements, sample forms and conditions of the construction contract for Architect's inclusion in the Project manual. Specifications shall define the general requirements for the Project, written descriptions of the technical nature of materials, equipment, construction systems, standards and workmanship. The Architect shall not include in either the general requirements or in other technical specification sections requirements that conflict with the bidding requirements, sample forms and conditions of the construction contract

provided by the City. Dollar allowances shall not be used in the Project manual.

- .3 To the extent practicable for each item that requires a specific designation, the Architect shall specify the products of at least three manufacturers of each material and manufactured item acceptable for use in the Project.
- .4 The specifications shall also provide means by which the successful bidder can submit for approval products other than those specified which it considers equivalent to those specified in quality, including durability, serviceability, design, appearance, function, finish, performance, size and weight. The Architect shall advise the Director as to whether or not products other than those listed in the specifications are equivalent to the products listed.

1.3.3 The Architect shall attend review conferences with the Director and such others as the Director may designate to obtain the Director's approval of the development of the Contract Documents.

1.3.4 The Architect shall advise the Director of any adjustments to previous estimates of Construction Cost indicated by changes in the requirements or general market conditions.

1.3.5 The Architect shall, on behalf of the City, file all applications and Documents necessary to obtain approval of governmental authorities having jurisdiction over the Project and furnish any additional information necessary to obtain approvals. This shall include, but not be limited to, submittal of drawings to the Texas Department of Licensing and Regulations, Architectural Barriers Section for review, and Building Permit application. The Architect shall provide the City with copies of Proof of Submission and Proof of Inspection filings.

1.3.6 The Architect shall submit for the Director's approval a final estimate of the Construction Cost of the Project, based upon fully developed Contract Documents.

1.3.7 The Architect shall furnish to the Director **six** copies of fifty percent complete documents and **six** copies of fully developed, permissible Contract Documents for review by the Director. The Architect shall incorporate all review comments, if any, and furnish to the Director **six** additional sets of Contract Documents.

1.3.8 The Architect and Architect's subcontractors shall attend the Pre-Bid Conference and respond to bidders' questions. If required by the Director, the Architect shall issue Addenda to the Contract Documents during the bid period as necessary to respond to bidders' questions and to make clarifications. The Architect shall evaluate bids and bidders only when the Director requests such evaluations in writing.

1.4 **PHASE III: CONSTRUCTION SERVICES**

1.4.1 The Architect shall proceed with the Phase III Construction Services upon receipt of the Director's written authorization to proceed.

1.4.2 Unless otherwise provided in this Contract, the Architect shall provide limited administration of the construction contract as set forth below.

1.4.3 The Architect shall be a consultant of the City during Phase III Construction Services and shall advise and consult with the City. Instructions to the Contractor by the City shall also be sent to the Architect. The Architect shall have authority to act on behalf of the City only to the extent provided in this Contract.

1.4.4 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed in writing by the City and the Architect, to become generally familiar with the

progress and quality of the work and to determine, in general, if the work is proceeding in a manner indicating that the work when completed will be in accordance with the Contract Documents. The Architect shall furnish to the Director written reports of its on-site observations regarding the progress and quality of the work. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. On the basis of such on-site observations, the Architect shall keep the Director informed of the progress and quality of the work, and shall notify the Director immediately in writing, of any defects and deficiencies in the Contractor's work and work that is not performed in accordance with Contract Documents.

1.4.5 The Architect shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, which are solely the Contractor's responsibility under the construction contract. Except as otherwise provided herein, the Architect shall not be responsible for the Contractor's schedules or failure to carry out the work in accordance with the Contract Documents. Except as otherwise provided herein, the Architect shall not have control over or charge of acts or omissions of the Contractor, the Contractor's subcontractors, or the Contractor's agents or employees, or of any other persons performing any portions of the work.

1.4.6 The Architect shall at all times have access to the work wherever it is in preparation or progress.

1.4.7 The Architect shall attend conferences at the Project site with the Director and such others as the Director may designate, to assist the City in the administration of the Contract.

1.4.8 When requested by the Director, the Architect shall assist the Director in determining the amounts owing to the Contractor based on Architect's on-site observations and on evaluations of the Contractor's applications for payment and shall recommend to the Director issuance of certificates for payment to the Contractor in such amounts, as provided in the Contract Documents.

1.4.9 The Architect's approval of the Contractor's application for payment shall constitute the Architect's representation to the City that based upon the Architect's on-site observations as provided in Section 1.4.5 and upon the data comprising the Contractor's application for payment, that the work has progressed to the point indicated; and that, to the best of the Architect's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent test required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to specific qualifications expressed by the Architect. The Architect's approval of the Contractor's application for payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the Architect's approval of the Contractor's application for payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the work, (2) reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the City to substantiate the Contractor's right to payment or (3) ascertained how or for what purpose the Contractor has used money previously paid pursuant to the Contract.

1.4.10 The Architect shall interpret the requirements of the Contract Documents. The Architect shall render interpretations necessary for the proper execution or progress of the work to the Director with reasonable promptness upon written request of either the Director or the Contractor;

and, if requested by the Director, shall render written advice to the Director within a reasonable time, on all claims, disputes and other matters in question between the City and the Contractor relating to the execution or progress of the work or interpretation of the Contract Documents.

1.4.11 Interpretations and advice of the Architect shall be consistent with the intent of, be reasonably inferable from the Contract Documents, and shall be in written or graphic form. When making such interpretations and giving such advice, the Architect shall not show partiality to either City or the Contractor and shall not be liable for the result of any interpretation or advice so rendered in good faith.

1.4.12 The Architect shall recommend to the Director to reject work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for the implementation of the intent of the Contract Documents, the Architect shall recommend to the Director, to require special inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work be then fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Contractor's subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work.

1.4.13 The Architect shall review and recommend approval to the Director or take other appropriate action upon Contractor's submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the construction of the Project by the City or by separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

1.4.14 The Architect shall submit to the Director a schedule of colors and finishes for the Project which the Architect has selected from approved submittals. Wherever practicable, Architect shall supplement schedule of colors and finishes with color chips, swatches and samples. Provided the Contractor has submitted in a timely manner acceptable samples of products he proposes to use, the Architect shall submit a schedule of colors and finishes with sufficient lead time to permit a thirty-day review/approval period without risk of delay and the timely incorporation of the finishes, materials and similar items with other aspects of the Project. During the review period, the Architect shall confer with the Director and such others as the Director may designate and make adjustment to the schedule of colors and finishes as necessary to obtain approval by the Director.

1.4.15 The Architect shall review Contractor's requests and make recommendations to the

Director. When requested by the Director, the Architect shall prepare for the Director's approval and execution in accordance with the Contract Documents, and shall have authority, with the concurrence of the Director, to order minor changes in the work which do not involve an adjustment in the construction contract amount or an extension of the construction contract time for completion and which are not inconsistent with the intent of the Contract Documents. For the purpose of this section, "construction contract amount" shall be that amount and "construction contract time" for completion shall be that period as they appear in the Contract Documents initially or as they shall have been lawfully and legitimately amended under the terms of that contract at the time of such Contractor's request.

1.4.16 The Architect shall conduct inspections to determine and recommend to the Director the dates of Substantial Completion and the date of final completion, and shall receive and forward to the Director for the Director's review, written warranties, guarantees, releases, operating instructions and maintenance manuals, keys, equipment data and related documents required by the Contract Documents and assembled by the Contractor, and shall approve the Contractor's application for final payment upon compliance with the requirements of the Contract Documents.

1.4.17 The extent of the duties, responsibilities, and limitations of authority of the Architect shall not be restricted, modified or extended without written notice by the City to the Architect and Contractor.

1.4.18 Before final payment of Phase III Construction Services compensation, the Architect shall furnish to the Director, a complete set of AutoCAD V2013 and PDF files of drawings and specifications on a read-only compact disc. The digital files shall reflect significant changes in the work including changes in scope made during construction, based on marked-up Project record drawings maintained by the contractor at the Project site, and drawings and other data furnished by the Contractor to the Architect. The Architect shall be able to rely on the accuracy of such changes and other information supplied by the Contractor and will not be required to perform studies to determine the completeness of such recorded changes, if any, supplied by the Contractor.

1.5 PHASE IV: POST-CONSTRUCTION SERVICES

1.5.1 The Architect shall proceed with the Phase IV Post-Construction Services upon written authorization by the Director to proceed.

1.5.2 The Architect shall inspect the Project in the company of the Contractor, and the Director or such others as the Director may designate, no less than thirty days and no more than forty-five days prior to the expiration of the one-year correction period, established in the Contract Documents. On or before the seventh day after such inspection, the Architect shall furnish the Director a written report identifying items which require repair or replacement under the one-year correction period provisions of the Contract Documents.

1.6 ADDITIONAL SERVICES

1.6.1 The following Additional Services shall be performed by the Architect, if authorized by the Director, in addition to Architect's Basic Services and shall be paid for by the City as provided for in Section 6.10 of this Contract. Additional Services shall only be provided when necessary and

related to the purposes of this Contract, when authorized in writing by the Director, and when sufficient funding has been allocated for such services.

- .1 Providing analyses of the City's needs and programming the requirements of the Project beyond the scope of services provided in Section 1.2.2.
- .2 Providing financial, feasibility or other special studies.
- .3 Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites, and preparing special surveys, studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.
- .4 Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Phase III Construction Services.
- .5 Providing services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the City.
- .6 Preparing Documents for multiple bid packages or providing extra services in connection with bidding, negotiation or construction prior to the completion of the Phase II Construction Documents, when requested by the Director.
- .7 Providing detailed estimates of Construction Cost beyond the scope of estimate of Construction Cost based on current area, volume, or similar unit costs as required in Sections 1.2.3.5, 1.3.4 and 1.3.6; and providing analyses of owning and operating costs, or detailed quantity surveys or inventories of material, equipment and labor.
- .8 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.
- .9 Providing services for planning leased tenant or rental spaces.
- .10 Making revisions in drawings, specifications or other Documents when such revisions are inconsistent with written approvals or instructions previously given, or during Phase II, making revisions to the Contract Documents required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such Documents or due to other causes not within the control of the Architect.
- .11 Preparing drawings, specifications and supporting data and providing other services in connection with a change to approved Phase II Contract Documents to the extent that such services are in excess of the Basic or other Additional Services required of the Architect pursuant to this Contract and provided such changes are not necessitated by an act or omission of the Architect. In the event a change order is caused by an act or omission of the Architect, the Architect will be required to prepare such drawings and specifications and supporting data at no expense to the City.
- .12 Making investigations, surveys, valuations, inventories or detailed appraisals of existing facilities and services required in connection with construction performed by the City.
- .13 Providing consultation concerning replacement of any work damaged during construction by fire or any other cause not under the Architect's control and

- furnishing services as may be required in connection with the replacement of such work.
- .14 Providing services made necessary by the default of the Contractor, or by major defects or deficiencies in the work of the Contractor, or by failure of performance of either the City or Contractor under the contract for construction.
 - .15 Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
 - .16 Providing landscape architecture services materially beyond the minimum requirements of the Code of Ordinances.
 - .17 Providing additional construction phase services in the event that 1) the number of calendar days stipulated in the Contract Documents for Substantial Completion is exceeded beyond the time period set out in Section 6.2.2 due to no fault of the Architect or 2) the number of calendar days allowed for Substantial Completion under the Contract Documents is increased by change order beyond the time period set out in Section 6.2.2 due to no fault of the Architect.
 - .18 Providing inspection of the Project in the company of the Contractor, and the Director, or such others as the Director may designate, no less than thirty days and no more than forty-five days prior to expiration of any special Project warranty, but after expiration of the one year correction period, as defined in the general conditions of the construction contract, established in the Contract Documents. On or before the seventh day after such inspection, the Architect shall furnish the Director a written report enumerating items which require repair or replacement under the special Project warranty provisions of the Contract Documents.
 - .19 Providing land survey services to supplement any legal description and site information provided by the City and to include, but not be limited to, as applicable to the Project, grades of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, deed restrictions and contours of the site, locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and information concerning available services and utility lines both public and private, above and below grade, including inverts and depths in accordance with Project requirements. The Architect shall commission a survey to be prepared by a registered land surveyor acceptable to the Director. The survey shall be signed and sealed by the registered land surveyor.
 - .20 Providing geotechnical investigation and engineering services required for the design of the Project. Such services may include, as applicable to the Project, test borings, test pits, soil bearing values, percolation tests, and similar investigations and engineering services with reports and appropriate recommendations in accordance with the Project requirements. The Architect shall commission a geotechnical investigation to be completed by a registered geotechnical subcontractor acceptable to the Director. The geotechnical report and appropriate recommendations shall be signed and sealed by the registered geotechnical engineer.

- .21 Providing Cultural Resource Reconnaissance or Surveying services as defined in the General Rules of Practice and Procedures, Chapter 41 of the Texas Antiquities Committee, to supplement the site information provided by the City and to identify potential historic or prehistoric sites in Project areas to be affected by improvements planned as part of the Project. The reconnaissance shall be conducted in accordance with procedures promulgated by the Texas Antiquities Committee in conformance with the Antiquities Code of Texas and signed by a professional archaeologist acceptable to the Texas Antiquities Committee and the Director. For the purposes of this Contract, the Director or his delegate is authorized to approve the archaeologist's permit applications for such Cultural Resource Reconnaissance or Surveys on behalf of the City.
- .22 Providing data processing and photographic production techniques when used in connection with another Additional Service.
- .23 Providing other professional services beyond the scope of Basic Services of this Contract which are necessary and related to the purposes of this Contract.

1.6.2 Whenever the Architect, in the course of performing Basic Services, is required to present recommendations to the Director with respect to the advisability of, or the need for, any Additional Service, such recommendation shall include a recommended scope for the Additional Services and the recommended fee and expenses. If the Architect recommends subcontract services, the recommendation shall also include the names of the subcontractor(s) recommended by the Architect. A maximum fee for each such subcontractor's service shall be proposed by the Architect at the time Additional Services requiring such expenses are requested by the Director and shall be negotiated and agreed upon by the Architect and the Director prior to the expense being incurred. The compensation for each such subcontractor's service expense shall never exceed this agreed upon maximum amount.

1.7 TIME

1.7.1 The Architect shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care, and the orderly progress of the work. Upon definition of the scope of the Project as provided in Section 1.2.2 and Exhibits "A" and "B" attached, the Architect shall submit for Director's approval a calendar schedule of Architect's services not exceeding the time limits provided in this Section 1.7, and which shall include allowances for periods of time required for City's review and for approval of submissions by authorities having jurisdiction over the Project, all as indicated on Exhibit "B," Project Schedule, attached. Time limits established by this schedule approved by Director shall not, except for reasonable cause, be exceeded by Architect or by the City.

1.7.2 The Architect agrees to perform the services and furnish to the Director items called for in Section 1.2 (Phase I Design) of this Contract within 231 calendar days from the issuance of a Notice to Proceed by the Director which includes a period of 56 calendar days for the City's reviews and approvals, providing there are no delays caused by the City or other agencies with whom the Project must be coordinated and over whom the Architect has no control.

1.7.3 Upon approval by the Director of Phase I Design drawings, outline specifications, and a preliminary estimate of Construction Cost, and upon written authorization by the Director, including notice of allocation of adequate funds, the Architect agrees to perform services and furnish to the

Director items called for in Section 1.3 (Phase II Contract Documents) of this Contract within 252 calendar days after receipt of such written authorization by the Director through receipt of Building Permit approval, which includes a period of 56 calendar days for Director's review and approval and 84 calendar days for Code Enforcement review and approval of the Building Permit; providing however, that if there are delays caused by the City or other agencies with whom the Project must be coordinated and over whom the Architect has no control, the Architect's time for performance shall be extended by the number of days of delay in the Project Schedule.

1.7.4 Upon receipt of written authorization from the Director to proceed, the Architect agrees to perform the services and furnish to the Director the items called for in Section 1.4 (Phase III: Construction Services) of this Contract for the period of construction time stated in the construction contract, providing there are no delays caused by the City, or by the Contractor for the general construction of the Project, or by other agencies with whom the Project must be coordinated and over whom the Architect has no control.

1.7.5 Upon receipt of written authorization from the Director to proceed, the Architect agrees to perform services and furnish to the Director the items called for in Section 1.5 (Phase IV Post-Construction Services) of this Contract within the time specified in Section 1.5.2 of this Contract.

1.7.6 Extensions of any of the time-of-performance commitments by the Architect in this Section shall be granted only by the Director, in written form, and shall have the same force and effect as the time-of-performance commitments originally stated herein.

1.7.7 The Architect acknowledges and agrees that any services it provides to the City after the completion date established in the Project Schedule, unless an extension of time has been granted, will be deemed to be gratuitously provided, and the City shall have no obligation to pay for such services unless the City Council approves an agreement to do so in its sole discretion.

1.7.8 This Contract shall remain in force (1) until expiration of the one year correction period established in the Contract Documents, or (2) 365 calendar days after completion of the services required in either Section 1.2 Phase I: (Design) or Section 1.3 Phase II: (Contract Documents) whichever shall have been completed without the subsequent Phase being authorized, or (3) until terminated under provisions of Article 9 herein.

1.8 **PAY OR PLAY**

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

1.8.2 Once Architect submits, and the Director approves Architect's POP-2 Form it shall be incorporated herein.

ARTICLE 2

THE CITY'S RESPONSIBILITIES

2.1 The City shall provide information regarding requirements for the Project including a written descriptive document, which shall set forth in detail the City's conditions and requirements for objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expendability, special equipment, and other conditions or requirements appropriate to the nature of the Project.

2.2 The City shall establish and update, when necessitated by changes in the agreed estimate and overall budget for the Project which shall include contingencies for bidding, changes in the work during construction, and other costs which are the responsibility of the City, including those described in this Article 2 and in Section 3.1.2.

2.3 The Director shall designate a representative authorized to act on the City's behalf with respect to the Project. The Director's authorized representative shall examine the Phase I and Phase II documents submitted by the Architect and shall render and obtain decisions pertaining thereto promptly to avoid unreasonable delay in the Architect's services.

2.4 If required for the Project, the City shall furnish or shall authorize the cost of obtaining as an Additional Service, a complete and correct written legal description of the site, including metes and bounds, corners, lines of streets and alleys, and location of the site.

2.5 The City shall pay for quality control testing and other laboratory tests, inspections and reports as required by law or by the Contract Documents.

2.6 When required for the Project, and when the services, information, surveys and reports described in Sections 2.4 and 2.5 inclusive, are furnished by the City, the Architect shall be able to rely upon the accuracy and completeness thereof.

2.7 If the City observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the City to both the Architect and Contractor.

2.8 The City shall furnish required information and services and shall render or obtain approvals and decisions as expeditiously as necessary for the orderly progress of the Architect's services and of the work.

ARTICLE 3

CONSTRUCTION COST

3.1 DEFINITION

3.1.1 The Construction Cost shall be the actual cost to the City of all elements of the Project designed or specified by the Architect.

3.1.2 Estimates of Construction Cost shall include (1) the cost, at current market rates, of labor and materials furnished by the City, (2) equipment designed, specified, selected or specially provided for by the Architect, (3) City building permit fees, and (4) a reasonable allowance for the cost of construction, including the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding.

3.1.3 Construction Cost does not include the compensation of the Architect and the Architect's subcontractors, the cost of the land, rights-of-way, or other costs which are the responsibility of the City as provided in Article 2.

3.2 RESPONSIBILITY FOR CONSTRUCTION COST

3.2.1 Evaluations of the City's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Costs, if any, prepared by the Architect, represent the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the City has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, the Architect cannot and does not warrant or represent that bids will not vary from the Project budget proposed, established or approved by the City, if any, or from any estimates of Construction Cost or evaluation prepared by the Architect.

3.2.2 When a Maximum Total Construction Cost is established as a condition of this Contract in Section 1.1.2 or at any time prior to the taking of bids, the Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, and, with written approval, to make reasonable adjustments in the scope of the Project, or to include in the Contract Documents alternate bids to adjust the Construction Cost to the specified Maximum Total Construction Cost.

3.2.3 If bidding has not commenced within 6 months after the Architect submits the Contract Documents to the City, any Project budget or Maximum Total Construction Cost may, when warranted in the opinion of the Director, be adjusted to reflect any change in the general levels of prices in the construction industry between the date of submittal of the Contract Documents to the City and the date on which bid proposals are sought.

3.2.4 If a Project budget or Maximum Total Construction Cost (adjusted as provided in Section 3.2.3) is exceeded by the lowest bona fide bid, the City shall (1) give written approval of an increase in such Maximum Total Construction Cost, or (2) authorize rebidding of the Project within a reasonable time, or (3) in the event the Project is abandoned, terminated in accordance with Section 9.2.1, or (4) cooperate in revising the Project scope and quality as required to reduce the Construction Cost. In the case of (4), provided a Maximum Total Construction Cost has been established as a condition of this Contract, the Architect, without additional charge, shall modify the Contract Documents as necessary to comply with the Maximum Total Construction Cost. The successful provision of such service shall be the limit of the Architect's responsibility arising from the establishment of such Maximum Total Construction Cost, and having done so, the Architect shall be entitled to compensation for all services performed, in accordance with this Contract, whether or not Phase III: Construction Services are commenced.

ARTICLE 4

DIRECT PERSONNEL EXPENSE

4.1 DEFINITION

4.1.1 Direct Personnel Expense is defined as the direct salaries of the Architect and all of the Architect's personnel directly engaged on the Project, plus the portion of the cost of their mandatory

and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits. For the purpose of this Contract the cost of such contributions and benefits is established as equal to 35% of direct salaries. Direct salary rates for the duration of this contract are shown on **Exhibit "D"** attached hereto and, by reference, incorporated.

ARTICLE 5

REIMBURSABLE EXPENSES

5.1 DEFINITION

5.1.1 A maximum amount for each Reimbursable Expense shall be proposed by the Architect at the time that services requiring such expenses are requested by the Director and shall be negotiated and agreed upon by the Architect and the Director prior to the expenses being incurred. The compensation for each such Reimbursable Expense shall never exceed this agreed upon maximum amount. Reimbursable Expenses are to be paid in addition to the compensation for Basic and Additional Services and include actual expenditures made by the Architect and the Architect's employees and subcontractors, including any sales tax Architect is legally required to pay, in the interest of the Project while performing services requested by the Director pursuant to the following Sections:

5.1.2 If authorized in advance in writing by the Director, travel costs in connection with out-of-town travel, to points outside of the greater City of Houston area, not to exceed the amounts established under the City's then current travel reimbursement policy for its employees,

5.1.3 If authorized in advance in writing by the Director, long distance communications, and fees paid for securing approval of authorities having jurisdiction affecting the Project,

5.1.4 Expense of reproductions, postage and handling of drawings, specifications and other Documents. Expenses for reproductions for submittals or correction of submittals required under Phase I or Phase II, reproductions for the office use of the Architect and the Architect's subcontractors are not reimbursable,

5.1.5 If authorized in advance by the Director, the expense of overtime work requiring higher than regular rates,

5.1.6 If authorized in advance by the Director, the expense of renderings, models and mock-ups,

5.1.7 If authorized in advance by the Director, the expense of filing documents for governmental approval under Sections 1.2.1.5 and 1.3.5, except for building permits, required for the Project.

ARTICLE 6

PAYMENTS TO THE ARCHITECT

6.1 GENERAL

6.1.1 The City shall compensate the Architect under this Contract as provided in this Article.

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

6.2 PAYMENTS FOR BASIC SERVICES

6.2.1 Payments for Basic Services shall be made as set forth in Sections 6.6, 6.7, 6.8 and 6.9.

6.2.2 If the time initially established in the construction contract for completion of the Project is extended, through no fault of the Architect, for more than 90 calendar days, the Architect may request compensation for any required extension of Phase III services, which, if authorized, shall be paid in accordance with the provisions of Section 6.10 for Additional Services.

6.2.3 Payments for Basic Services may be made monthly upon presentation of the Architect's statement of services rendered and expenses incurred.

6.3 PAYMENTS FOR ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

6.3.1 Payments for Additional Services and for Reimbursable Expenses may be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

6.4 PAYMENTS WITHHELD

6.4.1. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to the Architect.

6.4.2 If the Architect receives payment from the City for work performed by any subcontractor or for materials provided by any supplier and the Architect withholds or has withheld payment to the subcontractor or supplier on account of a deficiency in the quality or quantity of that subcontractor's or supplier's work or materials, the City may withhold the amount associated with such work or materials from any pending or future payments to the Architect until the next regular payment to the Architect occurring after the City receives reasonable documentation that the deficiency has been remedied.

6.5 PROJECT SUSPENSION

6.5.1 If the Project is suspended for more than 365 days, the Architect shall be compensated in accordance with Article 9, for all services performed prior to the suspension.

6.6 BASIS OF COMPENSATION FOR PHASE I DESIGN SERVICES - STIPULATED SUM

6.6.1 For Phase I Design performed by the Architect the City agrees to pay to the Architect the sum of \$525,000.00.

6.6.2 The Director may authorize, no more frequently than monthly, partial payments commensurate with percentage of completion of Phase I Design by the Architect. The fee for the Phase I services shall be payable as follows:

.1 When the Schematic Design of the Project is complete and approved by the Director, the City agrees to pay to the Architect the sum of \$262,500.00.

.2 When Design Development is complete and approved by the Director, the City agrees to pay to the Architect the sum of \$262,500.00.

6.7 BASIS OF COMPENSATION FOR PHASE II CONTRACT DOCUMENTS - STIPULATED SUM

6.7.1 For Phase II Contract Documents services performed by the Architect the City agrees to pay to the Architect the sum of \$262,500.00. The fee for the Phase II services shall be payable as follows:

.1 When the Drawings and the Project manual are, in the opinion of the Director, 50%

complete, the City agrees to pay to the Architect the sum of **\$131,250.00**

- .2 When the Drawings and the Project manual are fully developed, permittable documents that have been submitted to the Director for final approval, the City agrees to pay to the Architect the sum of **\$131,250.00**.
- .3 When the Drawings and Project manual receive final approval of the Director, the City agrees to pay the Architect the sum of **\$0.00**.
- .4 When the Architect has obtained the Building Permit approval, the City agrees to pay to the Architect the sum of **\$0.00**.
- .5 The Director may authorize no more frequently than monthly, partial payments commensurate with completion of Phase II services of the Architect.
- .6 Final payment shall be a lump sum payment of **\$262,500.00** due upon receipt of acceptable bids for the Project. If the Project is terminated under Section 1.7.8 (2) or (3) the final payment becomes due and payable to the Architect.

6.8 BASIS OF COMPENSATION FOR PHASE III CONSTRUCTION SERVICES - STIPULATED SUM

6.8.1 For Phase III Construction services performed by the Architect the City agrees to pay to the Architect the sum of **\$262,500.00**. The fee for the Phase III Construction Services shall be payable as follows:

- .1 Partial payments for Phase III Construction Services shall be paid periodically, but no more frequently than monthly, on the basis of that proportion of compensation for Phase III Construction Services actually performed bears to the total compensation for Phase III Construction Services required under this Contract, less previous payments for services.
- .2 Partial payments shall be limited to a total of 95% of the final amount due for Construction Services until (1) the completion of Construction Services and any Additional Services requested, and (2) the Project has been accepted by City Council.
- .3 The final 5% shall be a lump sum payment due upon Project acceptance by City Council.

6.9 BASIS OF COMPENSATION FOR PHASE IV POST-CONSTRUCTION SERVICES

6.9.1 Compensation for Phase IV Post-Construction services performed by the Architect is included in the compensation received by Architect under Section 6.8 for Phase III Construction Services.

6.10 COMPENSATION FOR ADDITIONAL SERVICES

6.10.1 For Additional Services of the Architect, as described in Section 1.6.1, but excluding Reimbursable Expenses and Additional Services of subcontractors, compensation to the Architect shall be a multiple of **2.2** times the Direct Personnel Expense of the Architect's Principals and employees incurred in the interest of the Project.

6.10.2 For Additional Services as described in Section 1.6.1 provided by subcontractors under contract with the Architect, compensation to the Architect shall be a multiple of **1.10** times the Subcontract Cost incurred in the interest of the Project. For Additional Services described in Section 1.6.1, payment to Architect shall be subject to the following:

- .1 The maximum cost of Certified Land Survey Services described under Section

- 1.6.1.19 is **\$18,000.00** and, unless an additional allocation for this expense is made, the total obligation of the City to the Architect shall not exceed the above maximum cost.
- .2 The maximum cost of Geotechnical Investigation and Engineering Services described under Section 1.6.1.20 is **\$6,000.00** and, unless an additional allocation for this expense is made, the total obligation of the City to the Architect shall not exceed the above maximum cost.
- .3 The maximum cost of Furniture, Fixture & Equipment (FF&E) Services described under Section 1.6.1.8 is **\$29,000.00** and, unless an additional allocation for this expense is made, the total obligation of the City to the Architect shall not exceed the above maximum cost.
- .4 The maximum cost of Building envelope consultant services described under Section 1.6.1.23 is **\$25,000.00** and, unless an additional allocation for this expense is made, the total obligation of the City to the Architect shall not exceed the above maximum cost.
- .5 The maximum cost of LEED Commissioning Services described under Section 1.6.1.23 is **\$30,000.00** and, unless an additional allocation for this expense is made, the total obligation of the City to the Architect shall not exceed the above maximum cost.
- .6 The maximum cost of Site Platting Services described under Section 1.6.1.3 is **\$5,000.00** and, unless an additional allocation for this expense is made, the total obligation of the City to the Architect shall not exceed the above maximum cost.
- .7 The maximum cost of Program Revisions described under Section 1.6.1.23 is **\$25,000.00** and, unless an additional allocation for this expense is made, the total obligation of the City to the Architect shall not exceed the above maximum cost.
- .8 The maximum cost of Information Technology consultant services described under section 1.6.1.23 is **\$8,000.00** and, unless an additional allocation for this expense is made, the total obligation of the City to the Architect shall not exceed the above maximum cost.
- .9 The maximum cost of Audio/Visual services described under section 1.6.1.23 is **\$5,000.00** and, unless an additional allocation for this expense is made, the total obligation of the City to the Architect shall not exceed the above maximum cost.
- .10 The maximum cost of Security consultant services described under section 1.6.1.23 is **\$8,000.00** and, unless an additional allocation for this expense is made, the total obligation of the City to the Architect shall not exceed the above maximum cost.
- .11 The maximum cost of Traffic Form A and Study consultant services described under section 1.6.1.23 is **\$10,000.00** and, unless an additional allocation for this expense is made, the total obligation of the City to the Architect shall not exceed the above maximum cost.
- .12 The maximum cost of Miscellaneous Additional Services described under section 1.6.1.23 is **\$100,000.00** and, unless an additional allocation for this expense is made, the total obligation of the City to the Architect shall not exceed the above maximum cost.

6.10.3 Compensation for Additional Services described in Section 1.6.1 shall not exceed **\$269,000.00** unless increased by additional allocation after execution of this Contract.

6.11 REIMBURSABLE EXPENSES

6.11.1 For Reimbursable Expenses, as described in Article 5, compensation to the Architect shall be a multiple of **1.10** times the amounts expended by the Architect, the Architect's employees and/or subcontractors in the interest of the Project.

6.11.2 Compensation for Reimbursable Expenses as described in Article 5, shall not exceed **\$60,500.00** unless an additional allocation is made after execution of this Contract.

6.12 LIMIT OF APPROPRIATION

6.12.1 The City's duty to pay money to Architect under the Contract is limited in its entirety by the provisions of this Section.

6.12.2 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 **\$1,379,500.00** ("Original Allocation") to pay money due under the Contract. The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for the Contract, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

6.12.3 The City makes a Supplemental Allocation by issuing to Architect 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 signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This Supplemental Allocation has been charged to such appropriation.

\$ _____

6.12.4 The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under the Contract 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 the Contract, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

6.12.5 The Director shall have the authority to reallocate funding between and among the various categories of Additional Services and the various categories of Reimbursable Expenses.

6.13 ADDITIONAL PROVISIONS

6.13.1 All invoices for the Basic Services are subject to approval by the Director and are due and payable on or about thirty days after receipt and approval by the Director. All payments shall be made by check. Such checks shall be made payable to the Architect and payments shall be addressed to the Architect at its address specified herein for notices. The City agrees that it will not unreasonably delay or withhold payment or approval of any invoice; however, the Director shall approve in whole or in part or disapprove Architect's invoices within fifteen days. Neither partial payments made hereunder nor approval of invoices or services by the Director shall be construed as final acceptance or approval of that part of the Architect's services to which such partial payment or approval relates nor shall such payments be construed as relieving the Architect of any of its obligations hereunder with respect thereto.

ARTICLE 7

RELEASE AND INDEMNIFICATION

7.1 RELEASE

7.1.1 EXCEPT FOR THE CITY'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT, ARCHITECT 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.

7.2 INDEMNIFICATION

7.2.1 ARCHITECT AGREES TO AND SHALL, TO THE EXTENT PERMITTED BY TEXAS LOCAL GOVERNMENT CODE §271.904, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES 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 ARISING AS A RESULT OF ARCHITECT'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONSULTANTS', OR SUBCONTRACTORS' ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS IN CONNECTION WITH ITS PERFORMANCE UNDER THIS AGREEMENT, WHETHER ARCHITECT IS IMMUNE FROM LIABILITY OR NOT. ARCHITECT SHALL INDEMNIFY AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES.

7.3 RELEASE AND INDEMNIFICATION OF PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT

7.3.1 ARCHITECT AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING ARCHITECT,

ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS ARCHITECT FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. ARCHITECT SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

7.3.2 ARCHITECT SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

7.3.3 WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, ARCHITECT SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND ARCHITECT SHALL REFUND THE PURCHASE PRICE.

7.4 SUBCONTRACTOR'S INDEMNITY

7.4.1 ARCHITECT 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.

ARTICLE 8

OWNERSHIP AND USE OF THE DOCUMENTS

8.1 Architect conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, notes, plans, computations, data bases, tabulations, exhibits, reports, underlying data, photographs and other work products, and any modifications or improvements to them (collectively "Documents"), and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that Architect, its agents, employees, contractors, and subcontractors (collectively "Authors") develop, write, or produce under this Agreement.

8.2 The Authors shall not claim or exercise any Proprietary Rights related to the Works. If requested by the Director, Architect shall place a conspicuous notation on any Works which indicates that the City owns the Proprietary Rights.

8.3 Architect shall execute all documents required by the Director to further evidence this assignment and ownership. Architect shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Agreement. If Architect's assistance is requested and rendered under this Section, the City shall reimburse Architect for all out-of-pocket expenses it incurs in rendering assistance, subject to the availability of funds. On termination of this Agreement, or if requested by the Director, Architect shall deliver all Works to the City. Architect shall obtain written agreements from the Authors which bind them to the terms in this Section.

8.4 All Works developed, written, or produced under this Agreement for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, are "works made for hire."

8.5 Architect may retain copies of the Documents for its archives. Architect shall not otherwise use, sell, license, or market the Documents.

ARTICLE 9

TERM, TERMINATION AND SUSPENSION OF CONTRACT

9.1 **TERM.** This Contract is effective on the Effective Date and expires upon the completion of the project unless terminated sooner.

9.2. TERMINATION OF CONTRACT

9.2.1 This Contract may be terminated by the City with or without cause upon thirty days written notice signed by the Director.

9.2.2 The Architect may terminate this Contract upon thirty days written notice to the City if the City fails substantially to perform in accordance with the terms of this Contract or if activity on the Project is suspended by the City for longer than the time period set out in Section 6.5.1, or if a Force Majeure causes suspension of the Project for longer than ninety days, provided, however, in the event the failure or suspension is cured within a thirty day period following the receipt by the City of the Architect's termination notice, the notice of termination shall become ineffective.

9.2.3 Upon receipt of a notice of termination and prior to the effective date of the termination, the Architect shall, unless the notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Contract and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Contract. Within thirty days after receipt of the notice of termination, the Architect shall submit a statement, showing in detail the services performed under this Contract prior to the effective date of termination.

9.2.4 Reproducible copies of all completed or partially completed Documents prepared under this Contract prior to the effective date of termination shall be delivered to the Director as a precondition to final payment.

9.2.5 In the event of termination due to no fault of the Architect and upon conditions stated in Sections 9.2.2 and 9.2.3 being met, the City shall promptly compensate the Architect for all services authorized by the Director and performed before or on the termination date, less previous compensation payments for services, together with Reimbursable Expenses then due.

9.3. FORCE MAJEURE, SUSPENSION OF CONTRACT

9.3.1 Timely performance by both parties is essential to this Contract. However, neither party will be liable for delays or other failures to perform its obligations under this Contract to the extent the delay or failure is caused by Force Majeure. For purposes of this Contract, Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders and the acts of superior governmental or military authority.

9.3.2 This relief is not applicable unless the affected party does the following:

- .1 uses due diligence to remove the Force Majeure as quickly as possible;
- .2 provides the other party with prompt written notice of the cause and its anticipated effect; and

.3 provides the other party with written notice describing the actual delay or non-performance incurred within seven days after the Force Majeure ceases.

9.3.3 The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Contract by the City.

9.3.4 If the Force Majeure continues for more than 30 days, the Director may terminate this Contract by giving seven days' written notice to Architect. Such termination is not a default or breach of this Contract. Architect waives any claim it may have for financial losses or other damages resulting from the termination except for amounts due under the Contract.

9.3.5 Architect shall not be relieved of the performance of its obligations under this Contract due to a strike or work slowdown of its employees. Architect shall employ only fully trained and qualified personnel during a strike.

ARTICLE 10

MISCELLANEOUS PROVISIONS

10.1 APPLICABLE LAWS

10.1.1 This Contract is subject to and shall be construed in accordance with the laws of the State of Texas, the City Charter and ordinances of the City of Houston (e.g. Landscape Ordinance), the laws and regulations of the federal government of the United States of America, and all rules and regulations of any regulatory body or officer having jurisdiction over this Project. Venue for this Contract is Harris County, Texas.

10.2 INSURANCE

10.2.1 The Architect shall provide and maintain certain insurance in full force and effect at all times during the term of this Contract and any extensions thereto. Such insurance is described as follows:

10.2.1.1 **Risks and Limits of Liability:** The insurance, at a minimum, must include the following coverages and limits of liability:

Coverage	Limit of Liability
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	Bodily Injury by accident \$1,000,000 (each accident) Bodily Injury by Disease \$1,000,000 (policy limit) Bodily Injury by Disease \$1,000,000 (each employee)
Commercial General Liability: Including Broad Form Coverage, Bodily Injury and Property Damage (Products and Completed Operations required when Physical Operations performed)	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence and \$1,000,000 aggregate per 12-month period
Automobile Liability	\$2,000,000 combined single unit for (1) any auto or (2) all owned, hired and non-owned autos
Excess Liability applicable to	\$1,000,000

Coverage	Limit of Liability
Commercial General and Automobile Liability	
Professional Liability	\$2,000,000 per claim/aggregate
Aggregate limits are per 12-month policy period unless otherwise indicated	

If professional liability coverage is written on a "claims made" basis, the Architect 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 Contract with a duration of two years after substantial completion.

10.2.1.2 **Form of Policies:** The insurance may be in one or more policies of insurance, the form of which must be approved by the Director and City Attorney; however, such approval shall never excuse non-compliance with the terms of this Section.

10.2.1.3 **Issuers of Policies:** The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in the State of Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition *Best's Key Rating Guide*.

10.2.1.4 **Insured Parties:** The City shall be an additional insured under this contract. Each policy, except those for Workers' Compensation, Employer's Liability and Professional Liability, must name the City and its officers and employees as Additional Insureds on the original policy and all renewals or replacements during the term of this Contract.

10.2.1.5 **Deductibles:** Architect shall be responsible for and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for same against the City, its officers or employees.

10.2.1.6 **Cancellation:** Architect must give the Director 30 days' advance written notice of any cancellation, non-renewal, or material change to the policy. Within the 30-day period, Architect shall provide other suitable policies in lieu of those about to be canceled or nonrenewed so as to maintain in effect the required coverage. If Architect does not comply with this requirement, the Director, at his or her sole discretion, may:

- (a) immediately suspend Architect from any further performance under this Contract and begin procedures to terminate for default, or
- (b) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Architect under this Contract.

10.2.1.7 **Subrogation:** Architect waives any claim or right of subrogation to recover against the City, its officers, agents and employees, and each Architect's insurance policy, except Professional Liability, must contain an endorsement waiving such claim.

10.2.1.8 **Endorsement of Primary Insurance:** Each policy, except Workers' Compensation and Professional Liability, must contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement.

10.2.1.9 **Liability for Premium:** The Architect shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.

10.2.1.10 **Subcontractors:** Architect shall require all subcontractors whose subcontracts exceed \$100,000, to carry insurance meeting all requirements stated above except amount. The amount shall be commensurate with the amount of the subcontract, but in no case shall it be less than \$500,000 per claim.

10.2.2 **Delivery of Policies:**

10.2.2.1 At the time this Contract is signed and as long as this Contract continues, Architect must furnish to the Director certificates of insurance that meet the requirements of this Contract. These certificates must bear the Architect's name for which they are insured. If requested by the Director, Architect must provide the originals of all policies referred to above, or copies certified by the agent or attorney-in-fact issuing them. Architect shall provide updated certificates of insurance to the Director upon request.

10.2.2.2 Every certificate of insurance Architect delivers for the Project shall:

- (a) Be less than 12 months old;
- (b) Include all pertinent identification information for the Insurer, including the company name and address, policy number, NAIC number or AMB number, and authorized signature;
- (c) Include the Project name and reference numbers and indicates the name and address of the Project Manager in the Certificate Holder Box; and
- (d) Be appropriately marked to accurately identify:
 - (i) All coverage and limits of the policy;
 - (ii) Effective and expiration dates; and
 - (iii) Waivers of subrogation, endorsement of primary insurance and additional insured language, as described above.

10.2.2.3 Architect shall continuously and without interruption, maintain in force the required insurance coverage specified in this Section. If Architect does not comply with this requirement, the Director, at his or her sole discretion, may: Immediately suspend Architect from any further performance under this Contract and begin procedures to terminate for default; or

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

10.2.2.5 Architect shall, upon the City's request, deliver an assurance letter from Architect's insurer stating that the insurer intends to issue Architect a new policy that meets the terms of this Section.

10.2.3 **Other Insurance.** If requested by the Director, Architect shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Architect's operations under this Contract.

10.3 Unless otherwise provided in this Contract, the Architect and Architect's subcontractors shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

10.4 The Architect agrees not to participate in the bidding process as a bidder and not to engage in construction of the Project. By written agreement, the Architect shall require each subcontractor for Project engineering services to be bound by the requirements of this Section.

10.5 **EQUAL EMPLOYMENT OPPORTUNITY**

10.5.1 The provisions set out in **Exhibit "C"** relating to Equal Employment Opportunity and attached to this Contract are hereby incorporated by reference herein for all purposes as fully and completely as if set forth verbatim herein. For the purpose of interpreting such, the Architect shall be the "Contractor".

10.6 **MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES PARTICIPATION**

10.6.1 Architect 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. Architect shall make good faith efforts to award subcontracts or supply agreements in at least 24% of the value of this Agreement to MWBEs. Architect acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity ("OBO") and will comply with them.

10.6.2 Architect shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

1. _____ (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 OBO Director ("the Director").
2. _____ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
3. Within five business days of execution of this subcontract, Architect (prime contractor) and subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

10.6.3 To this end, the Architect shall maintain records showing: (i) subcontracts and supply agreements with Minority Business Enterprises; and (ii) subcontracts and supply agreements with Women-owned Business Enterprises; and (iii) specific efforts to identify and award subcontracts and supply agreements to Minority and Women-owned Business Enterprises.

10.6.4 The Architect shall be required to submit periodic reports of its efforts under this Article to the OBO Director in such form and manner and at such time or times as may be prescribed, but initially described in the reporting forms included as **Exhibit "J"**.

10.7 SUCCESSORS AND ASSIGNS

10.7.1 The City and the Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Contract. Neither the City nor the Architect shall assign in law or otherwise, sublet or transfer any interest in this Contract without the written consent of the other.

10.8 NON-WAIVER

10.8.1 Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

10.9 NOTICES

10.9.1 All notices required or permitted hereunder shall be in writing and shall be deemed received when actually received or if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the other party at the address prescribed in the preamble hereof or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

10.10 CAPTIONS

10.10.1 The captions at the beginning of the articles and sections of this Contract are guides and labels to assist in locating and reading such articles and sections and, therefore, will be given no effect in construing this Contract and shall not be restrictive of or be used to interpret the subject matter of any article, section or part of this Contract.

10.11 ACCEPTANCES AND APPROVALS

10.11.1 Any acceptance or approval by the City, or its agents or employees shall not constitute nor be deemed to be a release of the responsibility and liability of the Architect, its employees, agents, subcontractors or suppliers for the accuracy, competency and completeness of any Documents prepared or services performed pursuant to the terms and conditions of this Contract, nor shall acceptance or approval be deemed to be an assumption of such responsibility or liability by the City, or its agents and employees, for any defect, error or omission in any Documents prepared or services performed by the Architect, its employees, agents, subcontractors or suppliers pursuant to this Contract.

10.12 AMBIGUITIES

10.12.1 In the event of any ambiguity in any of the terms of this Contract it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

10.13 INDEPENDENT CONTRACTOR

10.13.1 The relationship of the Architect to the City shall be that of an independent contractor. The City has no control or supervisory powers over the manner or method of Architect's performance under this Contract. All personnel Architect uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Architect is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

10.14 SURVIVAL

10.14.1 The provisions set forth in Article 8, Ownership and Use of The Documents, herein shall survive the termination, cancellation or expiration of this Contract.

10.15 EXTENT OF CONTRACT

10.15.1 This agreement, including its sections and the referenced Exhibits A to M which are made a part hereof, represents the entire and integrated agreement between the City and the Architect ("Contract") and supersedes all prior negotiations, representations or agreements either written or oral. This Contract may not be altered or amended except in writing executed on behalf of all of the parties and approved by ordinance by the City Council of the City of Houston.

10.15.2 If a conflict among the sections and Exhibits arises, the sections shall control over the Exhibits.

10.15.3 This Contract is between the City and Architect, which are collectively referred to as the "parties" or singularly as a "party." This Contract shall bind and benefit the parties and shall not bestow any rights or benefits upon any third parties.

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

10.16 FAIR CAMPAIGN ORDINANCE

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

10.17 ENFORCEMENT

10.17.1 The City Attorney or his or her designee shall have the right to enforce all legal rights and obligations under this Contract without further authorization. Architect covenants to provide to the City Attorney all documents and records that the City Attorney deems necessary to assist in determining Architect's compliance with this Contract, with the exception of those documents made

confidential by federal or State law or regulation.

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

10.17.3 The parties consent to venue for any litigation relating to this Contract being Harris County, Texas, regardless of any choice of law rules.

10.17.4 Unless otherwise specified in this Contract, the rights and remedies contained in this Contract are not exclusive but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Contract except in accordance with its provisions.

10.18 **DRUG DETECTION AND DETERRENCE**

10.18.1 It is the policy of the City to achieve a drug-free workforce and to provide a workplace that is free from the use of illegal drugs and alcohol. It is also the policy of the City that the manufacture, distribution, dispensation, possession, sale or use of illegal drugs or alcohol by Architects while on City Premises is prohibited. By executing this Contract, Architect represents and certifies that it meets and shall comply with all the requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 ("Mayor's Policy") and the Mayor's Drug Detection and Deterrence Procedures for Architects, Executive Order No. 1-31 Revised ("Executive Order"). City Council Motion No. 92-1971 (Mayor's Policy) is on file in the office of the City Secretary. Copies of Executive Order No. 1-31, Revised may be obtained in Room B-1, City of Houston Offices located at 1801 Main Street.

10.18.2 Executive Order No. 1-31, Revised applies to all City of Houston contracts for labor and/or services except the following:

- .1 Contracts authorized by Emergency Purchase Orders,
- .2 Contracts in which imposition of the requirements of this Executive Order would exclude all potential bidders or proposers or would eliminate meaningful competition for the contract,
- .3 Contracts with companies that have fewer than fifteen employees during any 20-week period during a calendar year and no safety impact positions,
- .4 Contracts with non-profit organizations providing services at no cost or reduced cost to the public, and
- .5 Contracts with federal, state, or local governmental entities.

10.18.3 Prior to execution of this Contract, Architect will have filed with the City (i) the Drug Policy Compliance Agreement substantially in the format set forth in **Exhibit "E"** (Attachment A to the Executive Order), (ii) a copy of its drug-free workplace policy, and (iii) a written designation of all safety impact positions, if applicable or (iv) a Certification of No Safety Impact Positions, substantially in the format set forth in **Exhibit "F"** (Attachment C to the Executive Order), if applicable (i.e. no safety impact positions). Architect shall also file every 6 months during the performance of this Contract and upon the completion of this Contract, a Drug Policy Compliance Declaration in a form substantially in the format set forth in **Exhibit "G"** (Attachment B to the Executive Order). The Drug Policy Compliance Declaration shall be submitted within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Contract. The first 6-month period shall begin to run on the date City issues its Notice to Proceed

hereunder or if no Notice to Proceed is issued, on the first day Architect begins Work.

10.18.4 Architect shall have the continuing obligation to file with the Director written designations of safety impact positions and Drug Policy Compliance Declarations at any time during the performance of this Contract that safety impact positions are added if initially no safety impact positions were designated. Architect also shall have the continuing obligation to file updated designations of safety impact positions with the Director when additional safety impact positions are added to Architect's employee work force.

10.18.5 Architect shall require that its subcontractors comply with the Mayor's Policy and the Executive Order and Architect shall be responsible for securing and maintaining the required documents for City inspection throughout the term of this Contract.

10.18.6 The failure of Architect to comply with the above Sections shall be a breach of this Contract entitling City to terminate in accordance with Article 9.

10.19 **BUSINESS STRUCTURE AND ASSIGNMENTS**

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

10.20 **ARCHITECT'S DEBT**

10.20.1 If Architect, at any time during the term of this Contract, incurs a debt, as the word is defined in Section 15-122 of the Houston City Code of Ordinances, it shall immediately notify City Controller in writing. If City Controller becomes aware that Architect has incurred a debt, it shall immediately notify Architect in writing. If Architect does not pay the debt within thirty days of either such notification, City Controller may deduct funds in an amount equal to the debt from any payments owed to Architect under this Contract, and Architect waives any recourse therefore. Architect 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.

10.21 **ARCHITECT'S ACCOUNTING RECORDS, INSPECTIONS AND AUDITS**

10.21.1 The Director and City Controller shall have the right to examine and review the Architect's books, records and billing Documents which are directly related to performance or payment under this Contract. The Architect shall maintain such books, records, and billing Documents for four years after the cessation of Architect's other services and responsibilities under this Contract. Nothing in this Article shall affect the time for bringing a cause of action nor the applicable statute of limitations.

The parties have executed this Contract in duplicate copies, each of which shall be an original, as of the date of countersignature by the City Controller of the City of Houston.

ARCHITECT:
PERKINS & WILL, INC.

DocuSigned by:
By: John Strastus
Name: John Strastus
Title: Principal

ATTEST/SEAL:

DocuSigned by:
By: Brodie Stephens
Corporate Secretary

Tax Identification No. 36-2690384

CITY:
THE CITY OF HOUSTON, TEXAS

By: _____
Mayor

ATTEST/SEAL:

By: _____
City Secretary

COUNTERSIGNED:

City Controller

DATE COUNTERSIGNED:

"Effective Date"

APPROVED:

DocuSigned by:
C. J. Messiahy, Jr.
Director, General Services Department

APPROVED AS TO FORM:

[Signature]
Senior Assistant City Attorney
LD No. _____

EXHIBIT "A"

SCOPE OF SERVICES

North Belt Police Station WBS No. G-000165-0001-3

1.1 PROJECT DESCRIPTION:

1.1.1 The scope of services for this Project includes the provision of architectural and engineering services necessary to design, document, and administer the construction contract for the New North Belt Police Station and Fleet Building located at 320 Gears Road, Houston, Texas.

1.1.2 The new facilities include a 29,000 S.F. police station and a 2,000 S.F. Fleet Building. Program spaces shall include patrol, administration, investigative functions and opportunities for community relations as well as the Fleet Building to maintain the vehicle motor pool. Site improvements will include landscaping, parking, storm water detention if required, fencing, exterior lighting, and a back-up generator. The new building shall be constructed with energy efficient MEP systems and meet all current environmental and LEED standards. The construction budget shall be \$15,344,500.00. See Budget Allocation.

1.1.3 Architect shall provide specifications; prepare biddable documents; provide permitting services; estimate construction costs; provide value engineering; assist with bidding and award activities; arrange and conduct meetings; perform construction phase services, including construction management; coordinate commissioning activities; and assist in the warranty review. Computer Aided Design and Drafting (CADD) shall be utilized in the preparation of Contract Document Drawings and Record Drawings. Construction Specifications Institute (CSI) standards shall be used in the preparation of the Project Manual.

1.1.4 The Architect shall not specify the use of any building materials to be used in the construction of this project that are classified as "asbestos containing materials" (ACM). ACMs are defined as materials containing greater than one percent (>1%) asbestos.

2.1 BASIC SERVICES:

2.1.1 The Architect shall design this Project to comply with the Leadership in Energy & Environmental Design (LEED™) standards for a Silver Level LEED™ Certification, unless otherwise approved by the Director in writing.

2.1.2 The architect shall register the Project with the United States Green Building Council

(USGBC). The Architect shall compile and submit necessary documentation to USGBC for review and certification. LEED registration fees are a Reimbursable Expense.

2.1.3 The Architect shall provide specifications that incorporate LEED requirements for inclusion in the Contract Documents. The contract documents shall define the contractor's responsibilities and documentation requirements related to LEED certification, including construction waste management, construction indoor air quality, and obtaining materials credits.

2.1.4 Phase II services involve the development of Contract Documents, as described in the Contract. Contract Documents shall be suitable for the solicitation of competitive construction bids. All permit and other discrepancies must be resolved, and changes incorporated into the Contract Documents before approval can be given by the City for the 100% submittal and the subsequent initiation of the bidding process.

2.1.5 The Architect shall issue Adobe™ PDF files for all specifications and drawings for bidding purposes. The Architect shall also submit to the City, the CADD files used to create the Drawings. Label CD-ROM disk with Project Name, Project Number, date and type of submittal (e.g. Bid Issue, Record Drawings, etc.). Do not use erasable or re-writable CD-ROM disks.

2.1.6 When the Architect has completed drawings for bidding and addendum purposes; the Architect shall compile a "for construction set" inclusive of all pre-bid and post-bid changes. The Architect shall submit to the City four hard copies, CADD and Adobe™ PDF files.

2.1.7 The Architect shall arrange and conduct Phase I and Phase II meetings providing associated documentation. Meeting minutes shall be typed and distributed to all project stakeholders within three days of the meeting occurrence. The Architect shall also solicit comments, revise and redistribute the meeting minutes.

2.1.8 Phase III services involve the administration of construction and other services as specified in the Contract.

2.1.8.1 The Architect shall attend bi-weekly construction progress meetings. As determined by the Director based on the progress of the work, the Architect may be required to attend meetings on a more frequent basis. At the end of the progress meetings the Architect shall walkthrough the project site with the City's project manager.

2.1.8.2 At the conclusion of construction the Architect shall correct the CADD files for the

Project from information taken from the "red line" record prints maintained on the site by the Contractor throughout the construction phase. The Architect shall periodically review the "red line" record prints to determine, to the best of the Architect's knowledge, whether they are maintained properly. The Record Drawings required in Section 1.4.19 of the Contract shall be Adobe™ PDF files generated from these corrected CADD files. In addition to providing Record Drawings, the Architect shall also provide the CADD files used to produce these files.

2.1.8.3 The Architect shall provide "punch list" inspection to determine the status of Substantial Completion. Provide a list of all outstanding items to be completed, by discipline, to the Director. Written warranties guarantee, releases, operating instructions, maintenance manuals, keys, equipment data and related documents required by the Contract Documents shall be obtained and reviewed. Three sets of documents bound and labeled in three-ring binders shall be transmitted to City's project manager.

3.1 ADDITIONAL SERVICES:

3.1.1 Enhanced LEED commissioning will be paid as an additional service as authorized by the Director in writing.

4.1 REIMBURSABLE EXPENSES:

4.1.1 The Architect shall provide two 18" x 24" color renderings of the City-approved Phase II design, as a Reimbursable Expense. The City shall approve both views in advance. Both renderings are to be framed in black metal frames, the style of which is to be approved by the City. City agrees to reimburse the Architect up to a sum **not to exceed \$5,000.00**.

5.1 PROJECT BUDGET:

5.1.1 Pursuant to City policy concerning the Administration and control of project funds, the initial budget for this Project is established at **\$15,344,500.00** is defined in the contract as the "Agreed Estimate". The Architect shall therefore endeavor to plan and design this Project in such a manner that the Architect's best professional estimate of probable Construction Cost, as defined in the Contract, does not exceed this amount. If at any time during the course of this Project, the Architect's estimate of Construction Cost, for all work designed and specified, exceeds this amount, the Architect shall immediately notify the Director, may by written notice either increase the Agreed Estimate up to an amount not to exceed the Maximum Total Construction cost, or any revision thereof, or obtain an agreed upon reduction in the Project scope. For any budget revision there shall be no increase in the Architect's fee.

6.1 USE OF COMPUTER-AIDED DESIGN AND DRAFTING (CADD):

6.1.1 All CADD files submitted shall be vector graphic files. All drawings used as Contract Documents for the Project shall be developed using Computer-aided Design and Drafting (CADD) software that produces vector graphic files. All CADD files used to generate drawings that are submitted to the City shall be submitted at the same time as the drawings they represent.

6.1.2 CADD files shall be AutoCAD 2008 compatible. The files submitted shall be capable of being read by AutoCAD 2008 software, with little or no translation degradation. If there is translation degradation, it must be acceptable to the City.

6.1.3 Use of raster graphic (scanned) images is limited. Scanned images may be incorporated into the drawings for such things as photographs, when approved by the City. For additions and renovation work, if no vector files of the Record Drawings (i.e. As-built) are available, and additional services for digitizing have not been provided, raster graphic images of the existing facility may be used to provide context to the new work. When raster images of "as-built" drawings are used, they shall be properly scaled and cleaned to blend with the vector drawings depicting the new work.

6.1.4 CADD files shall be submitted on CD-ROM. All submitted CADD files shall be on CD-ROM, using the MSDOS file storage system. Do not use erasable or re-writable CD-ROM disks.

6.1.5 CADD Drawings shall be drawn at full scale. Scaling the drawings to size for prints shall be done when the drawings are plotted.

6.1.6 Use State Plane World Geographic Coordinates. Do not use other coordinate systems.

6.1.7 Use Auto-dimensioning. The CADD program's capability to automatically dimension selected elements shall be used. The dimension computed by the CADD software shall not be altered in any way except to change its size, position or font.

6.1.8 Use Standard City CADD drawings and symbols, when available. Contact City's Project Manager for CADD files of the City Seal, Project Sign, Plaque and City Signature Block.

6.1.9 Show adequate location information on Drawings. Show monument location and or baselines on drawings with dimensions to the Work.

6.1.10 Do not incorporate Specifications into the Drawings unless required by the City of Houston Code Enforcement. Generally, graphic information should be included in the Drawings and written information in the Project Manual.

6.1.11 CADD files will be accorded the same status and protection as the Drawings they represent. The Architect will comply with State requirements in the issuance of electronic drawing files.

6.1.12 Drawings shall be prepared using the Uniform Drawing System (UDS) standards as published by CSI, also known as the National CADD Standard, with any additional requirements added by the City.

6.1.13 Include Documentation with each CADD submittal. Submit a computer text file, capable of being read by most any word processing software that documents what CADD files are on the disk and how they are used to create the plotted drawings. Documentation shall include but not be limited to an explanation of the CADD layering scheme and an explanation of how each sheet is composed for screen display and plotting (i.e. what is the main filename and what other reference files and/or cell libraries are used). Submittal should include a plot style table file.

7.1 KEY PERSONNEL:

7.1.1 Architect's personnel to be employed in the Project are identified below to the extent known at the time of signing this Contract. Architect shall not change the personnel identified below except with the Director's prior written consent, which shall not be unreasonably withheld. If any of Architect's key personnel to be employed in the Project are not identified below, Architect shall identify in writing such persons to the Director. If the Director does not approve of an individual, Architect shall propose an alternate individual reasonably acceptable to the Director.

Managing Principal	John Strasius, AIA, LEED AP
Project Designer	Ron Stelmarski
Project Manager	Christy Poindexter
Project Architect	Meredith Hunt

WBS No. G-000165-0001-3

NORTH BELT POLICE STATION
WBS NO.: G-000165-0001-3

EXHIBIT "B"

PROJECT SCHEDULE:

- August 1, 2020 – Notice to proceed given to Perkins+Will to begin design/construction drawings
- August 1, 2020 to January 1, 2022 - (17 1/2 months)
 - o Phase I - Schematic Design/Design Development/Project Manual - (4 months)
 - o Phase II - Contract Documents - (8 months)
 - o CoH Reviews and Approvals including Code Enforcement - (3 months)
 - o Bidding/Negotiations/GMP Approval - (2 1/2 months)
- January 18, 2022 - Notice to proceed given to Christensen Building Group, LLC start construction phase
- January 18, 2022 to January 18, 2023 - (12 months)
 - o Phase III - Commence building construction/procurement and execution
- Total project execution design/bidding & negotiation/construction - August 1, 2020 to January 18, 2023 - (29 1/2 months = 2 years – 5 1/2 months)
 - o Architectural/Engineering design/construction drawings/CoH review (15 months)
 - o Bidding/Negotiations/GMP Approval (2 1/2 months)
 - o Building Construction - (12 months)

EXHIBIT "C"

Equal Employment Opportunity Contract Compliance

I. SCOPE

Pursuant to City Council Ordinance No. 78-1538, passed August 9, 1978, all contracts entered into by the City of Houston involving the expenditure of \$10,000.00 or more shall incorporate the following equal employment opportunity clause.

II. REQUIREMENTS

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier, or lessee agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.

2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, or age.

3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or workers' representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal opportunity and affirmative action provisions applicable, and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246 and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.

6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract, or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965 so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The contractor shall file and shall cause each of his subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

Exhibit "D"**DIRECT SALARIES**

Pursuant to Section 4.1.1 of the Contract the following table represents the classifications and direct salary rates of personnel the Architect anticipates will be directly engaged on the Project.

<u>CLASSIFICATION</u>	<u>RATE</u>
Managing Principal	\$ 121.00 per hour
Design Principal	\$ 121.00 per hour
Project Manager	\$ 99.00 per hour
Project Architect	\$ 88.00 per hour
Staff Architect	\$ 66.00 per hour
Specification Writer	\$ 86.00 per hour
QA Architect	\$ 86.00 per hour
Interior Designer	\$ 91.00 per hour
Administrative	\$ 37.00 per hour

EXHIBIT "E"
DRUG POLICY COMPLIANCE AGREEMENT

I, _____
(Name) _____
(Title)
of _____
(Architect)

have authority to bind Architect 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 Architect is aware of and by the time the Contract is authorized and approved by the City Council, City of Houston, Architect 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 Architect 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 Architects (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and an 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 Architect 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 the Contract not being authorized and approved by the City Council, City of Houston or termination of the Contract by the City of Houston.

(Date)

Architect

Signature

Title

EXHIBIT "F"

**ARCHITECT'S CERTIFICATION
OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT**

THE STATE OF TEXAS

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared

(Affiant)

who being by me duly sworn on his oath stated that he is _____
(Title)

of _____
Architect

and that no employee safety impact positions, as defined in §5.17 of Executive Order No. 1-31, will be involved in performing the architectural services as provided in the Contract. Architect agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

(Affiant's Signature)

SWORN AND SUBSCRIBED before me by _____
(Affiant)

on _____
(Date)

Notary Public in and for the State of TEXAS

(Print or type Notary Public name)

EXHIBIT "G"

DRUG POLICY COMPLIANCE DECLARATION

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF HARRIS

§

BEFORE ME, the undersigned authority, on this day personally appeared

(Affiant)

who being by me duly sworn on his oath stated that he is _____
(Title)

of _____
(Architect)

the Architect named and referred to within the Contract; that Affiant is fully competent and authorized to give this affidavit and that Affiant has personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 20__

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

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

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

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

Initials From _____ to _____ the following testing has occurred:
(Start date) (End date)

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

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

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

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

(Affiant's Signature)

SWORN AND SUBSCRIBED before me by _____ on _____
(Affiant) (Date)

Notary Public in and for the State of TEXAS

(Print or type name)

My Commission Expires: _____
(Expiration Date)

My Commission Expires: _____
(Expiration Date)

EXHIBIT "H"
CERTIFICATE OF INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

7/1/2020

DATE (MM/DD/YYYY)

6/8/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY, AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER LOCKTON COMPANIES 444 W. 47TH STREET, SUITE 900 KANSAS CITY MO 64112-1906 (816) 960-9000	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:
	INSURER(S) AFFORDING COVERAGE INSURER A : American Zurich Insurance Company INSURER B : Endurance Risk Solutions Assurance Co INSURER C : Lloyds & London Co INSURER D : Zurich American Insurance Company INSURER E : American Guarantee and Liab. Ins. Co. INSURER F :
INSURED 1411585 PERKINS+WILL, INC. ATTN: RICHARD NEMETH 2 BRYANT STREET SAN FRANCISCO CA 94105 DALLAS	NAIC # 40142 43630 16535 26247

COVERAGES *** CERTIFICATE NUMBER: 16794000 REVISION NUMBER: XXXXXXXX

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
D	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y	Y	GLO0926401	7/1/2019	7/1/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 25,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
E	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	BAP0926404	7/1/2019	7/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
B	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	Y	N	EXC10007382704	7/1/2019	7/1/2020	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$ XXXXXXXX
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	Y	WC0926402	7/1/2019	7/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	PROFESSIONAL LIABILITY	N	N	LDUSA1901441	7/1/2019	7/1/2020	\$2,000,000 PER CLAIM/\$2,000,000 AGGREGATE

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
SEE ATTACHED.

CERTIFICATE HOLDER

16794000
CITY OF HOUSTON
DESIGN & CONSTRUCTION DIVISION
ATTN: DIMITRI KARAVIAS, SR. PROJECT MANAGER
900 BAGBY STREET, 2ND FLOOR
HOUSTON TX 77002

CANCELLATION See Attachments

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Joseph M. Agnello

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RE: DESIGN SERVICES FOR NORTH BELT POLICE STATION, 320 GEARS ROAD, HOUSTON, TX / WNS # G-000165-0001-3. THE CITY OF HOUSTON, A TEXAS HOME-RULE MUNICIPALITY, AND ITS OFFICERS AND EMPLOYEES ARE ADDITIONAL INSURED AS RESPECTS GENERAL LIABILITY, AUTO LIABILITY, AND UMBRELLA/EXCESS LIABILITY, AND THESE COVERAGES ARE PRIMARY, IF REQUIRED BY WRITTEN CONTRACT. THE ADDITIONAL INSURED'S OWN COVERAGE IS EXCESS OF AND NON-CONTRIBUTORY WITH THE GENERAL LIABILITY AND UMBRELLA/EXCESS LIABILITY, AND ON THE AUTO LIABILITY AS RESPECTS THE USE OF VEHICLES OWNED BY PERKINS+WILL, INC. IF REQUIRED BY WRITTEN CONTRACT. WAIVER OF SUBROGATION APPLIES TO GENERAL LIABILITY, AUTO LIABILITY, AND WORKERS COMPENSATION/EMPLOYER'S LIABILITY WHERE ALLOWED BY STATE LAW AND IF REQUIRED BY WRITTEN CONTRACT.

POLICY NUMBER: GLO0926401

COMMERCIAL GENERAL LIABILITY
CG 20 37 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**Additional Insured – OWNERS, LESSEES or
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
ANY PERSON OR ORGANIZATION YOU ARE REQUIRED TO ADD AS AN ADDITIONAL INSURED UNDER A WRITTEN CONTRACT OR WRITTEN AGREEMENT	ANY LOCATION OR PROJECT, OTHER THAN A WRAP-UP OR OTHER CONSOLIDATED INSURANCE PROGRAM LOCATION OR PROJECT FOR WHICH THE INSURANCE IS OTHERWISE SEPARATELY PROVIDED TO YOU BY A WRAP-UP OR OTHER CONSOLIDATED INSURANCE PROGRAM.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

CG 20 37 07 04

© ISO Properties, Inc., 2004

POLICY NUMBER: GLO0926401

COMMERCIAL GENERAL LIABILITY
CG 20 10 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
ANY PERSON OR ORGANIZATION YOU ARE REQUIRED TO ADD AS AN ADDITIONAL INSURED UNDER A WRITTEN CONTRACT OR WRITTEN AGREEMENT	ANY LOCATION OR PROJECT, OTHER THAN A WRAP-UP OR OTHER CONSOLIDATED INSURANCE PROGRAM LOCATION OR PROJECT FOR WHICH THE INSURANCE IS OTHERWISE SEPARATELY PROVIDED TO YOU BY A WRAP-UP OR OTHER CONSOLIDATED INSURANCE PROGRAM.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

POLICY NUMBER: GLO0926401
Effective Date: SEE ATTACHED CERTIFICATE

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

Any person or organization that requires you to waive your rights to recovery, in a written contract or agreement with the Named Insured.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**The following is added to Paragraph 8. Transfer Of
Rights Of Recovery Against Others To Us of
Section IV - Conditions:**

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.



Notification to Others of Cancellation

POLICY NUMBER: GLO0926401

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part
Liquor Liability Coverage Part
Products/Completed Operations Liability Coverage Part

- A.** If we cancel this Coverage Part(s) by written notice to the first Named Insured for any reason other than nonpayment of premium, we will mail or deliver a copy of such written notice of cancellation:
1. To the name and address corresponding to each person or organization shown in the Schedule below; and
 2. At least 10 days prior to the effective date of the cancellation, as advised in our notice to the first Named Insured, or the longer number of days notice if indicated in the Schedule below.
- B.** If we cancel this Coverage Part(s) by written notice to the first Named Insured for nonpayment of premium, we will mail or deliver a copy of such written notice of cancellation to the name and address corresponding to each person or organization shown in the Schedule below at least 10 days prior to the effective date of such cancellation.
- C.** If notice as described in Paragraphs **A.** or **B.** of this endorsement is mailed, proof of mailing will be sufficient proof of such notice.

SCHEDULE	
Name and Address of Other Person(s) / Organization(s):	Number of Days Notice:
Any person or organization you are required to provide notice of cancellation, as defined above, in a written contract, written agreement, except where such contract or agreement is prohibited by law.	30

All other terms and conditions of this policy remain unchanged.

POLICY NUMBER: GLO0926401

Other Insurance Amendment – Primary And Non-Contributory

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the: **Commercial General Liability Coverage Part**

1. The following paragraph is added to the Other Insurance Condition of Section IV – Commercial General Liability Conditions:

This insurance is primary insurance to and will not seek contribution from any other insurance available to an additional insured under this policy provided that:

- a. The additional insured is a Named Insured under such other insurance; and
- b. You are required by a written contract or written agreement that this insurance would be primary and would not seek contribution from any any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph 4.b. of the Other Insurance Condition of Section IV – Commercial General Liability Conditions:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

All other terms and conditions of this policy remain unchanged.

POLICY NUMBER: BAP0926404

COMMERCIAL AUTO
CA 04 44 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US (WAIVER OF
SUBROGATION)**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

BUSINESS AUTO COVERAGE FORM

MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

Named Insured: SEE ATTACHED CERTIFICATE
Endorsement Effective Date: SEE ATTACHED CERTIFICATE

SCHEDULE

Name(s) Of Person(s) Or Organization(s): All persons and/or organizations that are required by written contract or agreement with the insured that waiver of subrogation be provided under this policy.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

Notification to Others of Cancellation

POLICY NUMBER: BAP0926404

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial Automobile Coverage Part

A. If we cancel this Coverage Part by written notice to the first Named Insured for any reason other than nonpayment of premium, we will mail or deliver a copy of such written notice of cancellation:

1. To the name and address corresponding to each person or organization shown in the Schedule below; and

2. At least 10 days prior to the effective date of the cancellation, as advised in our notice to the first Named Insured, or the longer number of days notice if indicated in the Schedule below.

B. If we cancel this Coverage Part by written notice to the first Named Insured for nonpayment of premium, we will mail or deliver a copy of such written notice of cancellation to the name and address corresponding to each person or organization shown in the Schedule below at least 10 days prior to the effective date of such cancellation.

C. If notice as described in Paragraphs A. or B. of this endorsement is mailed, proof of mailing will be sufficient proof of such notice.

Name and Address of Other Person(s) / Organization(s):

Any person or organization you are required to provide notice of cancellation, as defined above, in a written contract, written agreement, except where such contract or agreement is prohibited by law.

Number of Days Notice:

30

All other terms and conditions of this policy remain unchanged.

POLICY NUMBER: BAP0926404

**COMMERCIAL AUTO
CA 20 48 10 13**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DESIGNATED INSURED
COVERED AUTOS LIABILITY COVERAGE**

This endorsement modifies insurance provided under the following:

**AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

SCHEDULE

Name of Person(s) or Organization(s):

ANY PERSON OR ORGANIZATION YOU ARE REQUIRED TO PROVIDE ADDITIONAL INSURED STATUS OR ADDITIONAL INSURED STATUS ON A PRIMARY, NON-CONTRIBUTORY BASIS IN A WRITTEN CONTRACT OR WRITTEN AGREEMENT, EXCEPT WHERE SUCH CONTRACT OR AGREEMENT IS PROHIBITED BY LAW.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in Paragraph A.1. of Section II - Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph D.2. of Section I - Covered Autos Coverages of the Auto Dealers Coverage Form.

CA 20 48 10 13

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Any person or organization that requires you to waive your rights of recovery, in a written contract or agreement with the Named Insured.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: 07/01/19

Insured: Perkins + Will, Inc.

Policy No: WC0926402

American Zurich Insurance Company

WC 00 03 13

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**WC 99 06 33****NOTIFICATION TO OTHERS OF CANCELLATION ENDORSEMENT**

This endorsement is used to add the following to Part Six of the policy.

**PART SIX
CONDITIONS**

- A.** If we cancel this policy by written notice to you for any reason other than nonpayment of premium, we will mail or deliver a copy of such written notice of cancellation to the name and address corresponding to each person or organization shown in the Schedule below. Notification to such person or organization will be provided at least 10 days prior to the effective date of the cancellation, as advised in our notice to you, or the longer number of days notice if indicated in the Schedule below.
- B.** If we cancel this policy by written notice to you for nonpayment of premium, we will mail or deliver a copy of such written notice of cancellation to the name and address corresponding to each person or organization shown in the Schedule below at least 10 days prior to the effective date of such cancellation.
- C.** If notice as described in Paragraphs **A.** or **B.** of this endorsement is mailed, proof of mailing will be sufficient proof of such notice.

SCHEDULE	
Name and Address of Other Person(s) / Organization(s):	Number of Days Notice:
Any person or organization you are required to provide notice of cancellation, as defined above, in a written contract, written agreement, except where such contract or agreement is prohibited by law.	30

All other terms and conditions of this policy remain unchanged.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement attaching to and forming part of Policy No. B0146LDUSA1901441

Issued to: PERKINS + WILL, INC. and/or their Subsidiaries and/or associated and/or affiliated companies and business entities owned or financially controlled as more fully described in Endorsement No.1 or as currently, previously, or hereafter existing or created in accordance with Condition 0. herein.

Issued by: Underwriters at Lloyds of London

LIMITED AUTHORITY TO ISSUE CERTIFICATES OF INSURANCE ENDORSEMENT

In consideration of the premium charged, it is hereby understood and agreed as follows:

(1) Insurers authorize Lockton Companies LLC, BFL Canada Risk & Insurance Services, Inc. and Paragon International Insurance Brokers Ltd, the ("Certificate Issuer") to issue Certificates of Insurance at the request or direction of the Insured. It is expressly understood and agreed that, subject to Paragraph (2) below, any Certificate of Insurance so issued shall not confer any rights upon the Certificate Holder, create any obligation on the part of the Insurers, or purport to, or be construed to, alter, extend, modify, amend, or otherwise change the terms or conditions of this Policy in any manner whatsoever. In the case of any conflict between the description of the terms and conditions of this Policy contained in any Certificate of Insurance on the one hand, and the terms and conditions of this Policy as set forth herein on the other, the terms and conditions of this Policy as set forth herein shall control.

(2) Notwithstanding Paragraph (1) above, such Certificates of Insurance as are authorized under this endorsement may provide that in the event the Insurers cancel or non-renew this Policy or in the event of a Material Change to this Policy, Insurers shall mail written notice of such cancellation, non-renewal, or Material Change to such Certificate Holder within a specified period of time; provided, however, that the Insurers shall have not be required to provide such notice more than 45 days prior to the effective date of cancellation, non-renewal, or a Material Change. The Insured shall provide written notice to the Insurers of all Certificate Holders and the number of days' written notice of cancellation, non-renewal, or Material Change, if any, specified in each Certificate of Insurance (i) at inception of this Policy, (ii) 90 days prior to expiration of this Policy, and (iii) within 10 days of receipt of a written request from Insurers. Insurers' obligation to mail notice of cancellation, non-renewal, or a Material Change as provided in this paragraph shall apply solely to those Certificate Holders with respect to whom the Insured has provided the foregoing written notice to the Insurers.

(3) It is further understood and agreed that Insurers' authorization of the Certificate Issuer under this endorsement is limited solely to the issuance of Certificates of Insurance and does not authorize, empower, or appoint the Certificate Issuer to act as an agent for the Insurers or bind the Insurers for any other purpose. The Certificate Issuer shall be solely responsible for any errors or omissions in connection with the issuance of any Certificate of Insurance pursuant to this endorsement.

(4) As used in this endorsement:

(i) Certificate of Insurance means a document issued for informational purposes only as evidence of the existence and terms of this Policy in order to satisfy a contractual obligation of the Insured.

(ii) Material Change means an endorsement to or amendment of this Policy after issuance of this Policy by the Insurers that restricts the coverage afforded to the Insured.

All other terms, clauses and conditions remain unchanged.

EXHIBIT "I"

**FORM POP 2
CERTIFICATION OF AGREEMENT TO COMPLY WITH
PAY OR PLAY PROGRAM**

Available at <http://www.houstontx.gov/obo/payorplay/pop2.pdf>



**City of Houston
Certification of Compliance with
Pay or Play Program**



Contractor Name:	Perkins + Will, Inc.	\$ 1,379,500.00
	<i>(Contractor/Subcontractor)</i>	<i>(Amount of Contract)</i>

Contractor Address: 2218 Bryan St, Suite 200, Dallas, TX 75201

Project No.: G-000165-001-3

Project Name: City of Houston North Belt Station

POP Liaison Name: John Strasius, AIA, LEED AP, Principal

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534 and Executive Order 1-7, Contractor/Subcontractor agrees to abide by the terms of this Program. This certification is required of all contractors for contracts subject to the program. You must agree EITHER to PAY or to PLAY for all covered employees. The Contractor/Subcontractor may also Pay on behalf of some covered employees and Play on behalf of other covered employees.

The Contractor/Subcontractor will comply with all provisions of the Pay or Play Program and will furnish all information and reports requested to determine compliance with program requirements of the Pay or Play Program (See Executive Order 1-7 for the terms of the Pay or Play program) The criteria of the program is as follows:

The Contractor/Subcontractor agrees to "Pay" \$1.00 per hour for work performed by covered employees under the contract with the City. If independent contract labor is utilized the Contractor/Subcontractor agrees to report hours worked by the independent contract laborer and pay \$1.00 per hour for work performed.

Otherwise the Contractor/Subcontractor agrees to **“Play”** by providing health benefits to each covered employee. The health benefits must meet the following criteria:

1. The employer will contribute no less than \$150 per employee per month toward the total premium cost for single coverage only; and
2. The employee contribution, if any amount, will be no greater than 50% of the total premium cost and no more than \$150 per month.
3. Pursuant to E.O. 1-7 section 4.04 a contractor is deemed to have complied with respect to a covered employee who is not provided health benefits if the employee refuses the benefits and the employee's contribution to the premium is no more than \$40 per month.

Please select whether you choose to:	Pay	Play	Both
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The Contractor/Subcontractor will file compliance reports with the City, which will include activity for covered employees subject to the program, in the form and to the extent requested by the administering department. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

Note: The Contractor is responsible to the City for the compliance of covered employees of covered subcontractors and only forms that are accurate and complete will be accepted.

*Estimated Number of:	Prime Contractor	Sub-Contractor
Total Employees on City Job	10	10
Covered Employees	10	10
Non-Covered Employees		
Exempt Employees		

***Required**

I hereby certify that the above information is true and correct.

John Strasius

Digitally signed by John Strasius
Date: 2020.06.10 16:13:37 -0500

06-10-2020

Contractor (Signature)

Date _____

John Strasius, AIA LEED AP, Principal

Name and Title (Print or type)

EXHIBIT "J"

MWBE PROGRAM CONTRACT COMPLIANCE FORMS

Available at:

EXHIBIT _____
ATTACHMENT _____
MWBE PARTICIPATION PLAN/GOOD FAITH EFFORTS

Date:	05-08-2020
Bid Number:	G-000165
Formal Bid Title:	North Belt Police Station

Name of Certified MWBE **	Street Address, City, State, Zip Code, Tel # & Email	Certification Type {✓}		NAICS Code (6 Digits)	Description of Work (Scope of Work)	% of Participation
		MBE	WBE			
Infrastructure Associates Rahim Tazeh	6117 Richmond Ave, #200, Houston TX 713-622.0120/ rt1@iahouston.com	X			MEP Engineering Services	9% \$124,155
Four & One Design Tara Klein	23544 Coons Rd, Tomball, TX 77025/ (713) 871-1414/ Tara@4and1design.com		X		Landscape Architecture Services	4% \$55,180
JQ Infrastructure Akshai Ramakrishnan	15810 Park Ten Place, Houston TX 832-941-5236 aramakrishnan@jqeng.com	X			Civil and Structural Engineering Services	11% \$151,745


TOTAL	\$	24%
MWBE PARTICIPATION AMOUNT	\$	331,080
TOTAL BID AMOUNT	\$	1,379,500

EXHIBIT _____
ATTACHMENT _____
MWBE PARTICIPATION PLAN/GOOD FAITH EFFORTS

If you have exhausted your best efforts to comply with the City's MWBE Policy by seeking subcontracts and/or subconsultant agreements with certified minority and women business enterprises but failed to meet the MWBE contract goal of this bid document, list below your good faith efforts to demonstrate compliance. For more information, please review the Good Faith Efforts Policy which can be found on the OBO website at www.houstontx.gov/ofo.

****All firms listed must be certified by the Office of Business Opportunity at the time of bid submission. This completed MWBE participation plan/good faith efforts must be returned with the submission documents.**

The undersigned will enter into formal subcontracting agreement(s) with the MWBE subcontractors/subconsultants listed on this participation plan upon award of a contract from the City.

Perkins + Will, Inc.
Bidder Company Name
 Principal
Signature of Authorized Officer/Agent/Bidder & Title
John Strasius, AIA LEED AP/ Principal
Print or Typed Name of Authorized Officer/Agent/Bidder & Title

05/11/2020
Date



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

District B

Item Creation Date: 7/2/2020

**25CONS438 – Award Construction Manager at Risk
Contract Christensen Building Group, LLC New North Belt
Police Station**

Agenda Item#: 24.

Summary:

ORDINANCE appropriating \$150,000.00 out of Police Consolidated Construction Fund; approving and authorizing Construction Manager at Risk Contract between City of Houston and **CHRISTENSEN BUILDING GROUP, LLC** for Pre-Construction and Construction Phase Services for the new North Belt Police Station Project - **DISTRICT B - DAVIS**

Background:

RECOMMENDATION: Award construction manager at risk contract and appropriate funds for preconstruction phase services.

SPECIFIC EXPLANATION: The General Services Department (GSD) recommends that City Council award a Construction Manager at Risk (CMAR) Contract to Christensen Building Group, LLC to provide pre-construction and construction phase services for a new North Belt Police Station for the Houston Police Department. The new North Belt Police Station will replace the existing undersized lease space at 100 Glenborough Drive. The requested appropriation will fund pre-construction phase services. City Council will be requested to appropriate funds for construction phase services under a separate Council action.

On June 14, 2019 and June 21, 2019, GSD advertised a Request for Proposals containing selection criteria that ranked proposers on experience, key personnel, firm's safety ratings and construction phase fee for the project services. The proposals were due on July 11, 2019 and nine firms responded. GSD evaluated the proposals and interviewed the five highest ranking firms. Christensen Building Group, LLC ranked highest and offers the best value for the City based on the advertised criteria.

PROJECT LOCATION: 320 Gears Rd., Houston, TX 77067

PROJECT DESCRIPTION: The newly constructed facilities will include a 29,000 S.F. police station and a 2,000 S.F. Fleet Building. This facility will be a first of its kind for the City of Houston sharing land and amenities with Fire Station No. 84. This model will improve operational processes between police and fire creating more efficient efforts and responses as first responders. Program spaces will include patrol, administration, investigative functions and opportunities for community

relations, as well as a Fleet Building for the maintenance of HPD vehicles. Site improvements will include landscaping, parking, storm water detention if required, fencing, exterior lighting, and a back-up generator.

The project will incorporate the LEED™ (Leadership in Energy and Environmental Design) Green Building Rating System for New Construction (LEED-NC).

AWARD: It is recommended that City Council award a CMAR contract to Christensen Building Group, LLC, and appropriate \$150,000.00 for pre-construction phase services.

PAY OR PLAY PROGRAM: The proposed contract requires compliance with the City's 'Pay or Play' Ordinance regarding health benefits for employees of City contractors. In this case, the contractor elects to pay and play; providing health benefits for some employees but will pay into the Contractor Responsibility Fund for others in compliance with City policy.

HIRE HOUSTON FIRST: The proposed contract requires compliance with the City's 'Hire Houston First' (HHF) Ordinance that promotes economic opportunity for Houston businesses and supports job creation. In this case, Christensen Building Group, LLC is a designated HHF company, but they were the successful awardee without application of the HHF preference.

CIP FISCAL NOTE: The five-year projected operating and maintenance costs for this project are as noted below.

-

Capital Project Information: See the attached Form A for a breakdown of capital costs.

Estimated Fiscal Operating Impact

Project	FY 21	FY 22	FY 23	FY 24	FY 25	Total FY 21-25
North Belt Police Station	\$0	\$0	\$186,500	\$373,000	\$373,000	\$932,500

WBS No: G-000165-0001-4

DIRECTOR'S SIGNATURE/DATE:

C. J. Messiah, Jr.
General Services Department

Art Acevedo
Chief of Police
Houston Police Department

-

Amount of Funding:

\$150,000.00 Police Consolidated Construction Fund (4504)

Contact Information:

Jacquelyn L. Nisby

Council Liaison
Phone: 832.393.8023

ATTACHMENTS:

Description

Signed Coversheet
25CONS438 - Maps
2020-662 Executed Ordinance

Type

Signed Cover sheet
Backup Material
Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

District B

Item Creation Date: 7/2/2020

25CONS438 – Award Construction Manager at Risk Contract Christensen Building Group, LLC New North Belt Police Station

Agenda Item#: 9.

Background:

RECOMMENDATION: Award construction manager at risk contract and appropriate funds for preconstruction phase services.

SPECIFIC EXPLANATION: The General Services Department (GSD) recommends that City Council award a Construction Manager at Risk (CMAR) Contract to Christensen Building Group, LLC to provide pre-construction and construction phase services for a new North Belt Police Station for the Houston Police Department. The new North Belt Police Station will replace the existing undersized lease space at 100 Glenborough Drive. The requested appropriation will fund pre-construction phase services. City Council will be requested to appropriate funds for construction phase services under a separate Council action.

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The project will incorporate the LEED™ (Leadership in Energy and Environmental Design) Green Building Rating System for New Construction (LEED-NC).

AWARD: It is recommended that City Council award a CMAR contract to Christensen Building Group, LLC, and appropriate \$150,000.00 for pre-construction phase services.

PAY OR PLAY PROGRAM: The proposed contract requires compliance with the City's 'Pay or Play' Ordinance regarding health benefits for employees of City contractors. In this case, the contractor elects to pay and play; providing health benefits for some employees but will pay into the Contractor Responsibility Fund for others in compliance with City policy.

HIRE HOUSTON FIRST: The proposed contract requires compliance with the City's 'Hire Houston First' (HHF) Ordinance that promotes economic opportunity for Houston businesses and supports job creation. In this case, Christensen Building Group, LLC is a designated HHF company, but they were the successful awardee without application of the HHF preference.

CIP FISCAL NOTE: The five-year projected operating and maintenance costs for this project are as noted below.

-

Capital Project Information: See the attached Form A for a breakdown of capital costs.

Estimated Fiscal Operating Impact

Project	FY 21	FY 22	FY 23	FY 24	FY 25	Total FY 21-25
North Belt Police Station	\$0	\$0	\$186,500	\$373,000	\$373,000	\$932,500

WBS No: G-000165-0001-4

DIRECTOR'S SIGNATURE/DATE:

DocuSigned by:

C.J. Messiah, Jr. 7/15/2020

C. J. Messiah, Jr.

General Services Department

Art Acevedo
Chief of Police
Houston Police Department

-

Amount of Funding:

\$150,000.00 Police Consolidated Construction Fund (4504)

Contact Information:

Jacquelyn L. Nisby
Council Liaison

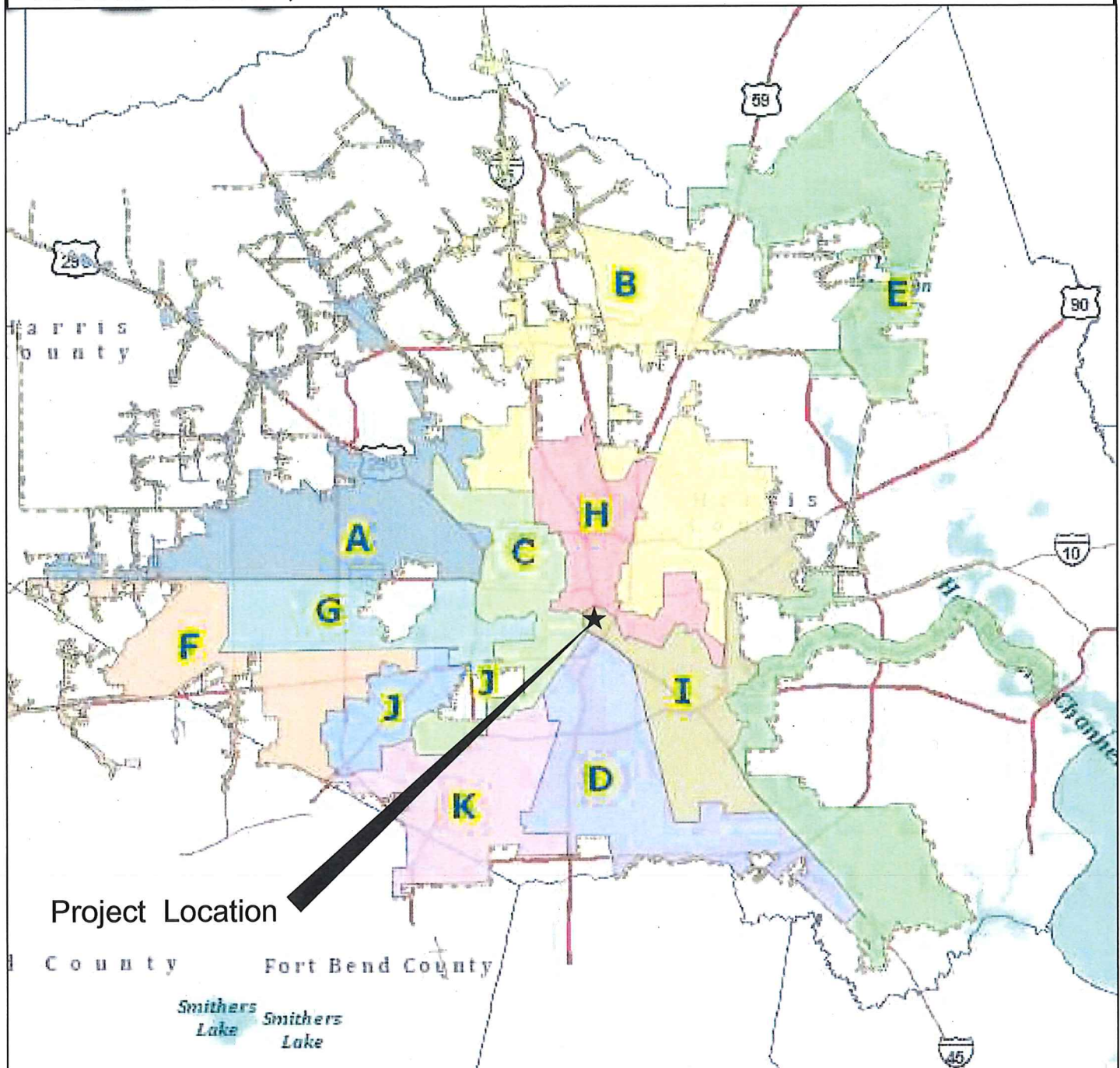
Phone: 832.393.8023

^{DS}
JLN



KEY MAP NO. 493L

CITY OF HOUSTON
HARRIS COUNTY, TEXAS



Barbara Bush Literacy Plaza, Phase Two
500 McKinney
Houston, TX 77002

COUNCIL DISTRICT "I"

KEY MAP NO. 493L

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 herein by this reference.
- () Other - Grant Funds Available


Jerry Brown

City Controller of the City of Houston, Texas

Date: 7-28, 2020

ms 4504-1000-520126

PAO

FUND REF:


AMOUNT: 150,000.00

ENCUMB. NO.: 42-9541

OK OA 46-16208

FMS 3-27905

City of Houston, Texas Ordinance No. 2020-662

 AN ORDINANCE APPROPRIATING \$150,000.00 OUT OF THE POLICE CONSOLIDATED CONSTRUCTION FUND; APPROVING AND AUTHORIZING A CONSTRUCTION MANAGER AT RISK CONTRACT BETWEEN THE CITY OF HOUSTON AND CHRISTENSEN BUILDING GROUP, LLC FOR PRE-CONSTRUCTION AND CONSTRUCTION PHASE SERVICES FOR THE NEW NORTH BELT POLICE STATION PROJECT; 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. The City Council hereby appropriates the sum of money set out in the title of this Ordinance, out of the fund and for the purpose set out in such title.

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 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 agreement, agreements or other undertaking described in the title of this ordinance, 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. 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 29th day of July, 2020

APPROVED this ____ day of _____, 20 ____.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.

ATG. Haniel
City Secretary

DocuSigned by:

Joe Nwaokoro

A7B91A9275E147C...

(Prepared by Legal Dept. _____)

(JN:yjs 7/20/2020)

Sr. Assistant City Attorney

(Requested by C. J. Messiah, Director, General Services Department & Art Acevedo, Chief, Houston Police Department)

(L.D. File No. 0332000073001)

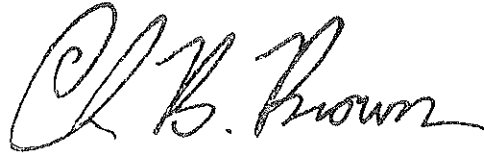
CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE:


AUG - 4 2020

CERTIFICATE OF CITY CONTROLLER

I, Chris Brown, City Controller of the City of Houston, Texas, pursuant to Article II, Section 19a of the Charter of the City of Houston, with respect to the sum of **\$150,000.00** required for the project referenced in the title of this ordinance, do hereby certify as follows:

- (1) The sum of **\$150,000.00** will be funded from public improvement bond proceeds and/or public improvement commercial paper proceeds (first-in-first-out basis) pursuant to Ordinance No. 94-405 authorizing the creation of the **Police Consolidated Construction Fund**. To the extent that this sum will be paid with bond proceeds, it is in the treasury in the said fund, and is not appropriated for any other purpose.
- (2) To the extent that the **\$150,000.00** will be paid by commercial paper proceeds, funds will be received into the treasury and available before the maturity of said obligation, and such anticipated funds have not already been appropriated for any other purpose. Such sum will be received as a cash draw(s) to the City of Houston pursuant to the General Obligation Commercial Paper Ordinance, Ordinance No. 93-1149.



City Controller 

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	

**CONSTRUCTION MANAGER-AT-RISK AGREEMENT
FOR THE**

NORTH BELT POLICE STATION

WBS No. G-000165-0001-4

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

I. PARTIES

1.1. ADDRESS

THIS CONSTRUCTION MANAGER-AT-RISK AGREEMENT ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a home-rule municipal corporation, and **CHRISTENSEN BUILDING GROUP, LLC** ("Construction Manager"), a **LIMITED LIABILITY COMPANY** authorized to do business in the State of Texas, (also referred to as "Party" individually or "Parties" collectively).

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

City

Director, General Services Department
City of Houston
P.O. Box 1562
Houston, Texas 77251

Construction Manager

Mark Christensen, President
CHRISTENSEN BUILDING GROUP, LLC
15425 North Freeway, Suite 330
Houston, TX 77090

The Parties agree as follows: |

1.2. TABLE OF CONTENTS

This Agreement consists of the following sections:

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EXHIBITS

- A Document 00700-General Conditions
- B Key Personnel and Duties
- C Guaranteed Maximum Price Proposal
- D Form of Bonds
- E Additional Services Requisition
- F City's Wage Rates
- G Master Project Schedule
- H MWBE Subcontract Terms

1.3. PARTS INCORPORATED

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

1.4. CONTROLLING PARTS

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

1.5. SIGNATURES

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 corporation):

By: DocuSigned by:
Jennifer Bratkowski
64DCE9518AB8442...
Name: Jennifer Bratkowski
Title: Corporate Secretary

CONSTRUCTION MANAGER:
Christensen Building Group, LLC

By: DocuSigned by:
Mark Christensen
3603C3DF80754B7...
Name: Mark Christensen
Title: President
Federal Tax ID No.: 464743479

ATTEST/SEAL:

CITY:
CITY OF HOUSTON, TEXAS

City Secretary

Mayor

APPROVED:

DocuSigned by:
C.J. Messiah, Jr.
1E174AD77D5841F...
Services Department

COUNTERSIGNED BY:

City Controller

DATE COUNTERSIGNED:

APPROVED AS TO FORM:

Assistant City Attorney
[Signature]

II. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below. Terms not defined in this Article shall have the meaning given to them in the attached Document 00700-General Conditions (Exhibit "A").

- 2.1. **Additional Preconstruction Phase Services** means those services described in Section 3.3.6.
- 2.2. **Construction Phase** means the phase of the Project during which the Construction Manager implements and executes the construction work required by the Contract Documents.
- 2.3. **Construction Manager's Contingency** means the dollar amount set out in the Guaranteed Maximum Price Proposal that includes (but is not limited to) costs that Construction Manager incurs as a result of: (1) its Subcontractors' failure to perform or insolvency; (2) fines or penalties imposed by any governmental body for its negligent acts; (3) it or its Subcontractors' failure to coordinate their work with that of the City or its contractors after agreeing to a schedule; and (4) it or its Subcontractors' acts of negligence for costs related to defective, rejected, or nonconforming Work, materials, or equipment. The Construction Manager's Contingency shall not exceed **3.0%** of the proposed Cost of the Work.
- 2.4. **Construction Phase Fee** means the fee for Construction Manager's profit and general overhead, calculated as **2.02%** of Cost of the Work determined by the City at the time of acceptance of Guaranteed Maximum Price.
- 2.5. **Cost of the Work** means reasonable costs that the Construction Manager necessarily incurs to perform the Work in strict compliance with the Contract Documents, as described in Section 4.2.2.4.
- 2.6. **Day** means a calendar day.
- 2.7. **Effective Date** means the date the City Controller countersigns the Signature Page (Section 1.5) of this Agreement.
- 2.8. **General Conditions Work** means Construction Manager's management and administrative personnel directly engaged in the performance of the work (reference Exhibit B), insurance, bonds, equipment, utilities, temporary facilities, permit and inspections fees, testing fees pursuant to the terms and conditions of City's Document 00700-General Conditions and Contract Documents and incidental work, including field labor and materials.
- 2.9. **Phase** means either the Project's Preconstruction Phase or the Project's Construction

Phase, as those terms are defined in this Article.

- 2.10. **Preconstruction Phase** means the phase of the Project during which the Construction Manager performs the services described in Section 3.3.
- 2.11. **Project** means new North Belt Police Station Building, Surface Parking and Site Work, including all required ancillary work.
- 2.11. **Project Team** means the City, Construction Manager, Design Consultant(s), any separate contractors employed by the City, and other consultants employed for the purpose of programming, design, and construction of the Project. The composition of the Project Team may vary at different phases of the Project. The City will designate the Project Team and may modify it from time to time.

III. DUTIES OF CONSTRUCTION MANAGER

3.1. GENERALLY

- 3.1.1 Construction Manager shall perform the Work, as defined in Document 00700-General Conditions (**Exhibit "A"**), in accordance with the Contract Documents.
- 3.1.2. The City is entering into this Agreement in reliance on Construction Manager's special abilities in construction management and in performing its obligations under this Agreement. Construction Manager accepts the relationship of trust and confidence established between it and the City by this Agreement. Construction Manager shall use its best efforts, skill, judgment, and abilities to perform the services hereunder and to further the interests of City in accordance with City's requirements and procedures. Construction Manager represents that it has no obligations or impediments of any kind that will limit or prevent performance of the services required under this Agreement.
- 3.1.3. Construction Manager shall use best efforts to coordinate with other contractors on or around the Project site.
- 3.1.4. No governmental authorization, approval, order, license, permit, franchise or consent, and no registration, declaration or filing with any governmental authority is required on the part of Construction Manager in connection with the execution, delivery and performance of the Contract Documents, except those that have already been obtained or which Construction Manager anticipates will be timely obtained in the ordinary course of performance of the Contract Documents.
- 3.1.5. Construction Manager has no actual knowledge of any strikes, lockouts or other labor disputes pending, or threatened or scheduled to occur, with respect to any of the factories, offices or other facilities of any of Construction Manager's suppliers, sub-vendors, or proposed subcontractors.

3.1.6. The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order No. 1-7, are incorporated into this Agreement for all purposes. Construction Manager has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement. IF CONSTRUCTION MANAGER DOES NOT PAY IN ACCORDANCE WITH THE PAY OR PLAY PROGRAM WITHIN 30 DAYS OF THE DATE CITY ENGINEER SENDS CONSTRUCTION MANAGER WRITTEN NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS UP TO THE AMOUNT OWED FROM ANY PAYMENTS OWED TO CONSTRUCTION MANAGER UNDER THIS AGREEMENT, AND CONSTRUCTION MANAGER WAIVES ANY RECOURSE.

3.1.7. Construction Manager shall perform Preconstruction Phase services and Construction Phase services for each Project if authorized by the City Engineer.

3.2. CONSTRUCTION MANAGER'S PERSONNEL AND SUBCONTRACTORS

3.2.1. Construction Manager, its employees, and all and its subcontractors are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction.

3.2.2. Construction Manager's personnel to be employed in the Project are identified in **Exhibit "B"** to the extent known at the time of signing this Agreement. Construction Manager shall not change the personnel identified in **Exhibit "B"** except with the City Engineer's prior written consent, which shall not be unreasonably withheld. If any of Construction Manager's key personnel is not identified in **Exhibit "B"**, Construction Manager shall identify in writing such persons to the City Engineer. If City Engineer does not approve of an individual, Construction Manager shall propose an alternate individual reasonably acceptable to City Engineer.

3.2.3. Construction Manager shall not award subcontracts or other agreements based on cost plus a fee without the prior consent of City Engineer.

3.2.4. Construction Manager shall require its subcontractors who have not competitively bid to disclose to City their markups (both overhead and profit), estimates, and costs calculated in their proposal or incurred or expected in sub-subcontracts and the Work performed, including all Change Order Work.

3.3. PRECONSTRUCTION PHASE SERVICES

Construction Manager shall perform and complete the following Preconstruction Phase Services:

3.3.1. Budget and Cost Consultation

- 3.3.1.1 Provide, throughout the duration of the Preconstruction Phase, updates of ongoing cost and budget impacts as well as cost consultation services.
- 3.3.1.2 Prepare and be responsible for all procurement and construction cost estimates.
- 3.3.1.3 Advise the other members of the Project Team immediately if at any time the Construction Manager has knowledge or belief that the previously established cost or schedule goals will not be met and make recommendations to the Project Team for corrective action.
- 3.3.1.4 Provide cost estimate at the completion of each of the following design submittal milestones: (1) (100%) Schematic Design, (2) (100%) Design Development, (3) 50% Construction Documents, and (4) 95% Construction Documents. Review shall be completed in a period of two (2) weeks of the date such submittals are provided to Construction Manager. The estimate shall include: quantity take-offs assembly and installation costs to include all materials, labor, and physical plant. In addition, the estimate shall include the costs breakdowns for optional or recommended changes to the contract documents for review and consideration by the design engineer and City Engineer.

3.3.2. Review of Design and Construction Contract Documents

- 3.3.2.1. Review all drawings and specifications for constructability and coordination of documents at the completion of each of the following design submittal milestones: (1) (100%) Schematic Design, (2) (100%) Design Development, (3) 50% Construction Documents, and (4) 95% Construction Documents. Review shall be completed in a period of two (2) weeks of the date such submittals are provided to Construction Manager.
- 3.3.2.2. Advise Project Team of inconsistencies, defects, or omissions in the drawings and specifications, and recommend alternative solutions whenever the design affects construction feasibility, budget, risks, or schedules. Submit a written constructability report for City Engineer's approval.
- 3.3.2.3. Submit a report recommending reasonable adjustments in the scope of the Project, including but not limited to: construction feasibility; quality; availability of materials and labor; cost factors, including costs of alternative materials or designs, costs of operation and maintenance, preliminary budgets, and possible cost savings; and any other matters

necessary to accomplish the Project in accordance with the Master Project Schedule and Project construction budget established by City Engineer.

3.3.3. Existing Site Conditions

City has given the Construction Manager unrestricted access to the existing improvements and conditions on the Project site and has given the Construction Manager the opportunity to visually investigate the existing conditions. Construction Manager will perform a thorough visual, non-destructive, and concise review of the site to become familiar with the existing conditions of the facility building systems and components. Construction Manager may recommend destructive demolition or building utility interruptions to accurately determine the scope of the work as Additional Services. Construction Manager shall perform the review prior to submitting any Guaranteed Maximum Price Proposal. Construction Manager's submission of a Guaranteed Maximum Price Proposal shall be a representation that it has completed a review of existing site conditions and considered them in establishing the Guaranteed Maximum Price ("GMP"). Construction Manager shall not be entitled to a claim for an adjustment in time or price under the Document 00700-General Conditions for conditions that it discovered or ought to have reasonably discovered using best practices during its visual and non-destructive review, but any costs incurred shall be a legitimate use of the Construction Manager's Contingency.

3.3.4. Construction Planning & Bidding

- 3.3.4.1. Schedule, conduct, and record the minutes of pre-bid conferences with interested bidders, subcontractors, material suppliers, and equipment suppliers, as required.
- 3.3.4.2. Coordinate and develop with Design Consultant the bid package and work scope description that represents the entirety of the Project.
- 3.3.4.3. In accordance with *Texas Government Code* Section 2269.255(a), as amended from time to time, publicly advertise and solicit either competitive bids or competitive sealed proposals from potential Subcontractors for the performance of all major elements of the Work. Construction Manager may seek to perform portions of the Work itself if Construction Manager submits its bid or proposal for those portions of the Work in the same manner as all other subcontractors and if City Engineer determines, in his sole discretion, that Construction Manager's bid or proposal provides the best value for City. City Engineer's determination in such matters is final. If Construction Manager intends to submit a bid or proposal for such Work, it shall notify City Engineer in writing prior to soliciting such bids or proposals. Construction Manager

shall receive and open all Subcontractor bids or proposals. Construction Manager and City Engineer shall review all Subcontractors' bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to individuals other than those employed by the Construction Manager, City, or Design Consultant. All bids and proposals shall be made available to the public after the award of the subcontract or not later than the seventh day after the date of final selection of bids or proposals, whichever is later. If Construction Manager reviews, evaluates, and recommends to City a bid or proposal from a Subcontractor, but City requires a bid or proposal from another Subcontractor to be accepted, then, pursuant to the terms of the Contract, City shall compensate Construction Manager by a change in price, time, or Guaranteed Maximum Price for any additional cost and risk that Construction Manager incurs because of City's requirement that another subcontractor's bid or proposal be accepted.

- 3.3.4.4 Before submitting Guaranteed Maximum Price proposal, submit a summary of subcontractor bids and any amounts added to subcontractor bids by Construction Manager in a format acceptable to the City Engineer. In addition, provide a detailed breakdown of anticipated General Condition costs.

3.3.5. Guaranteed Maximum Price Proposal

- 3.3.5.1. When the Cost of the Work has been bid and costs agreed upon, Construction Manager shall submit a Guaranteed Maximum Price Proposal ("Proposal") for each Project or portion thereof listed in Section 2.11 to City Engineer in the form attached to this Agreement as **Exhibit "C"**. Based on particular Project requirements and the development of the Project design, City Engineer, at his sole option and discretion, may reasonably specify a different format than that contained in **Exhibit "C"**. The Proposal shall include the following:

1. a Schedule of Values showing a breakdown of the Guaranteed Maximum Price of the Project, including the Cost of the Work, Construction Manager's Contingency, and the Construction Phase Fee;
2. a list of drawings and specifications, including all addenda, used in preparation of the Proposal;
3. a list of Cash Allowances;
4. a list of the clarifications and assumptions made by Construction Manager in the Proposal;

5. a list of the Alternates used in calculating the Guaranteed Maximum Price;
6. the proposed Contract Time, including dates for Notice to Proceed, Date of Commencement of the Work, Date of Substantial Completion (which may be expressed in terms of amount of time after a Notice to Proceed is issued), Date of Final Completion, and any other milestone dates upon which the Proposal is based;
7. Construction Manager's Contingency;
8. Construction Phase Fee; and
9. any other items required by City Engineer.

3.3.5.2. The Proposal shall separately set forth the portion of the proposed Guaranteed Maximum Price that is allocated to Construction Manager's Contingency. Construction Manager may not use the Construction Manager's Contingency without the prior written consent of the City Engineer. Construction Manager may not charge a Construction Phase Fee on costs attributable to the Construction Manager's Contingency. Construction Manager shall not include contingency amounts in other portions of the proposed Guaranteed Maximum Price, and the other portions of the proposed Guaranteed Maximum Price shall be based on the cost of actual bids, proposals, and subcontracts for the Work where they exist, or if they do not exist, then on the Construction Manager's best good faith estimate of what the costs for those portions of the Work will be.

3.3.5.3. Construction Manager is not bound to a Guaranteed Maximum Price unless the City allocates sufficient funds and the City Engineer accepts the Proposal. Construction Manager shall not withdraw the Proposal for 60 days. If City Engineer accepts a Proposal for any phase of the Project, the Proposal shall be incorporated into this Agreement As if it were executed at the time this Agreement was executed, subject to the limit of appropriation in Section 4.3.2.

3.3.5.4. City Engineer, at his sole discretion, may reject the Proposal (with no liability to City except for accrued but unpaid invoices, and the termination fee as described in this Section, if any), or attempt to renegotiate the Proposal with Construction Manager (with the right to cease negotiations at any time and reject the Proposal). If the City Engineer ultimately rejects all Proposals for the Projects listed in Section 2.11, this Agreement shall terminate upon five days' advance written

notice from the City Engineer to Construction Manager. City shall have no liability to any of Construction Manager's subcontractors in the event of such termination. Construction Manager shall include a provision in each subcontract that is legally sufficient to eliminate any legal or equitable liability the City may have for such termination as to the subcontractors. If the City terminates the Contract in its entirety without proceeding with any portion of the Construction Phase services, then the City will not owe Construction Manager anything under this Contract for construction.

- 3.3.5.5. Construction Manager shall not be entitled to an increase in the Guaranteed Maximum Price for Work that is not detailed in the Contract Documents but is reasonably inferable, in the City Engineer's sole discretion, from the Contract Documents. If an item or system is either shown or specified, Construction Manager shall provide, at no extra cost to the City, all labor, material and equipment required for the proper installation of such item or system and needed to make a complete operating installation, whether or not detailed or specified, omitting only such parts as are specifically excepted by the City. Any costs incurred by the Construction Manager under this section shall be legitimate use of the Construction Manager's Contingency.

3.3.6. Additional Preconstruction Phase Services

- 3.3.6.1. City Engineer may request Construction Manager to perform Preconstruction Phase Services in addition to those required under this Agreement ("Additional Preconstruction Phase Services"). Each time City Engineer requests Construction Manager to perform services that Construction Manager believes to be Additional Preconstruction Phase Services, and prior to performing such services, Construction Manager shall complete and forward to City Engineer for approval an Additional Services Requisition in substantially the form attached as **Exhibit "E"**. The Requisition shall describe in detail the nature of the Additional Preconstruction Phase Services, the basis upon which Construction Manager has determined that the requested services are Additional Preconstruction Phase Services, and the maximum amount of fees and reimbursable expenses for which Construction Manager shall perform the Additional Preconstruction Phase Services, and a proposed schedule for the completion of the services. Construction Manager shall proceed only after written acceptance by City Engineer of the Additional Services Requisition and written approval from City Engineer to proceed. If Construction Manager fails to provide the Additional Services Requisition or if Construction Manager begins performing Additional Preconstruction Phase Services prior to written approval from City Engineer, Construction Manager waives any claim for additional

compensation based on its performance of the Additional Preconstruction Phase Services.

3.3.6.2. If City Engineer concludes that Construction Manager must already perform all or part of the services described in the Additional Services Requisition pursuant to this Agreement, then City Engineer shall notify Construction Manager of his determination and Construction Manager shall perform the services requested by City Engineer.

3.3.6.3. Upon acceptance by City Engineer, each Additional Services Requisition and the services performed by Construction Manager pursuant to it shall become part of this Agreement as if they had been included in this Agreement as required obligations at the original execution of this Agreement.

3.4. CONSTRUCTION PHASE SERVICES

Construction Manager shall perform the following Construction Phase Services:

3.4.1 Project Control

3.4.1.1. Supervise and pay for the Work in strict accordance with the Contract Documents. Construction Manager shall timely award and enter into, as a general contractor, all subcontracts necessary and appropriate to provide all labor and materials for the Work in accordance with the requirements of *Texas Government Code* Section 2269.255 and 2269.256. Construction Manager shall self-perform only General Conditions Work and other Work that the City awards to Construction Manager in accordance with the requirements of *Texas Government Code* Sections 2269.251 *et seq.* and this Agreement. City reserves the right to perform work related to the Project and to award separate contracts for work related to the Project.

3.4.1.2. Review drawings and specifications, including any geotechnical data/reports that are available, and notify the Design Consultant and City Engineer of any defects or omissions in the drawings and specifications it discovers with respect to the existing conditions. Upon discovering a defect or omission in the drawings or specifications or other Contract Documents, Construction Manager shall submit a written request within ten days from discovery for an explanation or decision to the Design Consultant and the City Engineer. Construction Manager shall cooperate with the City Engineer and Design Consultant to resolve the discovered defects or omissions so as not to unnecessarily impede the progress of the Work. Should the defect be determined as Work that is reasonably inferable from the Contract Documents or should have been reasonably

discovered during the Preconstruction Phase, Construction Manager shall proceed with the Work and the Construction Manager shall be responsible for all resulting costs, including the cost of redoing or remedying the Work and resulting time delays; such costs shall be a legitimate use of the Construction Manager's Contingency. Any claims for concealed or unknown conditions must comply with the requirements of Section 4.3.5 of Document 00700-General Conditions.

- 3.4.1.3. Monitor the Work of the subcontractors and coordinate with the Project Team to complete the Work for a cost not to exceed the Guaranteed Maximum Price and attain Substantial Completion by the date(s) required by the Contract Documents.
- 3.4.1.4. Attend City's Project progress meetings (separate from the meetings described in subsection 3.4.1.5 below) scheduled by City Engineer (which will occur no less often than biweekly), and fully advise the Project Team, to the City Engineer's satisfaction, at such meetings as to Project status; which shall include construction schedule updates, proposal log, Change Order log, Submittal Log, Safety, Risks, Action/Outstanding Items with Responsible party and due date, daily log summary and daily logs. Receipt of daily logs shall not relieve Construction Manager of liability responsibility or serve as notice. Record and distribute the minutes of each meeting within seven days of the meeting in a format acceptable to the City Engineer.
- 3.4.1.5. Schedule, direct, and attend regular meetings with other members of the Project Team during the construction of the Project to discuss jointly such matters as procedures, progress, problems, and scheduling. Before each meeting, prepare and distribute to the other Project Team members a written agenda for the meeting and a memorandum setting forth the list of critical activities that require immediate action and the dates by when the activities must be completed. Record and distribute the minutes of each meeting within seven days of the meeting.
- 3.4.1.6. Maintain a competent, full-time staff at the Project site to coordinate and provide general direction over the Work and progress of the subcontractors on the Project. Project must be supervised by Construction Manager whenever work is being performed or when project site is open.
- 3.4.1.7. Establish on-site organization of personnel and clearly defined lines of authority in order to effectuate the overall plans of the Project Team.
- 3.4.1.8. Establish and implement procedures for coordination among the Project Team, Subcontractors, separate contractors, Design Consultants, and

other consultants with respect to all aspects of the construction of the Project.

- 3.4.1.9. Expedite and coordinate delivery and installation of City-procured material and equipment, if any.

3.4.2. Scheduling

Perform Project scheduling in compliance with the Document 00700-General Conditions, or otherwise provide regular monitoring, updating, and reissuing of the all Project schedules as construction progresses, including, without limitation, Master Project Schedules, detailed construction schedules, submittal schedules, inspection schedules, and occupancy schedules. Identify potential and actual variances between scheduled and probable completion dates. Review the schedules for Work not started or incomplete and recommend to the City Engineer adjustments in the schedules to conform with the probable completion dates. Provide summary reports to the City Engineer of each schedule update and document all changes in construction schedules. Incorporate activities of subcontractors and other parties affecting the progress of the Work into scheduling, including lead time of critical path materials. Include City's occupancy requirements and occupancy priorities in scheduling. Evaluate Subcontractor's personnel and equipment, and availability of supplies and materials, with respect to each subcontractor's ability to meet schedules. Recommend action to City Engineer when any subcontract requirements are not met or appear unlikely to be met.

3.4.3. Cost Control

- 3.4.3.1. Maintain cost accounting records in good form and in accordance with generally accepted accounting practices on all Project expenditures. Allow the City unrestricted access to such records and preserve them for a period of three years after the City makes final payment to Construction Manager for the Project.
- 3.4.3.2. Provide to City Engineer the subcontractors' schedule of values, subcontractors' sworn statements and waivers of lien, subcontract or purchase order, contract and disbursement summaries, change order listings and change orders, and budget cost summary reports as reasonably required by City Engineer.
- 3.4.3.3. Promptly identify all significant variances between estimated costs and actual costs, and promptly report such variances to the City Engineer along with recommendations for action monthly.

3.4.4. Documents, Shop Drawings, and Submissions

- 3.4.4.1. Request interpretations from the Design Consultant, with the City Engineer's consent, regarding the design intent of the Contract Documents in order to perform Construction Manager's obligations under this Agreement.
- 3.4.4.2. In collaboration with the other members of the Project Team, establish and implement procedures for expediting the processing of Design Consultants' approval of shop drawings and other submissions. Receive and review all shop drawings and other submissions for conformance with the Contract Documents. Coordinate shop drawings and other submissions with the Contract Documents and other related documents prior to transmitting them to other members of the Project Team.
- 3.4.4.3. Keep a daily log of Project construction activities available to the other members of the Project Team in accordance with the Document 00700-General Conditions.
- 3.4.4.4. Maintain at the Project site and make available to City Engineer a current set of record drawings, the Contract Documents, updated records of subcontracts, drawings, examples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all changes and revisions, a directory of personnel, Project correspondence, inspection procedures (as prepared by others), testing laboratory procedures (as prepared by others), contract changes, time extensions, progress payment data, final acceptance procedures, and instructions from City.
- 3.4.4.5. Provide City Engineer, at his request, with complete and unaltered copies of all subcontracts, including any amendments.

3.5. LIQUIDATED DAMAGES

- 3.5.1. Failure to achieve Substantial Completion of the Project by the date set forth in the agreed upon Guaranteed Maximum Price Proposal will cause damages to City and actual damages from such harm are difficult to estimate accurately. Therefore, Construction Manager and Surety are liable for and shall pay to City the amount of **\$1,200.00** per day as liquidated damages. Construction Manager and Surety are liable for and shall pay to City, as liquidated damages and not as a penalty, the amounts set forth above, on a cumulative basis, for each and every day of delay beyond the date of Substantial Completion established in the approved Guaranteed Maximum Price Proposal. The amount of liquidated damages fixed in this Section is a reasonable forecast of just compensation for harm to City resulting from Construction Manager's failure to achieve Substantial Completion of the Project

by the date set forth in this Section. These liquidated damages shall be City's sole remedy for damages from delay by Construction Manager in achieving Substantial Completion to which such liquidated damages apply.

3.6 MWBE COMPLIANCE

- 3.6.1 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 **28%** (MBE = 18% and WBE = 10%) 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 Opportunity Contract Compliance Division and will comply with them. Contractor shall execute written contracts with its MWBE subcontractors containing the terms set out in Exhibit "H" and shall submit all disputes with MWBE subcontractors to mediation.

3.7 BONDS AND INSURANCE

- 3.7.1 Submit with the Guaranteed Maximum Price proposal and before commencement of any construction work, Construction Manager shall provide performance and payment bonds on forms prescribed by City, in accordance with the requirements set forth in the General Conditions. The penal sum of the payment and performance bonds shall be equal to the Guaranteed Maximum Price.
- 3.7.2 Prior to commencing the Work, Construction Manager shall be required to purchase and maintain the insurance coverages set forth in Article 11 of the General Conditions; provided however, that Construction Manager may delay purchase and maintenance of Owner's and Contractor's Protective Liability, Installation Floater, and Property and Casualty Coverage until no later than 10 days of the date the City Engineer accepts the Guaranteed Maximum Price Proposal. The Construction Manager shall not commence Construction Phase Services unless all insurance coverages set forth in Article 11 of the General Conditions are in full force and effect.
- 3.7.3 Construction Manager shall not request payment, and City shall not be required to pay for Construction Manager's additional general liability insurance, builder's all risk insurance or any other form of insurance coverage that is in excess of the required coverage amounts specified in this Agreement and in Article 11 of the General Conditions, and City shall be entitled to repayment of any amounts paid in excess of what City is required to pay. The additional costs for coverages in addition to those coverages specifically required by this Agreement shall be the sole responsibility of Construction Manager.

IV. DUTIES OF CITY

4.1. GENERALLY

- 4.1.1. The City hereby designates and appoints the Construction Manager to be the Construction Manager-at-Risk under this Agreement and authorizes the Construction Manager to so act in connection with the scope of Work set forth in the Contract Documents.
- 4.1.2. City Engineer will be reasonably acquainted with the Project. Upon Construction Manager's request, City Engineer shall furnish the written authorization of each City employee authorized to represent him in connection with the Project.
- 4.1.3. City shall cooperate in providing information to the other members of the Project Team regarding its requirements for the Project.
- 4.1.4. If City has actual knowledge of any fault or defect in the Project or non-conformance with the drawings and specifications, City shall give prompt written notice thereof to Construction Manager.

4.2. PAYMENT TERMS

4.2.1 Preconstruction Phase Services

- 4.2.1.1. The City shall pay a lump sum fee of **\$99,871.15** (the "Preconstruction Services Fee") for Preconstruction Phase Services that Construction Manager renders under this Agreement as set forth in this Section.
- 4.2.1.2. The City shall pay Construction Manager based on invoices showing the percentage of total services performed during the preceding month.
- 4.2.1.3. Construction Manager shall not be entitled to any increase in the Preconstruction Services Fee because of Project Schedule extensions or delays, or changes in the scope of the proposed Project, unless such changes are material, as determined by City Engineer in his sole discretion.
- 4.2.1.4. Payment Terms for Additional Preconstruction Phase Services.
 - 4.2.1.4.1 The City shall pay Construction Manager based on invoices showing the percentage of services completed as set out in an approved Additional Services Requisition. Payments shall not exceed the amount set out in the approved Requisition.

4.2.2. Construction Phase Services

4.2.2.1. City shall pay Construction Manager for the Work based on the sum of the Cost of the Work plus the Construction Phase Fee. The sum of the Cost of the Work and Construction Phase Fee shall not exceed the Guaranteed Maximum Price, subject to changes authorized by the Contract Documents. Construction Manager shall pay, without reimbursement from City, any cost not authorized by the Contract Documents and Guaranteed Maximum Price, except as per agreed upon Modifications.

4.2.2.2. If the sum of the Cost of the Work and the Construction Phase Fee is less than the Guaranteed Maximum Price, then City shall retain all savings. For items in the Contract Documents and on **Exhibit "C"** noted as "Allowances", City shall retain 100% of any savings. The Cost of the Work included in the Allowances shall be determined in accordance with Document 00700-General Conditions.

4.2.2.3. The Cost of the Work includes only the following:

4.2.2.3.1. Self-Performed Work performed on a Non-Lump Sum Basis Labor: Work self-performed must be approved by City Engineer in accordance with Section 3.3.4.3 of this Agreement.

1. Reasonable and customary wages paid to construction workers directly employed by Construction Manager who perform the construction of the Self Performed Work. If requested by City Engineer, Construction Manager shall provide certified payrolls and any other documentation to verify wages and hours for non-salaried employees.
2. Reasonable and customary wages or salaries of Construction Manager's on-site direct supervisory personnel but only for documented time when directly involved in performance of the Self- Performed Work.
3. Costs paid or incurred by Construction Manager for labor costs arising out of taxes, insurance, and benefits which are (i) required by law, (ii) required by collective bargaining agreements, (iii), or Construction Manager's standard fringe benefits, so long as such costs are based on wages and salaries which are properly included in the Cost of the Work as defined

herein.

4.2.2.3.2. Self-Performed Work performed on a Non-Lump Sum Basis- Materials, Equipment, Tools, and Rentals: Work self-performed must be approved by City Engineer in accordance with Section 3.3.4.3 of this Agreement.

1. Costs of materials and equipment to be incorporated into the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. City shall be entitled to take possession of excess materials not incorporated into the Work. This requirement only applies to materials that the City reimbursed the Construction Manager as a Cost of the Work. Payment for stored materials is subject to City's Document 00700-General Conditions.
2. Costs of materials, supplies, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by Construction Manager, if such items are fully consumed in the construction of the Work. Cost for items used shall be based on fair market value and may include costs of transportation, installation, minor maintenance costs, and removal. If the item is not fully consumed, then the cost shall be based on cost of the item minus its fair market salvage value.
3. Rental charges for machinery, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by Construction Manager, and may include transportation, installation, and minor maintenance costs, and removal. Cumulative rental charges for equipment or tools shall not exceed the purchase price of the equipment or tools.
4. Site debris removal and disposal costs in accordance with all applicable laws and regulations.

4.2.2.3.3. Subcontracts

Payments made or owed to Subcontractors by Construction Manager for the construction of the Work in accordance with the Contract Documents and the requirements of the

Subcontracts with such Subcontractors, but only for Subcontracts consented to by City in accordance with the requirements of the Contract Documents.

4.2.2.3.4. Other costs:

1. Governmental sales and use taxes directly attributable to the Work. City is a home-rule municipal corporation and Construction Manager shall avail itself of all exemptions which may exist for such taxes based on City's status.
2. Intellectual property royalties and licenses for items specifically required by the Contract Documents that are, or will be, incorporated into the Work.
3. Costs associated with emergency actions taken to prevent damage to property or persons.
4. Other costs approved in advance in writing by City Engineer at City Engineer's sole option and discretion.
5. Construction Manager's General Conditions Work expenses.
6. Work self-performed on a lump sum basis. Work self-performed on a lump sum basis must be approved by City Engineer in accordance with Section 3.3.4.3 of this Agreement.

4.2.2.3.5. Cost of the Work does not include:

1. Construction Manager's Contingency unless approved by the City Engineer in accordance with Section 3.3.5.2.
2. Construction Phase Fee.
3. Legal and administrative costs to review and negotiate the Contract Documents.
4. Costs resulting from the failure of Construction Manager or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract

Documents.

5. Liquidated or actual, direct or consequential damages imposed by City for failure of Construction Manager to complete the Work within the Contract Time.
6. Costs not specifically authorized, including any cost that would cause the Guaranteed Maximum Price for any portion of the Work to be exceeded.

4.2.2.3.6. Construction Manager shall credit the following discounts, rebates, and refunds to the Cost of the Work paid by City:

1. If City makes funds available to Construction Manager, discounts earned by the Construction Manager through advance or prompt payments. Construction Manager shall provide sufficient advance notice of available discounts and the need for funds to be available to City Engineer for City to obtain the benefit of the discounts. The Construction Manager shall purchase materials and rental equipment for this Project in such quantities as will provide the most advantageous prices to the City.
2. Reasonable market value as approved by the City Engineer at the time of removal of all materials, tools, and equipment actually purchased for the Work and charged as a Cost of the Work and which is retained by the Construction Manager upon completion of the Work.
3. Rebates, discounts, or commissions allowed to and collected by the Construction Manager from Suppliers of materials or from subcontractors, together with all other refunds, returns, or credits received for return of materials, and sales taxes.
4. Deposits made by City and not returned to City due to the negligent or intentional acts of the Construction Manager. Should Construction Manager not promptly so reimburse City upon demand, City shall be entitled to recover said amount from Construction Manager, including, but not limited to, by deducting the amount from payments due the Construction Manager.

4.2.3 Miscellaneous Payment Terms

In addition to the payment procedures described in Document 00700-General Conditions, the following payment terms shall apply:

- 4.2.3.1. In the Document 00700-General Conditions, references to adjustments in "cost" or "costs" refer to Costs of the Work as defined in this Agreement. References to Construction Manager's "overhead" and "profit" refer to Construction Manager's Construction Phase Fee.
- 4.2.3.2. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work (including Construction Phase Fee) shall not exceed the unpaid balance of the Guaranteed Maximum Price (less retainage on Work previously completed). If City Engineer determines that the amount remaining under the Guaranteed Maximum Price will not be sufficient to pay Construction Manager for services in accordance with this Agreement, the City may withhold payments until Construction Manager, at its sole cost, performs a sufficient portion of the remaining services so that the portion of the amount remaining under the Guaranteed Maximum Price is determined by City to be sufficient to so complete the then remaining Work.
- 4.2.3.3. Any partial payments made by the City shall not be construed as the City's final acceptance or approval of that part of the Work to which the partial payment relates or as a release of Construction Manager of any of its obligations or liabilities with respect to the Work.
- 4.2.3.4. The schedule of values may be revised from time to time to adjust allocations of costs to various line items as the costs become better known, but such adjustment shall be subject to the approval of the City Engineer, which shall not be unreasonably withheld. Under no circumstances shall the schedule of values for all or any portion of the Work exceed the Guaranteed Maximum Price. The Construction Phase Fee, the General Conditions Work, and the Construction Manager's Contingency shall be shown as separate line items on the schedule of values.
- 4.2.3.5. Each schedule of values submitted shall maintain the originally established value for each work classification line item and shall contain any revisions to costs or cost estimates for each such classification. The format and tracking method of the original schedule of values and of all updates to it shall be subject to the approval of City Engineer.
- 4.2.3.6. Payment for Construction Phase Fee shall be in the same proportion to

the total fee as the amount requested for the Cost of the Work relative to the total Cost of the Work used in deriving the then current Guaranteed Maximum Price.

- 4.2.3.7. Construction Manager shall submit a monthly cost breakdown, including cost elements, for General Conditions Work over the duration of the construction period to City Engineer for approval. City shall pay for General Conditions Work on a monthly basis per the approved breakdown.
- 4.2.3.8. Payment for the Cost of the Work shall be made based on percentages of completion of each portion of the Work listed in Schedule of Values with approved back up including subcontractor invoices, actual labor, equipment and material costs as of the end of the period covered by the Application for Payment, in accordance with City's Document 00700-General Conditions.
- 4.2.3.9. Retainage as specified in City's Document 00700-General Conditions will be applied to the entire amount requested including the Cost of the Work and the Construction Manager's Construction Phase Fee. Construction Manager shall make payments to subcontractors based on the same percentage of Work completed that is allocable to that subcontractor for each respective schedule of values classification, including applicable retainage.

4.3. LIMIT OF APPROPRIATION

- 4.3.1. The City's duty to pay money to Construction Manager for any purpose under this Agreement is limited in its entirety by the provisions of this Section.
- 4.3.2. The fees specified in Section 4.2 above are Construction Manager's total compensation for its services under this Agreement. Construction Manager recognizes that, under its Charter, the City may not obligate itself by contract to pay more money than the amount the City Council appropriates, and further recognizes that the City Council has appropriated and allocated only \$150,000.00 to pay for services under this Agreement. Unless the City Council makes further appropriations for this Agreement, the City's obligation to Construction Manager under this Agreement must not exceed \$150,000.00.
- 4.3.3. If the appropriated funds are exhausted and the City would otherwise owe Construction Manager additional payments for continuing Work, Construction Manager has the right to suspend performance of the Work by seven days' advance written notice to City Engineer describing the cause and Construction Manager's planned suspension. After the City makes further appropriations, Construction Manager shall resume Work and may be entitled to equitable adjustment in

accordance with Section 14.3.3 of Document 00700-General Conditions. If, after more than 180 days after receiving notice of Construction Manager's planned suspension the City has not made further appropriations, Construction Manager shall have the right to terminate its performance under Section 14.4 of the Document 00700-General Conditions.

V. TERM AND TERMINATION

- 5.1. The City Engineer shall issue a Preconstruction Phase Notice to Proceed to authorize the start of Preconstruction Phase services. Construction Manager shall complete Preconstruction Phase Services in accordance with the Master Project Schedule in **Exhibit "G"**, subject to any time extensions granted under Section 8.2 of Document 00700-General Conditions. After establishment of the Guaranteed Maximum Price, the City Engineer will issue a Construction Phase Notice to Proceed to authorize the start of Construction Phase Services. Construction Manager shall complete Construction Phase Services within the Contract Time in the agreed upon Guaranteed Maximum Price Proposal in **Exhibit "C"**, subject to any time extensions granted under Section 8.2 of Document 00700-General Conditions.
- 5.2. Termination rights shall be as provided in Document 00700-General Conditions.
- 5.3. A termination under this Agreement above shall not relieve Construction Manager or any of its employees of liability for violations of this Agreement, or for any act, omission, or negligence of Construction Manager.
- 5.4. As of the date of termination of this Agreement, Construction Manager shall furnish to City Engineer all statements, accounts, reports and other materials that Construction Manager has prepared in connection with its responsibilities under this Agreement. City shall have the right to use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise. All drawings, plans, specifications, renderings and models, etc., prepared by the Design Consultant are the property of City or Design Consultant, as set forth in the terms and conditions of the agreement between City and the Design Consultant. They are not to be used by any person or entity other than City on other projects unless expressly authorized by City.

VI. MISCELLANEOUS

- 6.1. Each subcontract agreement is assigned by Construction Manager to City effective only after termination by default of this Agreement by City and effective only for those subcontract agreements that City accepts by notifying the Subcontractor in writing. Construction Manager agrees to execute such additional documents as City may request to confirm such assignments. Construction Manager shall include a provision in each subcontract agreement recognizing the rights of City pursuant to the foregoing contingent assignment. Despite such acceptance by City of any such assignment, City shall not be

liable for anything under such subcontract prior to the acceptance by City of the assignment or for any liability of Construction Manager to the Subcontractor. Acceptance of any such assignment shall not relieve Construction Manager or the Subcontractor of their responsibilities and liabilities for any Work performed prior to City's acceptance of such assignment.

- 6.2. Nothing contained in the Contract Documents shall create any obligations or liabilities owed by City to any Subcontractor or Supplier. Except as may be required by law, City shall have no liability or responsibility for the performance or nonperformance of any Subcontractor, Supplier, or consultant, even if City designated, required, identified or approved such Subcontractor, Supplier, consultant, or sub-consultant of any tier.
- 6.3. 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.
- 6.4. 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 others' breach of a term, that waiver does not waive a later breach of this Agreement. An approval by the City Engineer or Director, or by any other employee or agent of the City, of any part of Construction Manager'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 City Engineer is not authorized to vary from the terms of this Agreement.
- 6.5. City hereby expressly reserves the right from time to time to designate by written notice to Construction Manager one or more representatives to act partially or wholly for City in connection with the performance of City's obligations hereunder. Construction Manager shall act only upon instructions from such representatives unless otherwise specifically notified to the contrary.
- 6.6. Construction Manager is an independent contractor and not an agent of City. Construction Manager shall be liable to City for acts and omissions of Construction Manager and Construction Manager's Subcontractors and Suppliers of any tier, and their agents, employees and parties in privity of contract with any of them and anyone acting on behalf of any of them, and any other persons performing any of the Work directly or indirectly under contract with Construction Manager, including any design professionals and their consultants and sub-consultants of any tier.
- 6.7. IF CONSTRUCTION MANAGER, 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 CONSTRUCTION MANAGER HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONSTRUCTION MANAGER IN WRITING.

IF CONSTRUCTION MANAGER 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 CONSTRUCTION MANAGER UNDER THIS AGREEMENT, AND CONSTRUCTION MANAGER WAIVES ANY RECOURSE THEREFOR. CONSTRUCTION MANAGER 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
DOCUMENT 00700-GENERAL CONDITIONS
CONSTRUCTION MANAGER-AT-RISK
January 1, 2020 EDITION
TABLE OF ARTICLES

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ARTICLE 1 - GENERAL PROVISIONS

1.1 DEFINITIONS

1.1.1 *Agreement*: Document signed by the Parties and binding the Parties, containing the name of Construction Manager, title and location of the Project, enumeration of documents included in the Contract, and other provisions.

1.1.2 *Allowance*: An estimated sum of money to be used only for a limited class of expenditures such as utility relocation costs, fees for special licenses or permits, or other "pass-through" costs that would be the same for any contractor. Cash Allowances may not be used to purchase goods or services that are not specified in the Contract, and exclude profit, overhead, and administrative costs. The unspecified items must be purchased according to the terms of Article 7.

1.1.3 *Bonds*: Performance Bond, Payment Bond, Maintenance Bond, and other Surety instruments executed by Surety. When in singular form, refers to individual instrument.

1.1.4 *Business Enterprise*: Any business entity registered in a program authorized by 49 C.F.R. § 26 (where applicable) or City Code of Ordinances, Chapter 15, Article II, relating to Equal Opportunity Employment and taking affirmative action to ensure that applicants are employed and employees are treated without regard to race, religion, color, sex, national origin, or age. The term "Business Enterprise" may include any Disadvantaged Business Enterprise ("DBE"), Minority Business Enterprise ("MBE"), Woman Business Enterprise ("WBE"), Small Business Enterprise ("SBE"), Person with Disability Enterprise ("PDBE"), and any

Historically Underutilized Business ("HUB").

1.1.5 *Business Enterprise Policy*: Contract documents and applicable policies relating to Business Enterprises and authorized under 49 C.F.R. § 26 or City Code of Ordinances, Chapter 15, Article II.

1.1.6 *Certificate of Final Completion*: The certificate issued and signed by City Engineer pursuant to Section 9.8.

1.1.7 *Certificate of Substantial Completion*: The certificate issued and signed by City Engineer pursuant to Section 9.6.

1.1.8 *Change Order*: Written instrument prepared by City and signed by City Engineer and Construction Manager, specifying the following:

1. a change in the Work;
2. a change in Contract Price or Guaranteed Maximum Price; and
3. a change in Contract Time, if any.

The value of a Change Order is the net amount after offsetting all deductions against all additions affected by the Change Order.

1.1.9 *City*: The City of Houston, a home rule municipality located principally within Harris County, Texas, including its successors and its authorized representatives.

1.1.10 *City Engineer*: City Engineer or the City employee representing the City Engineer, designated in the Agreement and authorized to represent City, or successors.

1.1.11 *Claim*: Written demand or written assertion by one Party seeking adjustment of the Contract, payment of

money, extension of time, or other relief under the Contract and includes, but is not limited to, claims for materials, labor, equipment, delay, changes, adjustments, substitutions, fees, and third party claims. The Party making the Claim has the responsibility to substantiate the Claim.

1.1.12 *Conditions of the Contract:* Document 00700-General Conditions.

1.1.13 *Contract:* The entire and integrated written agreement between City and Construction Manager concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

1.1.14 *Contract Documents:* This Agreement, Document 00700-General Conditions, Special Conditions (if any), Drawings, Specifications, the Project Manual, all Addenda issued prior to the Effective Date, all documents listed in the Agreement and in the Modifications as being incorporated into the Agreement or the Contract Documents, Modifications, and written amendments duly authorized and signed by City and Construction Manager. The Contract Documents form the contract between City and Construction Manager, and the Contract Documents represent the entire and integrated agreement between the Parties and supersede prior negotiations, representation, and agreements between the Parties, whether written or oral.

1.1.15 *Construction Manager:* Person or firm identified as such in the Agreement including its successors and its authorized representatives.

1.1.16 *Contract Time:* The time period stated in an approved Guaranteed Maximum Price proposal to substantially complete the portion of the Work described in the approved Guaranteed Maximum Price

proposal, plus days authorized by Change Order. Contract Time may be delineated by Stages or Phases.

1.1.17 *Date of Commencement of the Work:* Date established in Notice to Proceed with a Construction Phase on which Contract Time will commence. This date will not be changed by failure of Construction Manager, or persons or entities for whom Construction Manager is responsible, to act. If and to the extent this provision is inconsistent with Section 5.1 of the Agreement, Section 5.1 of the Agreement shall govern.

1.1.18 *Date of Final Completion or "Final Completion":* The date upon which all Work has been completed to City Engineer's satisfaction and is certified by City Engineer to be at Final Completion.

1.1.19 *Date of Substantial Completion:* Date that a Construction Phase, or portion thereof designated by City Engineer, is certified by City Engineer to be substantially complete.

1.1.20 *Drawings:* Graphic and pictorial portions of the Contract Documents that define the character and scope of the Work. Until otherwise identified with more specificity in a Modification, the Drawings are the most recent Drawings prepared by the Construction Manager and accepted by City.

1.1.21 *Extra Unit Price:* Unit Prices, which may be required for completion of the Work.

1.1.22 *[Intentionally omitted]*

1.1.23 *Final Completion:* Final Completion occurs when Construction Manager fulfills all requirements for achieving Final Completion as set forth in the Contract Documents, including Section 9.8,

and City Engineer issues a Certificate of Final Completion.

1.1.24 *Furnish:* To supply, initially pay for, deliver to the site, and unload.

1.1.25 *General Requirements:* The sections of Division 01 Specifications that specify administrative and procedural requirements and temporary facilities required for the Work.

1.1.26 *Good Faith Efforts (GFE):* Steps taken to achieve an MBE, WBE, SBE, or PDBE goal or other requirements which, by their scope, intensity, and usefulness, demonstrate the bidder's responsiveness to fulfill the business opportunity objective, as well as the Contractor's responsibility to put forth measures to meet or exceed the MBE, WBE, SBE, or PDBE goal. These steps apply from before a contract's award, through its duration, and after its conclusion, in the event the Contractor has been unsuccessful in meeting the Contract MBE, WBE, PDBE, or SBE goals. These efforts are required whether a Goal Oriented Contract or a Regulated Contract, as defined in the Office of Business Opportunity's Policy and Procedures Manual.

1.1.27 *Guaranteed Maximum Price (GMP):* The amount agreed upon by City and Construction Manager as the maximum cost to City for the Work for a Construction Phase, including the Cost of the Work and the Construction Manager's Construction Phase Fee for that Construction Phase.

1.1.28 [*Intentionally omitted*]

1.1.29 *Inspector:* City's employee or agent authorized to assist with inspection of the Work.

1.1.30 *Install:* Unpack, assemble, erect, place, anchor, apply, work to dimension,

finish, cure, clean, protect, and similar operations.

1.1.31 *Legal Holiday:* Day established by City Council as a holiday.

1.1.32 [*Intentionally omitted*]

1.1.33 *Ultra Low Sulfur Diesel Fuel:* As defined in Section 3.9.1.1.

1.1.34 [*Intentionally omitted*]

1.1.35 *Minor Change in the Work:* A written change in the Work, ordered by City Engineer, that does not change Guaranteed Maximum Price or Contract Time, and that is consistent with the general scope of the Contract.

1.1.36 *Modification:* Change Order, Work Change Directive, or Minor Change in the Work, all of which are required to be in writing.

1.1.37 *Notice of Noncompliance:* A written notice by City Engineer to Construction Manager regarding defective or nonconforming work that does not meet the Contract requirements, and that establishes a time by which Construction Manager shall correct the defective or nonconforming work.

1.1.38 *Notice to Proceed or NTP:* An authorization issued by City Engineer to Construction Manager authorizing Construction Manager to commence performing the portion of the Work, per the Notice to Proceed.

1.1.39 *Parties:* Construction Manager and City. "Party," in singular form, refers to Construction Manager or City, as appropriate.

1.1.40 *Pollutant:* Any materials subject to the Texas Solid Waste Disposal Act.

1.1.41 *Pollutant Facility:* Any facility regulated by the State of Texas to protect the health and environment from contamination by Pollutants, including without limitation, landfills, oil and gas production and storage facilities, wastewater facilities, waste injection wells, and storage tanks (including drums).

1.1.42 *Product:* Materials, equipment, or systems permanently incorporated into the Work (or to be incorporated into the Work) and materials, tools, equipment or systems temporarily used in performance of the Work. Products may include existing construction or components intended for reuse.

1.1.43 *Product Data:* Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Construction Manager to illustrate a Product.

1.1.44 *Project:* Total construction, of which the Work performed under the Contract may be the whole or a part, and which may include construction by City or by separate contractors.

1.1.45 *Project or Program Manager:* Professionals, or firms employing professionals, engaged by City to be the City Engineer's authorized representative for administration of the Work. Titles used within City's departments may be different from those used in this definition. Unless otherwise designated by City Engineer, references in the Contract Documents to the Project or Program Manager shall refer to City Engineer. More than one Program Manager may be under contract with City.

1.1.46 *Provide:* Furnish and Install, complete, ready for intended use.

1.1.47 *Safety Impact Position:* A Construction Manager's employment position involving 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.

1.1.48 *Samples:* Physical examples that illustrate Products, or workmanship, and establish standards by which the Work is judged.

1.1.49 *Shop Drawings:* Drawings, diagrams, schedules, and other data specially prepared for the Work by Construction Manager, Subcontractor or Supplier, to illustrate a portion of the Work.

1.1.50 *Specifications:* Divisions 01 through 17 that are incorporated into the Agreement, consisting of written General Requirements and requirements for Products, standards, and workmanship for the Work, and performance of related services.

1.1.51 *Subcontractor:* All trade contractors, separate contractors, consultants, and subcontractors entering into contracts ("Subcontracts") with the Construction Manager for the performance of the Work. The relationship between the Construction Manager and the Subcontractors shall be that of a general contractor to its subcontractors unless otherwise approved in advance in writing by City Engineer, or except when City enters into a separate contract directly with a Subcontractor.

1.1.52 *Substantial Completion:* Substantial Completion occurs when Construction Manager fulfills all the requirements for achieving Substantial Completion of a Construction Phase as set forth in the Contract Documents, including

Section 9.6, and City Engineer issues a Certificate of Substantial Completion.

1.1.53 *Superintendent:* Employee of Construction Manager Construction Manager having authority and responsibility to act for and represent Construction Manager.

1.1.54 *Supplementary Conditions:* Part of the Conditions of the Contract that amends or supplements General Conditions.

1.1.55 *Supplier:* Manufacturer, distributor, materialman, or vendor having a direct agreement with Construction Manager or Subcontractor for Products, or services and its authorized representatives.

1.1.56 *Surety:* Corporate entity that is bound by one or more Bonds and is responsible for completion of the Work, including the correction period, and for payment of debts incurred in fulfilling the contract. Surety shall include co-surety or reinsurer, as applicable.

1.1.57 *Underground Facilities:* Pipes, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments and encasements containing such facilities that exist below ground level.

1.1.58 *Unit Price:* An amount stated in the Contract for an individual, measurable item of work, which, when multiplied by actual quantity incorporated into the Work, amounts to full compensation for completion of the item, including work incidental to it.

1.1.59 *Unit Price Quantities:* Quantities indicated in the Contract that are approximations made by City for contracting purposes.

1.1.60 *Work:* All services, supervision, labor, materials, supplies, equipment,

Products and other items for a Construction Phase required to perform this Agreement (whether completed or partially completed) in strict accordance with the Contract Documents (as such may be modified or amended), including all things reasonably inferable from the Contract Documents and all of the foregoing provided or to be provided by Construction Manager to fulfill Construction Manager's obligations under the Contract Documents.

1.1.61 *Work Change Directive:* A written change in the Work, ordered by City Engineer, that is within the general scope of the Contract and consisting of additions, deletions, or other revisions. A Work Change Directive will state the proposed basis for adjustment, if any, in or Guaranteed Maximum Price, or Contract Time, or both.

1.2 EXECUTION, CORRELATION, AND INTENT

1.2.1 The Construction Documents have been read and carefully considered by Construction Manager who understands and agrees to their sufficiency for the Work. Construction Manager represents that it is not aware of any insufficiency or defect in the Contract Documents. Execution of the Contract by Construction Manager is conclusive that it has visited the Work site, become familiar with local conditions under which the Work will be performed, and fully informed itself as to conditions and matters that can affect the Work or costs. Construction Manager further agrees that it has carefully correlated personal observations with requirements of the Contract. The Contract Documents shall not be more strongly construed against City than against Construction Manager and Surety.

1.2.2 Construction Manager shall include all items necessary for proper execution and completion of the Work in

strict accordance with Contract Documents and reasonably inferable therefrom.

1.2.3 Reference to standard specifications, manuals, or codes of a technical society, organization, or association, or to laws or regulations of a governmental authority, whether specific or implied, mean the latest edition in effect as of date of written agreement as to the Guaranteed Maximum Price for the portion of the Work covered by that Guaranteed Maximum Price, except as may be otherwise specifically stated in the Contract Documents.

1.2.4 No provision of any referenced standard, specification, or manual changes the duties and responsibilities of City or City Engineer from those set forth in the Contract Documents.

1.2.5 Organization of Specifications into divisions, sections, and articles and arrangement of Drawings does not control Construction Manager in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.6 Unless otherwise defined in the Contract Documents, words which have well-known construction industry technical meanings are used in the Contract in accordance with these recognized meanings.

1.2.7 Any ambiguity or uncertainty in Drawings, Specifications, Addenda, and Modifications shall be interpreted and construed by City Engineer and City Engineer's decision shall be final and binding upon all parties.

1.2.8 Where the words "directed," "required," "permitted," "ordered," "designated," "prescribed," or words of like import are used, it shall mean the direction, requirement, permission, order, designation,

or prescription of City Engineer unless explicitly stated otherwise. The words "approved," "acceptable," "satisfactory," or words of like import, shall mean approved by, or acceptable to, or satisfactory to City Engineer, unless explicitly stated otherwise.

1.2.9 Reference to a specific requirement of a cited standard shall include all general requirements of the entire cited standard pertinent to the specific reference.

1.2.10 When the Contract Documents use the capitalized term "Contractor," that term shall be deemed to refer to Construction Manager unless otherwise indicated.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 Drawings, Specifications, and other documents prepared by City or by Construction Manager are instruments of service through which the Work to be executed by Construction Manager is described. Construction Manager may retain one Contract record set.

1.3.2 Neither Construction Manager, Subcontractor, nor Supplier will own or claim a copyright to documents contained in the Contract Documents or any part of the Contract.

1.3.3 Documents contained in the Contract Documents, prepared by City or by Construction Manager, and copies furnished to Construction Manager, are for use solely with respect to the Work. They may not be used by Construction Manager, Subcontractors or Suppliers on other projects or for additions to the Work, without the specific written consent of City Engineer.

1.3.4 Construction Manager, Subcontractors, and Suppliers are granted a

limited license to use and reproduce applicable portions of the Contract Documents appropriate to and for use in execution of their Work under the Contract Documents.

1.4 INTERPRETATION

1.4.1 Specifications are written in an imperative streamlined form and are directed to Construction Manager, unless noted otherwise. When written in this form, words "shall be" are included by inference where a colon (:) is used within sentences or phrases.

1.4.2 In the interest of brevity, the Contract frequently omits modifying words such as "all" and "any" and articles such as "the" and "an", but an absent modifier or article is not intended to affect interpretation of a statement.

ARTICLE 2 - CITY

2.1 LIMITATIONS OF CITY'S OFFICERS AND EMPLOYEES

2.1.1 No officer or employee of City may authorize Construction Manager to perform an act or work contrary to the Contract Documents, except as otherwise provided in the Contract.

2.2 DUTIES OF CITY

2.2.1 If a building permit is required, the City will process an application for, and Construction Manager shall purchase and obtain the building permit before Date of Commencement of the Work or applicable Construction Phase of the Work.

2.2.2 City will make available to Construction Manager a reproducible set of Drawings. Additional copies will be furnished, on Construction Manager's request, at the cost of reproduction.

2.2.3 When necessary for performance of the Work, City will provide surveys describing physical characteristics, legal limitations, legal description of site, and horizontal and vertical control adequate to lay out the Work.

2.2.4 Information or services that City is required to provide under the Contract will be provided by City with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.5 The Contract imposes no implied duty on the City. The City does not warrant any plans or specifications associated with the Contract.

2.2.6 Except as expressly stated in this Article, the City owes no duty to the Construction Manager or any Subcontractor or Supplier.

2.3 AVAILABILITY OF LAND AND USE OF SITE

2.3.1 City will furnish, as indicated in the Contract Documents, rights-of-way, land on which the Work is to be performed, and other land designated in the Contract for use by Construction Manager unless otherwise provided in the Contract.

2.3.2 Construction Manager shall confine operations at site to those areas permitted by law, ordinances, permits, and the Contract Documents, and shall not unreasonably encumber the Project site with materials or equipment.

2.3.3 In addition to land provided by City under Section 2.3, City shall provide all land and access to land that may be required for use by Construction Manager for temporary construction facilities or for storage of materials and Construction Manager equipment, and Construction

Manager shall indemnify City during its use of the land as stated in Section 3.25.

2.4 CITY'S RIGHT TO STOP THE WORK

2.4.1 If Construction Manager fails to carry out the Work in accordance with the Contract Documents, or fails to correct Work that is not in accordance with requirements of the Contract Documents as required in Section 12.1.1 and Section 12.2, City may, by Notice of Noncompliance, order Construction Manager to stop the Work or any portion of the Work until the cause for the order has been eliminated. However, the right of City to stop the Work will not give rise to a Claim for delay or an increase in compensation or to a duty on the part of City to exercise this right for the benefit of Construction Manager or any other person or entity, except to the extent required by Section 6.2. If Construction Manager corrects the defective or nonconforming work within the time established in Notice of Noncompliance, City Engineer will give written notice to Construction Manager to resume performance of the Work.

2.5 CITY'S RIGHT TO CARRY OUT WORK

2.5.1 If Construction Manager fails to carry out work in accordance with the Contract Documents, and fails within the period established in a Notice of Noncompliance to correct the nonconforming work, City may, after expiration of the required period, correct the deficiencies without prejudice to other remedies City may have, including rights of City under Section 14.1.

2.5.1.1 When City corrects deficiencies, City Engineer will issue an appropriate Change Order and deduct from payments then or thereafter due Construction Manager

the cost of correcting the deficiencies, including compensation for other design consultants and City Engineer's additional services and expenses made necessary by such default, neglect, or failure. This action by City and amounts charged to Construction Manager are both subject to prior approval of City Engineer. If payments, then or thereafter due Construction Manager are not sufficient to cover these amounts, Construction Manager shall pay the difference to City. Costs of correcting deficiencies which would have otherwise been reimbursable to Construction Manager, as determined by the City Engineer in his sole discretion, shall not be deducted from sums otherwise due Construction Manager, but shall be considered a Cost of the Work, as determined by the City Engineer in his sole discretion, in determining Guaranteed Maximum Price and any savings shall revert to the City.

2.5.2 Notwithstanding City's right to carry out Work, maintenance and protection of the Work remains Construction Manager's responsibility, as provided in the Contract Documents.

2.6 CITY'S RIGHT TO REJECT WORK

2.6.1 City shall have the right to reject Work that does not conform to the Contract Documents. City shall also have the right to require special inspection or testing of the Work, whether or not such Work is then fabricated, installed, or completed. Neither City's right to act under this Section nor any decision by City either to exercise or not to exercise such right shall give rise to any duty or responsibility of City to Construction Manager or to any other person or entity, or result in a waiver of any of City's rights or relieve Construction Manager of its obligations.

ARTICLE 3 CONSTRUCTION MANAGER

3.1 RESPONSIBILITIES

3.1.1 Construction Manager shall maintain an office with agent in the greater City of Houston area during Construction Manager's performance under the Contract. Construction Manager shall file its street address with City Engineer. Construction Manager may use the job site office of Construction Manager to meet this requirement.

3.1.2 Construction Manager and Construction Manager's employees shall not give or lend money or anything of value to an officer or employee of City. Should this Paragraph 3.1.2 be violated, City Engineer may terminate the Contract under Section 14.1.

3.1.3 Construction Manager shall submit to City Engineer written monthly progress reports ("Progress Reports"). Such Progress Reports shall be submitted to City Engineer on forms approved by City Engineer with each Application for Payment. Such monthly reports shall include: (i) an updated Project Schedule, including a description of any deviations from City's approved Project Schedule; (ii) a complete cost report, including a description of deviations from the line items contained in the Guaranteed Maximum Price for that particular Construction Phase of the Project and a description of the amounts committed against Allowances, if any; (iii) a report of all Subcontractor Change Orders and pending claims; (iv) a description of problems, claims, disputes of any sort and potential problems, claims, or disputes of any sort arising in connection relating to the Work, including potential delays, materials and

supplies availability, disputes with Subcontractors or suppliers, and similar items; (v) a statement indicating methods of overcoming any past delay; (vi) all past and an estimate of all future cash flow requirements; and (vii) any additional information as may be reasonably required by City Engineer.

3.2 REVIEW OF CONTRACT AND FIELD CONDITIONS BY CONSTRUCTION MANAGER

3.2.1 Construction Manager shall carefully prepare and study the Contract Documents and any information furnished by City and shall immediately report, in writing, any known or reasonably inferable errors, inconsistencies, or omissions to City Engineer. If Work is affected, Construction Manager shall obtain a written interpretation or clarification from City Engineer before proceeding with the affected Work.

3.2.2 Construction Manager shall take field measurements and verify field conditions, and shall carefully compare the conditions and other information known to Construction Manager with the Contract Documents, before commencing activities. Construction Manager shall immediately report, in writing, to City Engineer for interpretation or clarification of discrepancies, inconsistencies, or omissions discovered during this process.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 Construction Manager shall supervise, direct, and inspect the Work competently and efficiently, devoting the attention and applying the skills and expertise as necessary to perform the Work in accordance with the Contract Documents. Construction Manager is solely responsible for and has control over construction means,

methods, techniques, sequences, and procedures of construction; for safety precautions and programs in connection with the Work; and for coordinating all Work under the Contract.

3.3.2 Regardless of observations or inspections by City or City's consultants, Construction Manager shall perform and complete the Work in accordance with the Contract Documents and submittals approved pursuant to Section 3.18. City is not liable or responsible to Construction Manager or Surety for Work performed by Construction Manager that is not in accordance with the Contract Documents regardless of whether such nonconformities are discovered during construction or after acceptance of the Work.

3.4 **SUPERINTENDENT**

3.4.1 Construction Manager shall employ a competent Superintendent and necessary assistants who shall be present at the site during performance of the Work. Communications given to Superintendent are binding on the Construction Manager.

3.4.2 Construction Manager shall notify City Engineer in writing of its intent to replace the Superintendent. Construction Manager shall not replace the Superintendent if City Engineer makes a reasonable objection in writing.

3.5 **LABOR**

3.5.1 Construction Manager shall provide competent, qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. City may, by written notice, require Construction Manager to remove from the Work any employee of Construction Manager or Subcontractors to whom City Engineer makes reasonable objection.

3.5.2 Construction Manager shall comply with the applicable Business Enterprise Policy set out in this Agreement and in the Supplementary Conditions.

3.5.3 When the Guaranteed Maximum Price is greater than \$1,000,000, Construction Manager shall make Good Faith Efforts to award subcontracts or supply agreements in at least the percentages set out in the Supplementary Conditions for Business Enterprise Policy. Construction Manager acknowledges that it has reviewed the requirements for Good Faith Efforts on file with the City's Mayor's Office of Business Opportunity and shall comply with them.

3.5.3.1 Construction Manager shall require written subcontracts with Business Enterprises and shall submit all disputes with Business Enterprises to voluntary mediation. Business Enterprise subcontracts complying with City Code of Ordinances Chapter 15, Article II must contain the terms set out in Subparagraph 3.5.3.2. If Construction Manager is an individual person, as distinguished from a corporation, partnership, or other legal entity, and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

3.5.3.2 Construction Manager shall ensure that subcontracts with Business Enterprise firms are clearly labeled "**THIS CONTRACT IS SUBJECT TO MEDIATION**" and contain the following terms:

1. (Business Enterprise) may not delegate or subcontract more than 50 percent of work under this subcontract to any other subcontractor without the express written consent of the Director.

2. (Business Enterprise) shall permit representatives of City of Houston, at all reasonable times, to perform (1) audits of the books and records of the Subcontractors and Suppliers, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. (Business Enterprise) shall keep the books and records available for this purpose for at least four years after the end of its performance under this subcontract. Nothing in this paragraph shall affect the time for bringing a cause of action nor the applicable statute of limitations.
3. Within five business days of execution of this subcontract, Construction Manager and (Business Enterprise) 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 the agent.

3.5.3 The requirements and terms of the City of Houston Pay or Play Program, as set out in Executive Order 1-7 and Ordinance 2007-0534, are incorporated into the Contract for all purposes. Construction Manager shall comply with the terms and conditions of the Pay or Play Program as they are set out at the time of City Council approval of this agreement. IF CONSTRUCTION MANAGER DOES NOT PAY IN ACCORDANCE WITH THE PAY OR PLAY PROGRAM WITHIN 30 DAYS OF

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THE DATE CITY ENGINEER SENDS CONSTRUCTION MANAGER WRITTEN NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS UP TO THE AMOUNT OWED FROM ANY PAYMENTS OWED TO CONSTRUCTION MANAGER UNDER THIS AGREEMENT, AND CONSTRUCTION MANAGER WAIVES ANY RECOURSE.

3.6 PREVAILING WAGE RATES

3.6.1 Construction Manager shall comply with governing statutes providing for labor classification of wage scales for each craft or type of laborer, worker, or mechanic.

3.6.1.1 Prevailing wage rates applicable to the Work shall be as stated in the Agreement, and as bound in the Project Manual.

3.6.1.2 Prevailing wage rates applicable to the Work may be one or the other of the following wage rates (Federal or City) identified in the Agreement:

1. Federal Wage Rate General Decisions
 1. Highway Rates
 2. Building Rates
 3. Heavy Construction Rates
 4. Residential Rates
2. City Prevailing Wage Rates
 1. Building Construction Rates
 2. Engineering Construction Rates
 3. Asbestos Worker Rates

3.6.2 Each week Construction Manager shall submit to Mayor's Office of Business Opportunity certified copies of payrolls showing classifications and wages paid by Construction Manager, Subcontractors, and Suppliers for each employee under the

Contract, for any day included in the Contract.

3.7 LABOR CONDITIONS

3.7.1 In the event of labor disputes affecting Construction Manager or Construction Manager's employees, Construction Manager shall utilize all reasonable means to resolve disputes in order that the Work not be delayed to any extent. These means will include seeking injunctive relief and filing unfair labor practice charges, and any other action available to Construction Manager.

3.7.2 When Construction Manager has knowledge that any actual or potential labor dispute is delaying or is threatening to delay timely performance of the Work, Construction Manager shall immediately notify City Engineer in writing. No Claims will be accepted by City Engineer for costs incurred as a result of jurisdictional or labor disputes.

3.8 DRUG DETECTION AND DETERRENCE

3.8.1 It is the policy of City to achieve a drug-free work force and to provide a workplace that is free from the use of illegal drugs and alcohol. It is also the policy of City that manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City's premises is prohibited. By executing the Contract, Construction Manager represents and certifies that it meets and will comply with all requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 ("Mayor's Policy") and the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31, (Revised) ("Executive Order"). Mayor's Policy is on file in the office of City

Secretary. Copies of Executive Order may be obtained at the location specified in the Advertisement for Proposals.

3.8.1.1 The Executive Order applies to City's contracts for labor or services except the following:

1. contracts authorized by Emergency Purchase Orders,
2. contracts in which imposition of requirements of the Executive Order would exclude all potential bidders or proposers, or would eliminate meaningful competition for the Contract,
3. contracts with companies that have fewer than 15 employees during any 20-week period during a calendar year and no safety impact positions,
4. contracts with non-profit organizations providing services at no cost or reduced cost to the public, and
5. contracts with federal, state, or local governmental entities.

3.8.1.2 Prior to execution of the Contract, Construction Manager shall have filed with City:

1. a Drug Policy Compliance Agreement form (Attachment "A" to the Executive Order), and
2. a copy of Construction Manager's drug free workplace policy, and
3. a written designation of all safety impact positions, if applicable, or a Construction Manager's Certification of a No Safety Impact Positions form (Attachment "C" to the Executive Order).

3.8.1.3 Every six months during performance of the Contract and upon completion of the Contract, Construction Manager shall file a Drug Policy Compliance Declaration form (Attachment "B" to the Executive Order). The Construction Manager shall submit the Drug Policy Compliance Declaration within 30 days of expiration of each six-month period of performance and within 30 days of the Date of Final Completion of the Work. The first six-month period shall begin on Date of Commencement of the Work.

3.8.1.4 Construction Manager shall have a continuing obligation to file updated designation of safety impact positions when additional safety impact positions are added to Construction Manager's employee workforce during performance of the Work.

3.8.1.5 Construction Manager shall require its Subcontractors and Suppliers to comply with the Mayor's Policy and Executive Order. Construction Manager is responsible for securing and maintaining required documents from Subcontractors and Suppliers for City inspection throughout the term of the Contract.

3.8.1.6 Failure of Construction Manager to comply with requirements will be a material breach of the Contract entitling City to terminate in accordance with Section 14.1.

3.9 **MATERIALS & EQUIPMENT**

3.9.1 Unless otherwise provided in the Contract Documents, Construction Manager shall provide and assume full responsibility for Products, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, transportation, temporary facilities, supplies, and other facilities and incidentals necessary

for Furnishing, performing, testing, starting-up, and completing the Work.

3.9.1.1 Construction Manager, Subcontractors, and Suppliers shall use Ultra Low Sulfur Diesel Fuel in all diesel operating vehicles and motorized equipment utilized in performing the Work. Ultra Low Sulfur Diesel Fuel is defined as diesel fuel having 15 ppm or the applicable standard set by state or federal law or rules and regulations of the Texas Commission on Environmental Quality, or the Environmental Protection Agency, whichever is less, in sulfur content. Off-road Ultra Low Sulfur Diesel Fuel may be used in lieu of on-road Ultra Low Sulfur Diesel Fuel. Construction Manager shall provide, upon request by City Engineer, proof that Construction Manager, Subcontractors, and Suppliers are using Ultra Low Sulfur Diesel Fuel.

3.9.2 Construction Manager shall provide Products that are:

1. new, unless otherwise required or permitted by the Contract, and
2. of specified quality.

If required by City Engineer, Construction Manager shall furnish satisfactory evidence, including reports of required tests, as to kind and quality of Products.

3.9.3 Construction Manager shall store Products in a safe, neat, compact, and protected manner. Construction Manager shall also store Products:

1. so as to cause the least inconvenience to property owners, tenants, and general public; and
2. so as not to block access to, or be closer than, three feet to any fire hydrant.

Construction Manager shall protect trees, lawns, walks, drives, streets, and other improvements that are to remain, from damage. If private or public property is damaged by Construction Manager, Construction Manager shall, at its sole expense, restore the damaged property to at least its original condition.

3.9.3.1 Construction Manager shall obtain City Engineer's approval for storage areas used for Products for which payment has been requested under Section 9.1.7. Construction Manager shall provide City access to the storage areas for inspection purposes. Products, once paid for by City, become the property of City and may not be removed from place of storage, without City Engineer's written permission except for a movement to the site. Construction Manager's Installation Floater, required under Section 11.2, shall cover all perils, including loss or damage to Products during storage, loading, unloading, and transit to the site.

3.10 PRODUCT OPTIONS AND SUBSTITUTIONS

3.10.1 For Products specified by reference standards or by description only, Construction Manager may provide any Product meeting those standards or description.

3.10.2 For Products specified by naming one or more manufacturers with provision for substitutions or equal, Construction Manager may submit a request for substitution for any manufacturer not named.

3.10.3 City Engineer will consider requests for substitutions only within the first 15 percent of Contract Time or first 90 days after date of Notice to Proceed of a Construction Phase, whichever is less.

3.10.4 Construction Manager shall document each request for substitution with complete data substantiating compliance of proposed substitution with the Contract.

3.10.5 A request for substitution constitutes a representation that Construction Manager:

1. has investigated the proposed Product and determined that it meets or exceeds the quality standard of the specified Product;
2. shall provide the same warranty for the substitution as for the specified Product;
3. shall coordinate installation of the proposed substitution and make changes to other work which may be required for the Work to be completed, with no additional cost or increase in time to City;
4. confirms that cost data is complete and includes all related costs under the Contract Documents;
5. waives related Claim for additional costs or time extensions that may subsequently become apparent; and
6. shall provide review or redesign services by a design consultant with appropriate professional license and shall obtain re-approval and permits from authorities.

3.10.6 City Engineer will not consider and will not approve substitutions when:

1. they are indicated or implied on Shop Drawing or Product Data submittals without separate written request; or

2. acceptance will require revision to the Contract Documents.

3.10.7 City Engineer may reject requests for substitution, and his decision will be final and binding on the Parties.

3.11 ALLOWANCES

3.11.1 The Guaranteed Maximum Price for each Construction Phase may include Allowances as identified in the Contract Documents.

3.11.2 City will pay the actual costs of Allowance item and they will not be considered a Cost of the Work. If actual costs exceed the Allowance, City Engineer must approve a Change Order for the additional costs.

3.12 WARRANTY

3.12.1 Construction Manager warrants to City that Products furnished under the Contract are:

1. free of defects in title;
2. of good quality;
3. new, unless otherwise required or permitted by the Contract Documents; and
4. free from defects and in strict conformance with the requirements of the Contract Documents.

If required by City Engineer, Construction Manager shall furnish satisfactory evidence as to kind, quality and title of Products, and that Products conform to requirements of the Contract Documents.

3.12.2 In the event of a defect in a Product, either during construction or warranty period, Construction Manager shall take appropriate action with manufacturer of

Product to assure correction or replacement of defective Product with minimum delay.

3.12.3 Construction Manager warrants that the Work is free of defects not inherent in the quality required or permitted, and that the Work does conform with the requirements of the Contract Documents. Construction Manager further warrants that the Work has been performed in a good and workmanlike manner.

3.12.3.1 If required in writing by the City Engineer, Construction Manager shall furnish satisfactory evidence, including reports or required tests, as to kind, quality and title of Products, and that Products conform to requirements of the Contract Documents.

3.12.3.2 In the event of a defect in a Product, either during construction or correction period, Construction Manager shall take appropriate action with the manufacturer of the Product to assure correction or replacement of the defective Product with minimum delay.

3.12.4 Construction Manager warrants that the Work is free of concentrations on polychlorinated biphenyl (PCB) and other substances defined as hazardous by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or any other applicable law or regulation.

3.12.5 Work not conforming to requirements of Section 3.12, including substitutions not properly approved and authorized, may be considered nonconforming work.

3.12.6 Construction Manager's warranty excludes remedy for damage or defect caused by:

3.12.6.1 improper or insufficient maintenance by City;

3.12.6.2 normal wear and tear under normal usage; or

3.12.6.3 claim that hazardous material was incorporated into the Work, if that material was specified in the Contract Documents.

3.12.7 Construction Manager warrants that title to all Work covered by Construction Manager's request for payment passes to City upon incorporation into the Work or upon Construction Manager's receipt of payment, whichever occurs first. Construction Manager further warrants that the title is free of all liens, claims, security interests or other interests ("Encumbrances"). If not, upon written demand from City Engineer, Construction Manager shall immediately take legal action necessary to remove Encumbrances.

3.13 TAXES

3.13.1 Construction Manager shall pay all applicable sales, consumer, use, and similar taxes, which are related to work provided by Construction Manager and to which any sales or use tax exemption is not applicable.

3.13.2 Construction Manager shall obtain, and require Subcontractors and Suppliers to obtain, necessary permits from applicable state and local taxing authorities to perform contractual obligations under the Contract, including sales tax permits (to the extent any sales or use tax exemption is not applicable).

3.13.3 City is exempt from the Federal Transportation and Excise Tax. Construction Manager shall comply with federal regulations governing the exemptions.

3.13.4 Products incorporated into the Work are exempt from state sales tax according to provisions of the TEX. TAX CODE ANN. CH. 151, Subsection H.

3.14 PERMITS, FEES, AND NOTICES

3.14.1 Unless otherwise provided in the Contract, Construction Manager shall secure and pay for all construction permits, licenses, and inspections.

3.14.1.1 necessary for proper execution and completion of the Work; and

3.14.1.2 legally required at time the Guaranteed Maximum Price for a construction Phase is approved by the City Engineer.

3.14.2 The Construction Manager shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work, including Construction Manager's or Subcontractor's licenses; neither City nor its agents, nor design consultant, shall be responsible for monitoring Construction Manager's compliance with this requirement.

3.15 CONSTRUCTION SCHEDULES

3.15.1 Upon receipt of a Notice to Proceed for a particular Construction Phase, Construction Manager shall promptly prepare and submit a construction schedule for such Construction Phase for City Engineer's review. The schedule must

reflect the minimum time required to complete the Work of the Construction Phase, not to exceed Contract Time.

3.15.2 Construction Manager shall give 24-hour written notice to City Engineer before commencing work or resuming work where work has been stopped. Construction Manager shall also give the same notice to inspectors.

3.15.3 Construction Manager shall incorporate milestones specified in Section 01326 (Construction Sequencing) of the Specifications into the construction schedule. Construction Manager's failure to meet a milestone, as determined by City Engineer, may be considered a material breach of the Contract. Such failure shall not be a material breach of the Contract if Construction Manager has submitted a updated construction schedule reasonably acceptable to the City Engineer under Section 8.1.5 hereof and is complying therewith.

3.15.4 Each month, Construction Manager shall submit to City Engineer a copy of the updated construction schedule indicating actual progress, incorporating applicable changes, and indicating courses of action required to assure completion of each Construction Phase of the Work within Contract Time.

3.15.5 Construction Manager shall keep a current schedule of all submittals that correlates with the schedules for each Construction Phase, and shall submit the initial schedule of submittals and any subsequent changes to City Engineer for approval.

3.16 DOCUMENTS AND SAMPLES AT THE SITE

3.16.1 Construction Manager shall maintain at the site, and make available to

City Engineer, one record copy of Drawings, Specifications, and Modifications. Construction Manager shall maintain the documents in good order and marked currently to record changes and selections made during construction. In addition, Construction Manager shall maintain at the site, approved Shop Drawings, Product Data, Samples, and similar submittals, which will be delivered to City Engineer prior to final inspection as required in Section 9.8.4.

3.16.2 Construction Manager shall maintain all books, documents, papers, accounting records, and other relevant documentation pursuant to the Work and shall make the books, documents, papers, and accounting records available to representatives of City for review and audits during the Contract term and for the greater of three years following Date of Substantial Completion of each Construction Phase or until all litigation or audits are fully resolved.

3.16.3 Construction Manager shall provide to City Attorney all documents and records that City Attorney deems necessary to assist in determining Construction Manager's compliance with the Contract, with the exception of those documents made confidential by federal or state law or regulation.

3.17 MANUFACTURER'S SPECIFICATIONS

3.17.1 Construction Manager shall handle, store, protect, and Install Products and perform all Work in the manner required by Product manufacturer. Should the Contract and manufacturer's instructions conflict, Construction Manager shall report conflict to City Engineer for resolution prior to proceeding with the affected portions of the Work.

3.17.2 References in the Contract Documents to the manufacturer's specifications, directions, or recommendations, mean manufacturer's current published documents in effect as of date of receipt of a Guaranteed Maximum Price proposal, or in the case of a Modification, as of date of Modification.

3.18 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.18.1 Shop Drawings, Product Data, and Samples are not part of the Contract. The purpose of Construction Manager submittals is to demonstrate, for those portions of the Work for which submittals are required, the way Construction Manager proposes to conform to information given and design concept expressed in the Contract Documents.

3.18.2 Construction Manager shall submit to City Engineer, if required by City Engineer for review the Shop Drawings, Product Data, and Samples, which are required by the Contract Documents. Review by City Engineer is subject to limitations of Paragraph 4.1.4. Construction Manager shall transmit the submittals to the City Engineer with reasonable promptness and in a sequence, so as to cause no delay in the Work or in activities of City or of separate contractors. Construction Manager shall transmit submittals in time to allow a minimum of 30 days for City Engineer's review prior to date Construction Manager needs reviewed submittals returned. This time may be shortened for a particular job requirement if approved by City Engineer in advance of submittal.

3.18.3 Construction Manager shall certify that the content of submittals conforms to the Contract without exception by affixing Construction Manager's approval stamp and signature. By certifying and

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submitting Shop Drawings, Product Data, and Samples, Construction Manager represents, and Construction Manager's stamp of approval shall state, that Construction Manager has determined and verified materials, quantities, field measurements, and field construction criteria related to the submittal, and has checked and coordinated information contained within the submittals with requirements of the Contract Documents and for compatibility with other submittals.

3.18.4 Construction Manager shall not perform any work requiring submittal and review of Shop Drawings, Product Data, or Samples until the submittal has been returned with appropriate review decision by the City Engineer. Construction Manager shall perform Work in accordance with the review.

3.18.5 If Construction Manager performs any Work requiring submittals prior to review and acceptance of the submittals by City Engineer, such Work is at Construction Manager's risk and City is not obligated to accept work if the submittals are later found to be unacceptable.

3.18.6 If, in the opinion of City Engineer, the submittals are incomplete, or demonstrate an inadequate understanding of the Work or lack of review by the Construction Manager, then submittals may be returned to the Construction Manager for correction and resubmittal.

3.18.7 Construction Manager shall direct specific attention in writing and on the resubmitted Shop Drawings, Product Data, or Samples to any additional proposed revisions, other than those revisions requested by City Engineer on previous submittals.

3.18.8 Construction Manager is not relieved of responsibility for deviations from

requirements of the Contract Documents by City Engineer's review or approval of Shop Drawings, Product Data, or Samples unless Construction Manager has specifically informed City Engineer in writing of the deviation at the time of the submittal, and City Engineer has given written approval of the deviation.

3.18.9 When professional certification of performance criteria of Products is required by the Contract Documents, City may rely upon accuracy and completeness of the calculations and certifications.

3.18.10 For Product colors or textures to be selected by City, Construction Manager shall submit all samples together to allow preparation of a complete selection schedule.

3.18.11 Construction Manager shall submit informational submittals, on which City Engineer is not expected to take responsive action, as required by the Contract Documents.

3.18.12 Submittals made by Construction Manager which are not required by the Contract Documents may be returned to Construction Manager without action.

3.19 CULTURAL RESOURCES AND ENDANGERED SPECIES

3.19.1 Construction Manager shall not remove or disturb, or cause to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. If Construction Manager discovers one of these items, Construction Manager shall immediately notify City Engineer and further comply with the requirements of 13 Tex. Admin. Code Chs. 25 and 26 (2002), or successor regulation. Construction Manager shall protect site and cultural resources from further disturbance until professional

examination can be made or until clearance to proceed is authorized in writing by City Engineer.

3.19.2 Should either threatened or endangered plant or animal species be encountered, Construction Manager shall cease work immediately in the area of encounter and notify City Engineer.

3.20 CUTTING AND PATCHING

3.20.1 Construction Manager is responsible for necessary cutting, fitting, and patching to accomplish the Work and shall suitably support, anchor, attach, match, and trim or seal materials to work of other contractors. Construction Manager shall coordinate the Work with work of other contractors to minimize conflicts, as provided in Article 6.

3.20.2 Construction Manager shall not endanger work by cutting, digging, or other action, and may not cut or alter work of other contractors except by written consent of City Engineer and affected contractor.

3.20.3 If authorized by City, cutting shall be accurately located and neatly done. Unnecessary cutting shall be avoided. Patching shall be done by skilled mechanics experienced in the particular type of work involved. Patching work shall conform to the standards of the Drawings and Specifications where applicable, and where not specified, such work shall conform to the highest standards of the trade. Finished patching in the work of a separate contractor shall be acceptable to the contractor whose work has been patched.

3.20.4 Construction Manager shall leave all holes, chases, and other openings in its construction required by other contractors for the installation of their work, provided such openings are accurately located by the party

requiring them before the execution of the construction. Construction Manager shall afford other contractors a reasonable opportunity to locate such openings.

3.21 CLEANING

3.21.1 Construction Manager shall perform daily cleanup of all dirt, debris, scrap materials and other disposable items resulting from Construction Manager's operations, whether on-site or off-site. Unless otherwise authorized in writing by City Engineer, Construction Manager shall keep all streets, access streets, driveways, areas of public access, walkways, and other designated areas clean and open at all times.

3.21.2 Failure of Construction Manager to maintain a clean site, including access streets, is the basis for City Engineer to issue a Notice of Noncompliance. Should compliance not be attained within the time period in the Notice of Noncompliance, City Engineer may authorize necessary cleanup to be performed by others and the cost of the cleanup will be deducted from monies due Construction Manager.

3.21.3 Construction Manager shall legally dispose off site all waste products and debris resulting from Construction Manager's on site and off site operations.

3.22 SANITATION

3.22.1 Construction Manager shall provide and maintain sanitary facilities at site for use of all construction forces under the Contract. Newly-constructed or existing sanitary facilities may not be used by Construction Manager.

3.23 ACCESS TO WORK AND TO INFORMATION

3.23.1 Construction Manager shall provide City, City's design consultant(s), testing laboratories, and governmental agencies that have jurisdictional interests, access to the Work in preparation and in progress wherever located. Construction Manager shall provide proper and safe conditions for the access.

3.23.2 If required by City Engineer, Construction Manager shall furnish information concerning character of Products and progress and manner of the Work, including information necessary to determine cost of the Work, such as number of employees, pay of employees, and time employees worked on various classes of the Work.

3.24 TRADE SECRETS

3.24.1 Construction Manager will not make any claim of ownership of trade secrets as to Products used in the Work, or preparation of any mixture for the Work. City Engineer will at all times have the right to demand and Construction Manager shall furnish information concerning materials or samples of ingredients of any materials used, or proposed to be used, in preparation of concrete placed or other work to be done. Mixtures, once agreed on, shall not be changed in any manner without knowledge and consent of City Engineer. City will make its best efforts to protect confidentiality of proprietary information.

3.25 RELEASE AND INDEMNIFICATION

3.25.1 CONSTRUCTION MANAGER 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
CONCURRENT (BUT NOT SOLE)
NEGLIGENCE AND/OR THE CITY'S
STRICT PRODUCT'S 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.

3.25.2 CONSTRUCTION MANAGER
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 THE
CONTRACT INCLUDING, WITHOUT
LIMITATION, THOSE CAUSED BY:

3.25.2.1 CONSTRUCTION
MANAGER'S AND/OR ITS
AGENTS', EMPLOYEES',

OFFICERS', DIRECTORS',
CONTRACTORS', OR
SUBCONTRACTORS'
(COLLECTIVELY IN
NUMBERED PARAGRAPHS
3.25.2.1 THROUGH 3.25.2.3,
"CONSTRUCTION MANAGER")
ACTUAL OR ALLEGED
NEGLIGENCE OR
INTENTIONAL ACTS OR
OMISSIONS;

3.25.2.2 THE CITY'S AND
CONSTRUCTION MANAGER'S
ACTUAL OR ALLEGED
CONCURRENT NEGLIGENCE,
WHETHER CONSTRUCTION
MANAGER IS IMMUNE FROM
LIABILITY OR NOT; AND

3.25.2.3 THE CITY'S AND
CONSTRUCTION MANAGER'S
ACTUAL OR ALLEGED
CONCURRENT STRICT
PRODUCTS LIABILITY,
WHETHER CONSTRUCTION
MANAGER IS IMMUNE FROM
LIABILITY OR NOT.

CONSTRUCTION MANAGER SHALL
DEFEND, INDEMNIFY, AND HOLD
THE CITY HARMLESS DURING THE
TERM OF THE CONTRACT AND FOR
FOUR YEARS AFTER THE
CONTRACT TERMINATES.
CONSTRUCTION MANAGER SHALL
NOT INDEMNIFY THE CITY FOR THE
CITY'S SOLE NEGLIGENCE.

3.25.3 THE INDEMNIFICATION
OBLIGATIONS UNDER SECTION
3.25.2 SHALL NOT BE LIMITED IN
ANY WAY BY THE LIMITS OF ANY
INSURANCE COVERAGE OR ANY
LIMITATION ON THE AMOUNT OR
TYPE OF DAMAGES,
COMPENSATION, OR BENEFITS
PAYABLE BY, FOR, OR TO
CONSTRUCTION MANAGER OR ANY

SUBCONTRACTOR, SUPPLIER, OR ANY OTHER INDIVIDUAL OR ENTITY UNDER ANY INSURANCE POLICY, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFITS ACTS.

3.25.4 NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LIABILITY OF CONSTRUCTION MANAGER FOR THE CITY'S CONCURRENT NEGLIGENCE SHALL NOT EXCEED \$1,000,000.

3.26 RELEASE AND INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT

3.26.1 UNLESS OTHERWISE SPECIFICALLY REQUIRED BY THE CONTRACT, CONSTRUCTION MANAGER AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONSTRUCTION MANAGER, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONSTRUCTION MANAGER FURNISHES DURING THE TERM OF THE CONTRACT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONSTRUCTION MANAGER SHALL PAY, SUBJECT TO REIMBURSEMENT IF ALLOWED

UNDER THE AGREEMENT, ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

3.26.2 CONSTRUCTION MANAGER SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT WITHOUT THE CITY ENGINEER'S PRIOR WRITTEN CONSENT.

3.26.3 UNLESS OTHERWISE SPECIFICALLY REQUIRED BY THE CONTRACT, WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONSTRUCTION MANAGER SHALL, AT ITS OWN EXPENSE, EITHER:

3.26.3.1 OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, OR PRODUCT, OR

3.26.3.2 IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS.

IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR PRODUCT, OR DISCONTINUE THE PROCESS, AND CONSTRUCTION MANAGER SHALL REFUND THE PURCHASE PRICE.

3.27 INDEMNIFICATION PROCEDURES

3.27.1 *Notice of Indemnification Claims.* If City or Construction Manager receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other Party within 10 days. The notice must include the following:

- 3.27.1.1 a description of the indemnification event in reasonable detail,
- 3.27.1.2 the basis on which indemnification may be due, and
- 3.27.1.3 the anticipated amount of the indemnified loss.

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

3.27.2 Defense of Indemnification Claims.

- 3.27.2.1 *Assumption of Defense.* Construction Manager may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to City. Construction Manager shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the

indemnification request, Construction Manager must advise City as to whether or not it will defend the claim. If Construction Manager does not assume the defense, City shall assume and control the defense, and all defense expenses constitute an indemnified loss.

3.27.2.2 *Continued*

Participation. If Construction Manager elects to defend the claim, City may retain separate counsel to participate in, but not control, the defense and to participate in, but not control, any settlement negotiations. Construction Manager may settle the claim without the consent or agreement of City, unless it:

- 1 would result in injunctive relief or other equitable remedies or otherwise require City to comply with restrictions or limitations that adversely affect City;
- 2 would require City to pay amounts that Construction Manager does not fund in full; or
- 3 would not result in City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

3.28 PRESERVATION OF CONTRACTING INFORMATION

3.28.1 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.

3.28.2 If Contractor fails to comply with any one or more of the requirements of this

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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 City's Chief Procurement Officer. 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 4 - ADMINISTRATION OF THE CONTRACT

4.1 CONTRACT ADMINISTRATION

4.1.1 City Engineer will provide administration of the Contract, and, subject to Section 7.1.2, City Engineer is authorized to issue Change Orders, Work Change Directives, and Minor Changes in the Work.

4.1.1.1 City Engineer may act through its design consultant(s), or Inspector. When the term "City Engineer" is used in the Contract, action by City Engineer is required unless City Engineer delegates his authority in writing.

4.1.2 City does not have control over or charge of, and is not responsible for, supervision, construction, and safety procedures enumerated in Section 3.3. City does not have control over or charge of and is not responsible for acts or omissions of Construction Manager, Subcontractors, or Suppliers.

4.1.3 City Engineer and City's design consultant(s) may attend project meetings and visit the site to observe progress and quality of the Work. City Engineer and its design consultant(s) are not required to make exhaustive or continuous on-site inspections or to check quality or quantity of the Work.

4.1.4 City Engineer will review and approve or take other appropriate action on Construction Manager's submittals, but only for limited purpose of checking for conformance with information given and design concept expressed in the Contract.

4.1.4.1 City Engineer's review of the submittals is not conducted for purpose of determining accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of Products, all of which remain the responsibility of Construction Manager.

4.1.4.2 City Engineer's and City's design consultant's review and/or approval of submittals shall not relieve Construction Manager of Construction Manager's obligations to perform the Work in strict conformance with the Contract Documents, including without limitation Construction Manager's obligations under Sections 3.3, 3.10, 3.12, 3.16 and 3.18 of these Document 00700-General Conditions and shall not constitute approval of safety precautions or, unless otherwise specifically stated by City Engineer or City's design consultant(s), of any construction means, methods, techniques, sequences, or procedures. City Engineer's or City's design consultant's review and/or approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.1.4.3 City's design consultant's decisions on matters relating to aesthetic

effect shall be final if consistent with the intent expressed in the Contract Documents.

4.1.5 Based on field observations and evaluations, City Engineer will process Construction Manager's progress payments, certify amounts due Construction Manager, and issue Certificates for Payment in the amount certified.

4.1.6 Construction Manager shall deliver to City Engineer for his review and records, written warranties and related documents required by the Contract Documents and assembled by Construction Manager.

4.1.7 Upon written request by Construction Manager or City, City Engineer will resolve matters of interpretation of or performance of the Contract, which are not Claims. City Engineer's decisions are final and binding on the Parties.

4.1.8 City Engineer may reject Work that does not conform to the Contract.

4.1.9 When City Engineer considers it necessary to implement the intent of the Contract, City Engineer may require additional inspection or testing of work in accordance with Sections 13.6.3 and 13.6.4, whether such work is fabricated, installed, or completed.

4.1.10 Except as expressly stated in this Article or other provisions of this Contract, the City owes no duty to the Construction Manager or any subcontractor.

4.2 COMMUNICATIONS IN ADMINISTRATION OF THE CONTRACT

4.2.1 Except as otherwise provided in the Contract Documents or when authorized by City Engineer in writing, Construction

Manager shall communicate with City Engineer. Construction Manager shall communicate with City's design consultant(s), design consultant's subconsultants, and separate contractors through City Engineer. City Engineer will communicate with Subcontractors and Suppliers through Construction Manager, but City Engineer is entitled to communicate directly with Subcontractors and Suppliers at any time to obtain information.

4.3 CLAIMS AND DISPUTES

4.3.1 *Documentation by City Engineer:* Construction Manager shall submit Claims, including those alleging an error or omission by City or City's design consultant(s), to City Engineer.

4.3.2 *Decision of City Engineer:* Upon submission of Claim by Construction Manager, City Engineer will resolve Claims in accordance with Section 4.4.

4.3.3 *Time Limits on Claims:* Claims by Construction Manager shall be made within 90 days after the occurrence of the event giving rise to such Claim. Claims by Construction Manager not made within the time required in the required manner shall be deemed waived by Construction Manager.

4.3.4 *Continuing the Contract Performance:* Pending final resolution of a Claim including referral to non-binding mediation, unless otherwise agreed in writing, Construction Manager shall proceed diligently with the performance of the Contract and City will continue to make payments in accordance with the Contract Documents.

4.3.4.1 Pending final resolution of a Claim including referral to non-binding mediation, Construction Manager is responsible for safety and protection of

physical properties and conditions at the Project site.

4.3.5 *Claims for Concealed or Unknown Conditions:* Concealed or unknown physical conditions may include utility lines, other man-made structures, storage facilities, Pollutants and Pollutant Facilities, and the like, but do not include conditions discovered or that should have been discovered through reasonable visual site inspection, geotechnical testing, geotechnical information available to Construction Manager, or otherwise, or that do not materially differ from those indicated in the Contract Documents, or information provided by City or those that should reasonably be anticipated, arising from Construction Manager's operations, or failure of Construction Manager to properly protect and safeguard subsurface facilities, or that do not materially differ from those indicated in the Contract Documents, or information provided by City or those that should reasonably be anticipated. Subject to the foregoing, concealed conditions also include naturally-occurring soil conditions outside the range of soil conditions identified through geotechnical investigations, but do not include conditions arising from groundwater, rain, or flood.

4.3.5.1 If conditions are encountered at the site which are Underground Facilities or otherwise concealed or unknown conditions as defined in Section 4.3.5, then Construction Manager will give written notice to City Engineer no later than five days after Construction Manager's first observation of the condition and before condition is disturbed. Construction Manager's failure to provide notice constitutes a waiver of a Claim.

4.3.5.2 City Engineer will promptly investigate concealed or unknown conditions. If City Engineer determines that

conditions at the site are not materially different and that no change in the Guaranteed Maximum Price or Contract Time is justified, City Engineer will notify Construction Manager in writing, stating reasons. If City Engineer determines the conditions differ materially and cause increase or decrease in Construction Manager's cost or time required for performance of part of the Work, City Engineer will recommend an adjustment in the Guaranteed Maximum Price, or Contract Time, or all, as provided in Article 7. Opposition by a Party to City Engineer's determination must be made within 21 days after City Engineer has given notice of the decision. If the Parties cannot agree on adjustment to the Guaranteed Maximum Price or Contract Time, adjustment is subject to further proceedings pursuant to Section 4.4.

4.3.6 *Claims for Additional Cost:* If Construction Manager wishes to make a Claim for increase in or Guaranteed Maximum Price, Construction Manager shall give written notice before proceeding with work for which Construction Manager intends to submit a Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

4.3.6.1 Construction Manager may file a Claim in accordance with Section 4.4 if Construction Manager believes it has incurred additional costs, for the following reasons:

- 1 written interpretation of City Engineer contrary to the terms of the Contract Documents;
- 2 order by City Engineer to stop the Work when Construction Manager is not at fault;
- 3 suspension of the Work by City Engineer when

Construction Manager is not at fault;

- 4 errors or omissions in the Drawings or Specifications that are not the responsibility of Construction Manager; or
- 5 City's non-compliance with another provision of the Contract Documents.

4.3.6.2 No increase in the Guaranteed Maximum Price is allowed for delays or hindrances to the Work, except for direct and unavoidable extra costs to Construction Manager that qualify as a Cost of the Work caused by failure of City to perform City's obligations under the Contract Documents. Any increase claimed is subject to the provisions of Section 4.4 and Article 7.

4.3.6.3 City is not liable for Claims for delay when Date of Substantial Completion of a Construction Phase occurs prior to expiration of Contract Time.

4.3.7 *Claims for Additional Time:* If Construction Manager wishes to make a Claim for an increase in Contract Time, Construction Manager shall give written notice as provided in Section 8.2. In case of continuing delay, only one Claim is necessary.

4.4 **RESOLUTION OF CLAIMS AND DISPUTES**

4.4.1 City Engineer will review Claims and take one or more of the following preliminary actions within 30 days of receipt of Claim:

- 1 submit a suggested time to meet and discuss the Claim with City Engineer;

- 2 reject Claim, in whole or in part, stating reasons for rejection;
- 3 recommend approval of the Claim by the other Party;
- 4 suggest a compromise; or
- 5 take other actions as City Engineer deems appropriate to resolve the Claim.

4.4.2 City Engineer may request additional supporting data from claimant. Party making Claim shall, within 10 days after receipt of City Engineer's request, submit additional supporting data requested by City Engineer.

4.4.3 At any time prior to rendering a written decision regarding a Claim, City Engineer may refer Claim to non-binding mediation as provided in Section 4.5. If Claim is resolved, City Engineer will prepare and obtain all appropriate documentation.

4.4.3.1 If Claim is not referred to non-binding mediation, City Engineer will render a written decision within 75 days of receipt of the Claim, or a time mutually agreed upon by the Parties in writing. City Engineer may notify Surety and request Surety's assistance in resolving a Claim. City Engineer's decision is final and binding on the Parties.

4.5 WAIVER OF ATTORNEY FEES AND INTEREST

4.5.1 Neither the City nor Construction Manager may recover attorney fees for any claim brought in connection with this Contract.

4.5.2 Neither the City nor the Construction Manager may recover interest for any damages claim brought in connection with this Contract except as allowed by TEXAS LOCAL GOVERNMENT CODE Chapter 2251.

4.6 INTERIM PAYMENT WAIVER & RELEASE

4.6.1 In accordance with section 4.3, the Construction Manager shall use due diligence in the discovery and submission of any Claim against the City related to the Contractor's work.

4.6.2 The Construction Manager shall submit any Claim to the City not later than the 90th day after the occurrence of the event giving rise to the Claim.

4.6.3 Any failure to timely comply with the requirements of section 4.6.2 waives and releases any Claim when the Construction Manager submits an application for payment after the 90th day.

4.6.4 This waiver does not cover any retainage. In case of any conflict of law, this language shall be revised to the minimum extent necessary to avoid legal conflict. This waiver is made specifically for the benefit of the City.

ARTICLE 5 - SUBCONTRACTORS AND SUPPLIERS

5.1 AWARD OF SUBCONTRACTS OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.1.1 Construction Manager may not contract with a Subcontractor, Supplier, person, or entity that City Engineer has made a reasonable and timely objection to.

5.1.2 If City Engineer has a reasonable objection to person proposed by Construction Manager, Construction Manager shall propose another with whom City Engineer has no reasonable objection.

5.1.3 Construction Manager shall execute contracts with approved Subcontractors and Suppliers, persons or entities before the Subcontractors, Suppliers, persons or entity begins work under the Contract.

5.1.4 Construction Manager shall notify City Engineer in writing of any proposed change of Subcontractor or Supplier, person or entity previously approved by City Engineer.

5.1.5 Construction Manager shall make timely payments to Subcontractors, Suppliers, persons and entities for performance of the Contract Documents. CONSTRUCTION MANAGER SHALL PROTECT, DEFEND, AND INDEMNIFY CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONSTRUCTION MANAGER'S FAILURE TO MAKE PAYMENTS. Disputes relating to payment of MWBE, PDBE and SBE Subcontractors, Suppliers, persons, or entities will be submitted to mediation in the same manner as other disputes under those subcontracts. Failure of Construction Manager to comply with decisions of mediator may be determined by City Engineer a material breach leading to termination of the Contract.

5.2 CONSTRUCTION MANAGER RESPONSIBILITY FOR SUBCONTRACTORS

5.2.1 Construction Manager is responsible to City, as may be required by laws and regulations, for all acts and omissions of Subcontractors, Suppliers, and other persons and organizations performing or furnishing any of the Work under direct or indirect contract with Construction Manager.

5.2.2 Construction Manager shall make available to each proposed Subcontractor,

prior to execution of subcontract, copies of the Contract to which Subcontractor is bound by this Section 5.2. Construction Manager shall notify Subcontractor of any terms of proposed subcontract which may be at variance with the Contract.

5.2.3 City Engineer's approval of Subcontractor or Suppliers does not relieve Construction Manager of its obligation to perform, or to have performed to the full satisfaction of City, the Work required by the Contract.

5.2.4 Unless there is a contractual relationship between Construction Manager and a Subcontractor or Supplier to the contrary, Construction Manager shall withhold no more retainage from Subcontractors or Suppliers than City withholds from Construction Manager under this Contract. However, once a Subcontractor or Supplier completes performance, Construction Manager shall release all retainage to that Subcontractor or Supplier regardless if City continues to retain under this Contract.

5.2.5 Prior to a Subcontractor or Supplier commencing performance for Construction Manager, Construction Manager shall meet with that Subcontractor or Supplier to provide instructions on invoicing procedures, dispute resolution procedures, and statutory rights, such as Section 2253 of the Texas Government Code. Subcontractors and Suppliers must certify to the City Engineer that Construction Manager has fulfilled the requirements of this Section.

ARTICLE 6 - CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS

6.1 THE CITY'S RIGHT TO PERFORM CONSTRUCTION

AND TO AWARD SEPARATE CONTRACTS

6.1.1 City shall have the right to perform on-site construction operations related to the Work and as part of the Project with its own forces or with separate contractors.

6.2 COORDINATION

6.2.1 City will coordinate activities of City's workforce and of each separate contractor with work of Construction Manager, and Construction Manager shall cooperate with City and separate contractors.

6.2.1.1 Construction Manager shall participate with other separate contractors and City in reviewing their construction schedules when directed to do so by the City Engineer. Construction Manager shall make revisions to construction schedule and Guaranteed Maximum Price deemed necessary after joint review and mutual agreement. Construction schedules shall then constitute schedules to be used by Construction Manager, separate contractors, and City, until subsequently revised.

6.2.2 Construction Manager shall afford to City and separate contractors reasonable opportunity for introduction and storage of their materials and equipment, and for performance of their activities.

6.2.3 If part of Construction Manager's work depends on proper execution of construction or operations by City or a separate contractor, Construction Manager shall, prior to proceeding with that portion of the Work, inspect the other work and promptly report to City Engineer apparent discrepancies or defects in the other construction that would render it unsuitable for the proper execution of the Work. Failure of Construction Manager to report apparent

discrepancies or defects in the other construction shall constitute acknowledgment that City's or separate contractor's completed or partially completed construction is fit and proper to receive Construction Manager's work, except as to discrepancies or defects not then reasonably discoverable.

6.3 MUTUAL RESPONSIBILITY

6.3.1 The responsible Party bears the costs caused by delays due to improperly timed activities, or by nonconforming construction.

6.3.2 Construction Manager shall promptly remedy damage caused by Construction Manager to completed or partially completed construction or to property of City or separate contractor.

6.3.3 Claims or disputes between Construction Manager and other City contractors, or subcontractors of other City contractors, working on the Project shall be submitted to binding mediation in accordance with Construction Industry Arbitration and Mediation Rules of the American Arbitration Association upon demand by any party to the dispute or by City. City is not required to arbitrate and is not bound by the result of any such mediation.

6.4 CITY'S RIGHT TO CLEAN UP

6.4.1 If a dispute arises among Construction Manager, separate contractors, and City as to responsibility under their respective contracts for maintaining premises and surrounding area free from waste materials and rubbish as described in Section 3.21, City may clean up and allocate cost among those responsible, as determined by City Engineer.

ARTICLE 7- CHANGES IN THE WORK

7.1 CHANGES

7.1.1 Changes in scope of the Work, subject to limitations in Article 7 and elsewhere in the Contract, may be accomplished without invalidating the Contract, or without notifying Surety by:

- 1 Change Order;
- 2 Work Change Directive; or
- 3 Minor Change in the Work.

7.1.2 The following types of Change Orders require City Council approval:

- 1 a single Change Order that exceeds five percent of the Guaranteed Maximum Price,
- 2 a Change Order which, when added to previous Change Orders, exceeds five percent of the Guaranteed Maximum Price,
- 3 a Change Order, in which the total value of increases outside of the general scope of work approved by City Council, when added to increases outside the general scope of work approved by City Council in previous Change Orders, exceeds 40 percent of the Guaranteed Maximum Price, even if the net increase to the Guaranteed Maximum Price is five percent or less. In this context, "increase" means an increase in quantity resulting from the addition of locations not within the scope of work approved by City Council, or the addition of types of goods or services not bid as unit price items.

Nothing in this Paragraph is intended to permit an increase of the Guaranteed Maximum Price in excess of the limit set out in TEX. LOC. GOV'T CODE ANN. §252.048 or its successor statute.

7.1.3 Construction Manager shall proceed promptly to perform changes in the Work provided in Modifications, unless otherwise stated in the Modification.

7.2 WORK CHANGE DIRECTIVES

7.2.1 A Work Change Directive cannot change the Guaranteed Maximum Price or Contract Time, but is evidence that the Parties agree that a change, ordered by directive, will be incorporated in a subsequently issued Change Order as to its effect, if any, on the Guaranteed Maximum Price or the Contract Time.

7.2.2 Failure by Construction Manager to commence work identified in a Work Change Directive within the time specified by City Engineer, or to complete the work in a reasonable period of time, may be determined by City Engineer to be a material breach of the Contract.

7.2.3 A Work Change Directive is used in the absence of total agreement of the terms of a Change Order. Interim payments are made in accordance with Section 9.6.1. Construction Manager may include a request for payment for undisputed Work under a Work Change Directive with Applications for Payment submitted in accordance with the Contract Documents.

7.2.4 If Construction Manager signs a Work Change Directive, then Construction Manager agrees to its terms including adjustment in the Guaranteed Maximum Price and Contract Time or method for determining them. Agreement by the Parties

to adjustments in the Guaranteed Maximum Price or Contract Time shall immediately be recorded as a Change Order.

7.2.5 City Engineer, by Work Change Directive, may direct Construction Manager to take measures as necessary to expedite construction to achieve Date of Substantial Completion on or before expiration of Contract Time. When the Work is expedited solely for convenience of City and not due to Construction Manager's failure to prosecute timely completion of the Work, then Construction Manager is entitled to an adjustment in the Guaranteed Maximum Price equal to actual Cost of the Work described in Section 4.3.3 of the Agreement. The Construction Manager's agreed to fee, as defined in Section 2.4 of the Agreement, shall be applied to the incremental increase in the Cost of the Work, if any, resulting from any such Work Change Directive.

7.3 ADJUSTMENTS IN CONTRACT TIME OR GUARANTEED MAXIMUM PRICE

7.3.1 Adjustments in the Guaranteed Maximum Price or Contract Time shall be accomplished only by Change Order after the parties have agreed to amending the approved GMP Proposal in Article 7 herein and under Article 4 of the Agreement. All changes must be documented with properly itemized and supported by sufficient data to permit evaluation.

7.3.2 If the City Engineer deletes or makes a change which results in a net decrease in the GMP, City is entitled to a credit by Construction Manager in the GMP and the Cost of the Work.

7.3.3 Unless otherwise provided in the Contract Documents, maximum allowances for overhead and profit due to changes in the

Work, whether additive or deductive, are limited by the following:

1 to first tier Subcontractors for change in the Work performed by its Subcontractors: 10% Overhead and 0% Profit.

2 to first tier Subcontractors for change in the Work performed by their respective firms: 10% Overhead and 5% Profit.

7.4 MINOR CHANGES IN THE WORK

7.4.1 A Minor Change in Work is binding on the Parties. Construction Manager shall acknowledge, in a written form acceptable to City Engineer, that there is no change in Contract Time or Guaranteed Maximum Price and shall carry out the written orders promptly.

7.5 CHANGES IN APPLICABLE LAW

7.5.1 To the extent that a change in Applicable Law enacted after the Guaranteed Maximum Price for an affected Phase is agreed upon affects to a material extent Construction Manager's time or cost of performing the Work for the affected Construction Phase, Construction Manager shall give City Engineer written notice within 90 Days of the effective date of such a change in Applicable Law, setting forth the details of the change in Applicable Law and Construction Manager's good faith determination of its impact on Construction Manager's performance obligations under the Contract Documents. The City Engineer will investigate such change in Applicable Law and, if the City Engineer determines that it causes an increase or decrease in Construction Manager's cost of, or time required for, performance of the Work for the affected Construction Phase and that the

notice was given timely, City and Construction Manager shall enter into a Change Order in accordance with the provisions of Article 7 herein.

ARTICLE 8 – TIME

8.1 PROGRESS AND COMPLETION

8.1.1 Time is of the essence in the Contract. By executing a Guaranteed Maximum Price Proposal and any Guaranteed Maximum Price contract amendment or change order, as determined by the City, Construction Manager agrees that Contract Time is a reasonable period for performing the Work.

8.1.2 *Computation of Time:* In computing any period of time prescribed or allowed by the Document 00700-General Conditions, the day of the act, event, or default after which designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or Legal Holiday, in which event the period runs until end of the next day that is not a Sunday or Legal Holiday. Sundays and Legal Holidays are considered to be days and are to be included in all other time computations relative to Contract Time.

8.1.2.1 Construction Manager shall provide City Engineer an accounting of inclement weather delay days.

8.1.2.2 City Engineer may grant an extension of Contract Time due to inclement weather where the Construction Manager establishes an actual delay impacting the critical path of the Construction Schedule and otherwise complies with the requirements of Article 8.

8.1.3 Construction Manager may not commence the Construction Phase Work

prior to the effective date of insurance and Bonds required by Article 11.

8.1.4 Construction Manager shall proceed expeditiously and without interruption, with adequate forces, and shall achieve Substantial Completion within the Contract Time.

8.1.5 Should progress of the Work fall behind construction schedule, except for reasons stated in Section 8.2.1, Construction Manager shall promptly submit at the request of City Engineer, updated construction schedule to City Engineer for approval. Construction Manager's failure to submit updated schedule may, at City Engineer's discretion, constitute a material breach of the Contract. Construction Manager shall take action necessary to restore progress by working the hours, including night shifts and lawful overtime operations as necessary, to achieve Date of Substantial Completion within Contract Time.

8.1.6 Except in connection with safety or protection of persons or the Work or property at the site or adjacent to the site, and except as otherwise indicated in the Contract, all the Work at the site will be performed Monday through Saturday between the hours of 7:00 a.m. and 7:00 p.m. Construction Manager shall not perform work between 7:00 p.m. and 7:00 a.m., on a Sunday, or on a Legal Holiday, without giving City Engineer 24 hour prior written notice and receiving written consent of City Engineer, which consent shall not unreasonably be withheld.

8.2 DELAYS AND EXTENSIONS OF TIME

8.2.1 Construction Manager may request extension of Contract Time for a delay in performance of work that arises from causes beyond Construction Manager's control and without fault or negligence of

Construction Manager. Examples of these causes are:

- 1 acts of God or of the public enemy,
- 2 acts of government in its sovereign capacity,
- 3 fires,
- 4 floods,
- 5 epidemics,
- 6 quarantine restrictions,
- 7 strikes,
- 8 freight embargoes,
- 9 unusually severe weather; and
- 10 discovery of Pollutants or Pollutant Facilities at the site.

8.2.2 For any reason other than those listed in Section 4.3.6.2, if the Construction Manager's work is delayed in any manner or respect, the Construction Manager shall have no claim for damages and shall have no right of additional compensation from the City by reason of any delay or increased expense to the Construction Manager's work, except for an extension of time as provided in this provision.

8.2.3 Construction Manager may request and may be entitled to an extension of Contract Time for delay only if:

- 1 delay is not caused by failure of Construction Manager or any of its Subcontractors or Suppliers to perform (or cause to be performed) or make progress for a cause within its control; and
- 2 cause of the delay was not reasonably anticipated and is beyond control of Construction Manager; and
- 3 the delay has been mitigated by all reasonable available efforts; and

- 4 Construction Manager can fully document and prove the impact of the event on Construction Manager's critical path of planned Work in the Project Schedule.

8.2.4 Claims relating to Contract Time must be made in accordance with Section 4.3.7.

8.2.5 Claims for extending or shortening Contract Time are based on written notice promptly delivered by Construction Manager to City Engineer. A Claim must accurately describe occurrence generating the Claim, and a statement of probable effect on progress of the Work.

8.2.6 Claims for extension of Contract Time are considered only when a Claim is filed within the time limits stated in Section 4.3.3.

8.2.7 Written notice of a Claim must be accompanied by claimant's written statement that adjustment claimed is entire adjustment to which claimant is entitled as a result of the occurrence of the event. When the Parties cannot agree, Claims for adjustment in Contract Time are determined by City Engineer in accordance with Section 4.4.

8.2.8 Adjustments to Contract Time shall be accomplished only by Change Order.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 APPLICATION FOR PAYMENT

9.1.1 Ten days before submittal of the first Application for Payment for a Construction Phase of Work, Construction Manager shall submit to City Engineer a Schedule of Values accurately allocating the Guaranteed Maximum Price for such Construction Phase

to the various portions of the Work for such Construction Phase, prepared in the form and supported by the data as City Engineer may require to substantiate its accuracy. The Schedule of Values shall contain, at a minimum, separate line items for the close out of the Work for such Construction Phase, the delivery of record "as-built" drawings, delivery of operation and maintenance manuals, delivery of warranty documents, and final cleanup. The Schedule of Values shall be balanced and not contain any "front end loading." The Schedule of Values, as approved by City Engineer, shall be used as a basis for approval of Construction Manager's Applications for Payment.

9.1.2 Construction Manager shall submit Applications for Payment to City Engineer each month on a form acceptable to City Engineer in accordance with Schedule of Values. Each Application for Payment shall indicate percentages of completion of each portion of the Work listed in Schedule of Values as of the end of the period covered by the Application for Payment. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

9.1.3 Each Schedule of Values submitted with an Application for Payment shall include the originally established value for each Work classification line item or subcontract and shall identify, by the addition of new data rows immediately below the previously accepted data rows, any revisions to the costs or cost estimates for each Work classification or subcontract. The format and tracking method of the original Schedule of Values and of all updates shall be subject to approval by City Engineer. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work, including Construction Manager's Fee, shall not exceed the unpaid balance of the

Guaranteed Maximum Price, less retainage on Work previously completed.

9.1.4 If previously unpaid, the Pre-Construction Services costs shall be identified separately in each Application for Payment.

9.1.5 Construction Manager shall deliver to City Engineer three copies of each itemized Application for Payment in such detail as is required by City Engineer. Applications for Payment must be supported by such substantiating data as City Engineer may require and shall reflect retainages as provided in the Contract Documents. The Application for Payment must be sworn to and notarized.

9.1.6 Before submitting the next Application for Payment (and with the Application for Final Payment), Construction Manager shall submit any evidence required by City Engineer to verify the Cost of the Work and to demonstrate that the cash disbursements already made by Construction Manager on account of the Cost of the Work are equal to or exceed (1) progress payments already received by Construction Manager; less (2) that portion of those payments attributable to Construction Manager's Fee; plus (3) payrolls for the period covered by the most recent Application for Payment; less (4) retainage provided for in the Contract Documents applicable to prior progress payments. This documentation of the most recent Application for Payment, if required by City Engineer, shall have a summary sheet (in two copies) that descriptively itemizes all expenses and individuals. No payment is required to be made for Work for which Construction Manager fails to provide required documentation.

9.1.7 Each Application for Payment shall be based upon the Cost of the Work and the most recent Schedule of Values submitted

by Construction Manager in accordance with the Contract Documents and accepted by City Engineer.

9.1.8 Applications for Payment shall show the Cost of the Work actually incurred by Construction Manager through the end of the period covered by the Application for Payment and for which Construction Manager has made or intends to make actual payment prior to the next Application for Payment and the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work that has actually been completed or (2) the percentage obtained by dividing (a) the Cost of the Work that has actually been incurred by Construction Manager on account of that portion of the Work for which Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the Schedule of Values.

- 1 The City Engineer, at his sole discretion, may authorize payment of stored materials up to a value of eighty five percent (85%) of the actual invoice amount properly substantiated by certified copies of invoices and freight bills of non-perishable material and equipment delivered and properly stored. Construction Manager must obtain approval from City Engineer for authorization to bill for stored materials in advance of the request for payment.

9.1.9 Each Application for Payment, including the Application for Final Payment shall constitute a certification by Construction Manager to City that the Work has progressed to the point indicated and the Work represented has actually been performed; the quality of the Work covered in the Application for Payment is in accordance with the Contract Documents; Construction Manager is entitled to payment in the amount requested; Construction Manager remains capable of performing the Contract to completion; and Construction Manager is current in payment with Subcontractors and Suppliers.

9.1.10 Construction Manager shall promptly and in all events before interest charges accrue to the Subcontractor pay each of its Subcontractors, upon receipt of payment from City, out of the amount paid to Construction Manager on account of such Subcontractor's work, the amount to which such Subcontractor is entitled in accordance with the terms of Construction Manager's Subcontract with such Subcontractor. Construction Manager shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its sub-subcontractors in similar manner. City shall have no obligation to pay or to be responsible in any way for payment to any Subcontractor or Supplier.

9.1.11 With each Application for Payment, Construction Manager shall submit a certified "waiver and release." The waiver and release shall state: "In consideration for the payment received, Construction Manager waives all claims of every sort against City arising out of the Work performed through the effective date of the Application for Payment, except for retainage and such claims as have been properly submitted in accordance with the provisions of the Contract Documents or claims that can be

made timely within the requirements of the Contract Documents.”

9.1.12 Retainage shall be five percent (5%) of the Cost of the Work and the Construction Manager’s Fee for each Phase of the Work. There shall be no retainage on the Construction Manager’s building permit cost, bond and insurance cost, or the Preconstruction Services. Otherwise, City shall be entitled to withhold retainage from all Applications for Payment by Construction Manager. Retainage is not held by City for the benefit of any others and shall be deemed amounts not yet earned by or owed to Construction Manager.

9.1.13 In addition to other rights under the Contract Documents and Applicable Law, City Engineer, in its discretion, may retain amounts owing to Construction Manager as City deems appropriate to protect City’s interest. Construction Manager shall not receive payments from City for any amounts Construction Manager retains from its Subcontractors, and Construction Manager shall immediately return to City any amounts paid to Construction Manager on behalf of any Subcontractor or Supplier or other which Construction Manager does not pass on as payment before the next Application for Payment. In the event City withholds all or any portion of the Construction Manager’s payments under this paragraph or under 9.4 hereof, City shall provide specific written accounting for same and shall allocate specific amounts for each reason justifying withholding. Such explanation shall be provided at the time payments would otherwise be due and sums withheld shall be paid when each such reason for withholding same has been cured to the reasonable satisfaction of the City.

9.1.14 Materials and services utilized in the construction of the Project may be exempted from state and local taxes.

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Construction Manager is responsible for taking full advantage of all tax exemptions applicable to the Project. City will deduct from the Applications for Payment and from the Request for Final Payment any taxes paid for materials or services that were entitled to tax exemption.

9.1.15 The Construction Manager is subject to the assessment of liquidated damages as provided in the Contract Documents. Amounts assessed as liquidated damages, and other amounts to which City is entitled by way of setoff or recovery, may be deducted from any monies otherwise due Construction Manager.

9.1.16 Construction Manager’s records shall be kept on the basis of generally accepted accounting principles in accordance with cost accounting standards issued by the Federal Office of Management and Budget Cost Accounting Standards Board consistently applied and organized by each Application for Payment period.

9.1.17 Applications for Payment must be supported by substantiating back-up data as required by the City Engineer and must reflect retainages as required herein. Evidence satisfactory to the City Engineer of payments made to Subcontractors and Suppliers for the month preceding the month for which the Application for Payment is submitted must accompany each Application for Payment on a form approved by the Director of the Mayor’s Office of Business Opportunity. The Application must be sworn and notarized.

9.2 CERTIFICATES FOR PAYMENT

9.2.1 Prior to issuing each Application for Payment under Section 9.1, Construction Manager shall submit a “Draft” Application for Payment that is valid and has all required documentation no later than the 25th of the

same month with Work projected through the end of the month. Within five (5) days of receipt of the Draft, the City Engineer shall review the Draft and provide the Construction Manager with any adjustments to the progress of the Work or amount requested, within reason. The Construction Manager shall make agreed to corrections to the Draft and submit to the City a "Final" Application for Payment that is valid and has all required documentation within five (5) days from receipt of the City Engineer's adjustments. Upon receipt of the Final Application for Payment, the City shall make payment to the Construction Manager not later than thirty (30) days from receipt. If, and in the event, the City Engineer holds all or part of a Final Application for Payment for one or more reasons, the City Engineer will issue a written explanation apportioning the amount withheld to each such cause.

9.2.1.1 With its draft Application for Payment, Construction Manager shall submit to City Engineer on a form approved by the Director of Mayor's Office of Business Opportunity, evidence satisfactory to the City Engineer of payments made to Subcontractors and Suppliers for the month preceding the month for which the Application for Payment is prepared.

9.2.2 Unless otherwise provided in the Contract Documents, payment for completed Work and for properly stored Products is conditioned upon compliance with procedures satisfactory to and agreed to by City Engineer to protect City's interests. Procedures will include applicable insurance, storage, and transportation to the site (with suitable on site storage and protection) for Products stored off site and proper documentation for such delivered Products, including certified copies of invoices and freight bills. Construction Manager is responsible for maintaining materials and

equipment until the Date of Substantial Completion.

9.2.3 Construction Manager shall document its use of Low Sulfur Diesel Fuel by providing invoices and receipts evidencing Construction Manager's use.

9.3 COMPUTATIONS OF CERTIFICATES FOR PAYMENT

9.3.1 Subject to the provisions of the Contract Documents, the amount of each Certificate for Payment is calculated as follows:

1 Take that portion of the Guaranteed Maximum Price for a Construction Phase properly allocated to completed Work for such Construction Phase based upon the percentage completion of each portion of the Work as set forth above. Pending final determination of cost to City of changes in the Work, amounts not in dispute may be included after increases and decreases have been netted out against each other, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

2 Add the Construction Manager's Fee.

3 Subtract the amount of retainage and such other amounts as City is entitled to withhold.

4 Subtract the aggregate of the previous payments made by City.

5 Subtract the shortfall, if any, indicated by Construction Manager in the documentation required to substantiate prior Applications for Payment or Construction Manager's payment of Costs of the Work covered by previous payments, or resulting from errors subsequently discovered by City Engineer in such documentation.

6 Subtract amounts, if any, for which City has withheld or nullified an Application for Payment.

9.4 DECISIONS TO WITHHOLD CERTIFICATION

9.4.1 City Engineer may decline to issue a Certificate for Payment and may withhold payment in whole or in part to the extent reasonably necessary to protect City if, in City Engineer's opinion, there is reason to believe that:

1 nonconforming work has not been remedied;

2 the Work cannot be completed for unpaid balance of the Guaranteed Maximum Price;

3 there is damage to City or another contractor;

4 Construction Manager has persistently failed to complete the Work in accordance with the Project Schedule or the Work will not be completed within Contract Time and that unpaid balance will not be adequate to cover actual and liquidated damages;

5 evidence that third party claims will probably be filed in court, in mediation, or otherwise;

6 Construction Manager has failed to make payments to Subcontractors or Suppliers or other third parties related to the Work;

7 Construction Manager has failed to carry out the Work in accordance with the Contract Documents;

8 The payment request has insufficient documentation to support the amount of payment requested;

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9 Construction Manager fails to obtain, maintain or renew insurance coverage as required by the Contract Documents;

10 Construction Manager is in breach or default under the Contract Documents or any loss or damage may result from negligence by Construction Manager or any Subcontractor or failure of Construction Manager or any Subcontractor to perform their obligations under the Contract Documents;

11 Construction Manager has not paid Subcontractors or Suppliers because of a payment dispute; or,

12 Construction Manager has failed to provide satisfactory evidence described in Sections 9.1.16, 9.2.1.1, and 9.5.2.

9.4.2 When the above reasons for withholding a Certificate for Payment are removed, certification will be made for amounts previously withheld.

9.4.3 City Engineer may decline to issue a Certificate for Payment and may withhold request for payment in whole or in part upon failure of Construction Manager to submit initial construction schedule or monthly schedule updates, as required in Section 3.15 or elsewhere in the Contract Documents.

9.4.4 City shall at any time during regular business hours have the right to inspect and copy the books and records (however kept) of Construction Manager for verification of Work done, costs, bids, estimates, markups, payments due, amounts claimed, obligations owed Subcontractors or Suppliers, or any other aspect of Construction Manager's obligations as they relate to the Project. At City Engineer's request, Construction Manager, shall promptly provide evidence satisfactory to City of Construction

Manager's compliance with the Contract Documents. Construction Manager shall require its Subcontractors and Suppliers to comply with this Section, and similarly require their sub-subcontractors and Suppliers of any tier, to comply with this Section.

9.5 PROGRESS PAYMENTS

9.5.1 The City will make payment, in an amount certified by City Engineer, within 20 days after City Engineer has issued a Certificate for Payment.

9.5.2 City has no obligation to pay or to facilitate the payment to any Subcontractor, Supplier, person or entity, except as may otherwise be required by law. Construction Manager shall comply with the prompt payment requirements of Chapter 2251 of the Government Code. However, Construction Manager shall pay Subcontractors and Suppliers within 7 calendar days of Construction Manager's receipt of payment from City unless there is a payment dispute between Construction Manager and a Subcontractor or Supplier evidenced on a form approved by the Director of Mayor's Office of Business Opportunity and submitted to the City Engineer each month with its Application for Payment.

9.5.2.1 City may, upon request and at the discretion of City Engineer, furnish to Subcontractor information regarding percentages of completion or the amounts applied for by Construction Manager, and action taken thereon by City because of Work done by the Subcontractor.

9.5.2.2 Construction Manager shall prepare and submit to City Engineer a Certification of Payment to Subcontractors, Suppliers, persons and entities form to be attached to each monthly Application for Payment.

9.5.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Work by City, does not constitute acceptance of work that is not in accordance with the Contract Documents.

9.6 DATE OF SUBSTANTIAL COMPLETION

9.6.1 When Construction Manager considers that a Construction Phase, or a portion thereof designated by City Engineer, to be substantially complete, Construction Manager shall prepare and submit to City Engineer a comprehensive punch list of items to be completed or corrected. Failure to include an item on the punch list does not alter the responsibility of Construction Manager to comply with the Contract Documents.

9.6.1.1 By submitting the punch list to City Engineer, Construction Manager represents that work on the punch list will be completed within the time provided for in Section 9.6.4.3.

9.6.2 Upon receipt of Construction Manager's punch list, City Engineer will inspect the Work, or designated portion thereof, to verify that the punch list contains all items needing completion or correction. If City Engineer's inspection discloses items not on Construction Manager's punch list, the items must be added to the punch list of items to be completed or corrected. If City Engineer's inspection reveals that Construction Manager is not yet substantially complete, Construction Manager shall complete or correct the deficiencies and request another inspection by City Engineer. City may recover the costs of re-inspection from Construction Manager. City Engineer will use reasonable efforts to inspect the Construction Phase within a reasonable time following receipt of Construction Manager's punch list, and if City Engineer disagrees that

Substantial Completion has been achieved, City Engineer will provide written notice as to what remains before Substantial Completion is achieved (but City Engineer shall not be prohibited from identifying other deficiencies later).

9.6.3 Prior to City Engineer's issuing a Certificate of Substantial Completion for the Work or other portion of the Work designated by City Engineer, Construction Manager shall also provide:

.1 Certificate of Occupancy (a temporary Certificate of Occupancy is acceptable provided Construction Manager promptly and diligently proceeds to obtain a permanent Certificate of Occupancy without conditions) for new construction, or Certificate of Compliance for remodeled work, as applicable;

.2 deliver all operations and maintenance manuals for the Project to City and have them approved by City and provide all training required under the Contract Documents. It is mutually understood and agreed that the Construction Manager will make every effort to deliver the operation and maintenance manuals prior to the building or partial building substantial completion date but the requirement for the delivery of all operation manuals shall not be the sole reason for the delay in the issuance of the Certificate of Substantial Completion; and

.3 compliance with Texas Accessibility Standards through state inspection of the Work, if required. If Construction Manager calls for inspection in a timely manner and the inspection is delayed through no fault of the Construction Manager, and City Engineer so confirms, City Engineer may, upon request by Construction Manager, add the inspection to the punch list in Section 9.6.2 and issue a Certificate of Substantial Completion.

9.6.4 When the Work, or designated portion thereof, is determined by City Engineer to be sufficiently complete in accordance with the Contract Documents so City can occupy or utilize the Construction Phase, or designated portion thereof, for the purpose for which it is intended, and all other conditions and requirements are satisfied, City Engineer will prepare a Certificate of Substantial Completion that incorporates the punch list in Section 9.6.2 and establishes:

- 1 Date of Substantial Completion;
- 2 responsibilities of the Parties for security, maintenance, heating, ventilating and air conditioning, utilities, damage to the Work, and insurance; and
- 3 fixed time within which Construction Manager shall complete all items on punch list to be corrected or completed accompanying the certificate.

9.6.5 Warranties required by the Contract shall commence on the Date of Substantial Completion of each Construction Phase unless otherwise provided by City Engineer in Certificate of Substantial Completion. Warranties shall not commence on items not yet completed until the Date of Final Completion.

9.6.6 Construction Manager shall complete or correct the items in Section 9.6.2 within the time period set out in the Certificate of Substantial Completion. If Construction Manager fails to do so, City may issue a Notice of Noncompliance and exercise all of its legal remedies under the Contract Documents, including those remedies set forth in Section 2.5.

9.6.7 Construction Manager shall keep the premises free from accumulation of waste materials or rubbish caused by Construction Manager's operations. At the completion of

the Work, Construction Manager shall remove from and about the Project Construction Manager's tools, construction equipment, machinery, surplus materials, waste materials and rubbish.

9.6.8 Immediately prior to the review of a portion of the Work for Substantial Completion, Construction Manager shall remove all waste materials, rubbish, Construction Manager's tools, construction equipment, machinery and surplus materials from the area to be inspected. Construction Manager shall also remove all protective coatings, temporary work, barriers and other protective devices.

1 Finished spaces that are to be inspected shall be cleaned as required to remove all stains, dirt and dust. Glass shall be cleaned on both faces, and carpet shall be vacuumed.

2 Unfinished spaces such as mechanical and electrical equipment rooms that are to be inspected shall be "broom clean."

3 Mechanical work such as duct work, unit heaters, finned tube radiation and its covers, air conditioning units, grilles and registers shall be cleaned as required to remove all stains, dirt and dust.

4 Electrical work shall be cleaned as necessary to remove all stains, dirt and dust.

9.6.9 Construction Manager shall maintain the Work in a clean condition until City determines the Date of Substantial Completion for the Construction Phase. After the Date of Substantial Completion of the Construction Phase, Construction Manager is responsible for removing waste materials, rubbish, dirt and dust caused by its continued operations.

9.6.10 Prior to final acceptance, or prior to City's partial or complete occupancy of a portion of the Work, Construction Manager shall do the following: (1) clean all spaces of the Work so that they are ready for City's occupancy without additional cleaning; (2) remove from the Project site all temporary buildings or facilities for that Work unless needed for other portions of the Work; (3) replace filters in air handling equipment according to the Specifications; and (4) replace burned out lamps. This obligation is in addition to and not by way of limitation of Construction Manager's obligation to prove the Project complete and ready to use in all respects by the time limits set forth in the Contract Documents.

9.6.11 After the Date of Substantial Completion of a Construction Phase and upon application by Construction Manager and approval by City Engineer, City may make payment, reflecting adjustment in retainage, if any, as follows: with the consent of Surety, the City may increase payment to Construction Manager up to 96 % of the Guaranteed Maximum Price, less the value of items to be completed and accrued liquidated damages.

9.7 PARTIAL OCCUPANCY OR USE

9.7.1 City may occupy or use any completed or partially completed portion of the Work that is less than a completed Construction Phase of the Work, provided the occupancy or use is consented to by Construction Manager and Construction Manager's insurer and authorized by public authorities having jurisdiction over the Work. Consent of Construction Manager to partial occupancy or use may not be unreasonably withheld.

1 Occupancy by City of a completed Construction Phase of the Work shall not require any consent.

9.7.2 Immediately prior to the partial occupancy or use, City Engineer and Construction Manager shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record condition of the Work.

9.7.3 Partial occupancy or use of a portion of the Work does not constitute acceptance of Work not in compliance with requirements of the Contract Documents.

9.8 FINAL COMPLETION AND FINAL PAYMENT

9.8.1 Construction Manager shall review the Contract and inspect the Work prior to Construction Manager notification to City Engineer that the Work is complete and ready for final inspection. Construction Manager shall submit an affidavit that Construction Manager has inspected the Work and that the Work is complete in accordance with the requirements of the Contract Documents.

9.8.2 City Engineer will make final inspection within 15 days after receipt of Construction Manager's written notice that the Work is ready for final inspection and acceptance. If City Engineer finds the Work has been completed in accordance with the Contract, Construction Manager shall submit items set out in Section 9.8.4 and a final Application for Payment. Within 30 days of receipt of the items set out in Section 9.8.4, the City Engineer may perform an audit to determine the accuracy of Construction Manager's accounting of the Costs of the Work and the Final Application for Payment. City Engineer will, within 10 days thereafter, either notify the Construction Manager that the Construction Manager has not achieved Final Completion of the Construction Phase as provided in Section 9.8.3 or issue a Certificate of Final Completion stating that to the best of City Engineer's knowledge,

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information, and belief, the Work has been completed in accordance with the Contract. If there is only one Construction Phase, City Engineer will recommend acceptance of the Work and recommend release of the remaining retainage by City Council. If there is more than one Construction Phase, the Parties shall confer upon the issuance of each Certificate of Final Completion to determine whether it is appropriate to seek City Council acceptance of the Work and release of the remaining retainage held for the particular Construction Phase that is certified as complete. Failing mutual agreement of the Parties to seek City Council acceptance and release of the remaining retainage, City shall continue to hold the remaining retainage for the particular Construction Phase until such time as the Parties mutually agree to seek City Council acceptance and release of the remaining retainage for such Construction Phase.

9.8.3 Should Work be found not in compliance with requirements of the Contract Documents, City Engineer will notify Construction Manager in writing of items of noncompliance. Upon inspection and acceptance of the corrections by City Engineer, compliance with all procedures of Section 9.8.2, and Construction Manager's submission of the items set out in Section 9.8.4, City Engineer will issue Certificate of Final Completion to Construction Manager's as provided in Section 9.8.2.

9.8.4 Construction Manager shall submit the following items to City Engineer before City Engineer will issue a Certificate of Final Completion:

- 1 affidavit that payrolls, invoices for materials and equipment, and other indebtedness of Construction Manager connected with the Phase of the Work, less

- amounts withheld by City, have been paid or otherwise satisfied. If required by City Engineer, Construction Manager shall submit further proof including waiver or release of lien or claims from Subcontractors, Suppliers, laborers (which may be conditioned upon City making payment to Construction Manager);
- 2 certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, will not be canceled or materially changed until at least 30 days written notice has been given to City;
- 3 written statement that Construction Manager knows of no substantial reason that insurance will not be renewable to cover correction and warranty period required by the Contract Documents;
- 4 consent of Surety to final payment;
- 5 copies of record documents, maintenance manuals, tests, inspections, and approvals and deliver the required record documents that describe changes or deviations from the Contract Documents, which occurred during construction and that reflect the actual "as-built" conditions of the completed Work;
- 6 compliance with Texas Accessibility Standards through state inspections of the Work, if required.

9.8.5 If Construction Manager fails to submit required items in Section 9.8.4 within 10 days of City Engineer's inspection of the Work under Section 9.8.2 or Section 9.8.3, City Engineer may, but is not obligated to:

- 1 deduct liquidated damages accrued from monies held;
- 2 proceed to City Council for acceptance of the Work, minus some or all of the items Construction Manager fails to submit under Section 9.8.4; and,
- 3 upon acceptance by City Council of the portion of the Work completed, either make final payment as set out in Section 9.8.8 or request that City Attorney interplead the balance due to Construction Manager under the Contract into the registry of a court of appropriate jurisdiction.

9.8.6 If final completion is materially delayed through no fault of Construction Manager, or by issuance of Change Orders affecting Date of Final Completion, and City Engineer so confirms, City may, upon application by Construction Manager and certification by City Engineer, and without terminating the Contract, make payment of balance due for that portion of the Work fully completed and accepted.

9.8.7 Upon City Engineer's issuance of a Certificate of Final Completion, Construction Manager may request an increase in payment up to ninety nine percent (99%) of the Guaranteed Maximum Price of the Construction Phase, less accrued Liquidated Damages.

9.8.8 If remaining balance due for work not corrected is less than retainage stipulated

in the Contract, Construction Manager shall submit to City Engineer written consent of Surety to payment of balance due for that portion of the Work fully completed and accepted, prior to certification of the payment. The payment is made under terms governing final payment, except that it does not constitute waiver of Claims.

9.8.9 Final Payment. The City will make final payment to Construction Manager within 30 days after the issuance of the Certificate of Final Completion by City Engineer and acceptance of the Work by City Council, subject to limitations, if any, as stated in the Contract Documents. City is entitled to deduct from any payment any amounts owed by Construction Manager to City, including accrued liquidated damages.

9.8.10 Acceptance of final payment by Construction Manager shall constitute a waiver of all Claims, whether known or unknown, by Construction Manager, except those previously made in writing and identified by Construction Manager as unsettled at time of final Application for Payment.

9.9 LIQUIDATED DAMAGES

9.9.1 Construction Manager and the City agree that failure to complete Work within the Contract Time will cause damages to the City and that actual damages from harm are difficult to estimate accurately. Therefore, Construction Manager and City agree that Construction Manager and Surety are liable for and shall pay to the City \$1,200.00 per day as liquidated damages, and that the amount of damages fixed therein is a reasonable forecast of just compensation for harm to the City resulting from Construction Manager's failure to complete the Work within the Contract Time. The amount stipulated will be paid for each day of delay

beyond Contract Time until the Date of Substantial Completion.

9.9.2 Construction Manager shall pay the City an amount of \$1200.00 per day for each operating vehicle or each piece of motorized equipment using high or low sulfur diesel fuel in anyway on the Work site.

ARTICLE 10-SAFETY PRECAUTIONS

10.1 SAFETY PROGRAMS

10.1.1 Construction Manager is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performance of the Contract. Construction Manager shall submit a safety program to City Engineer prior to mobilizing for the Work, and is solely responsible for safety, efficiency, and adequacy of ways, means, and methods, and for all loss, injury, or damage which might result from failure or improper construction, maintenance, or operation performed by Construction Manager.

10.2 POLLUTANTS AND POLLUTANT FACILITIES

10.2.1 If Construction Manager encounters material on-site that it reasonably believes to be a Pollutant or facilities that it reasonably believes to be a Pollutant Facility, Construction Manager shall immediately stop work in affected area and immediately notify City Engineer, confirming the notice thereafter in writing.

10.2.2 If City Engineer determines that the material is a Pollutant or facility is a Pollutant Facility, work in affected area may not be resumed except by Modification, and only if the work would not violate applicable laws or regulations.

10.2.3 If City Engineer determines that the material is not a Pollutant or a facility is not a Pollutant Facility, work in affected area will be resumed upon issuance of a Modification.

10.2.4 Construction Manager is not required to perform, unless authorized by Change Order, work relating to Pollutants or Pollutant Facilities except for that work relating to Pollutants or Pollutant Facilities specified in the Contract.

10.3 SAFETY OF THE ENVIRONMENT, PERSONS, AND PROPERTY

10.3.1 Construction Manager shall take reasonable precautions for safety and shall provide reasonable protection to prevent damage, injury, or loss from all causes, to:

- 1 employees performing work on-site, and other persons who may be affected thereby;
- 2 work, including Products to be incorporated into the Work, whether in proper storage, under control of Construction Manager or Subcontractor; and
- 3 other property at or adjacent to the site, such as trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal or replacement in course of construction.

10.3.2 Construction Manager shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons, property, or environment.

10.3.2.1 Construction Manager shall comply with requirements of Underground Facility Damage Prevention and Safety Act TEX. UTIL. CODE ANN. Ch. 251 (Vernon Supp. 2002).

10.3.2.2 Construction Manager shall comply with all safety rules and regulations of the Federal Occupational Health and Safety Act of 1970 and subsequent amendments (OSHA).

10.3.3 Construction Manager shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection of persons and property, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

10.3.4 Construction Manager shall designate a responsible member of Construction Manager's organization at site whose duty is prevention of accidents. This person will be Construction Manager's Superintendent unless otherwise designated by Construction Manager in writing to City Engineer.

10.3.5 Construction Manager shall prevent windblown dust and shall not burn or bury trash debris or waste products on-site or use sewers for disposal of trash or debris. Construction Manager shall prevent unlawful and other environmental pollution, including but not limited to particulates, gases and noise, as a result of the Work.

10.3.6 When use or storage of hazardous materials or equipment, or unusual methods are necessary for execution of the Work, Construction Manager shall exercise utmost care and carry on the activities under supervision of properly qualified personnel.

10.3.7 Construction Manager shall promptly remedy damage and loss to property referred to in Sections 10.3.1.2 and 10.3.1.3, caused in whole or in part by Construction Manager, or Subcontractors, which is not covered by insurance required by the Contract. Construction Manager is not required to remedy damage or loss attributable to City, City's design consultant, or other contractors.

10.4 EMERGENCIES

10.4.1 In emergencies affecting safety of persons or property, Construction Manager shall act at Construction Manager's discretion to prevent imminent damage, injury, or loss. Additional compensation or extension of time claimed by Construction Manager because of emergencies are determined as provided in Articles 7 and 8.

ARTICLE 11 - INSURANCE AND BONDS

11.1 GENERAL INSURANCE REQUIREMENTS

11.1.1 With no intent to limit Construction Manager's liability under indemnification and other provisions set forth in this Contract, Construction Manager shall provide and maintain in full force and effect during term of the Contract and all extensions and amendments thereto, at least the following insurance and available limits of liability.

11.1.2 If any of the following insurance is written as "claims made" coverage and City is required to be carried as additional insured, then Construction Manager's insurance shall include a two-year extended discovery period after last date that Construction Manager provides any work under the Contract.

11.1.3 Aggregate amounts of coverage, for purposes of the Contract, are agreed to be amounts of coverage available during fixed 12-month policy period.

11.1.4 Construction Manager shall be liable to City for any required coverage that City does not have or costs, damage, losses, or liability incurred by City (including attorneys' fees) due to Construction Manager's failure to purchase and maintain required insurance.

11.2 INSURANCE TO BE PROVIDED BY CONSTRUCTION MANAGER

11.2.1 *Risks and Limits of Liability:* Construction Manager shall provide at a minimum insurance coverage and limits of liability set out in Table 1, with no gaps in coverage between primary and excess coverage.

11.2.1.1 If Limit of Liability for Excess Coverage is \$2,000,000 or more, Limit of Liability for Employer's Liability may be reduced to \$500,000.

11.2.2 *Form of Policies:* Insurance may be in one or more policies of insurance, form of which is subject to approval by City Engineer. It is agreed, however, that nothing City Engineer does or fails to do with regard to insurance policies relieves Construction Manager from its duties to provide required coverage and City Engineer's actions or inactions will never be construed as waiving City's rights.

11.2.3 *Issuers of Policies:* Issuer of any policy shall have:

- 1 a Certificate of Authority to transact business in Texas, or
- 2 have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or

better, according to the most current edition of Best's Key Rating Guide, and the issuer must be an eligible nonadmitted insurer in the State of Texas.

Each insurer is subject to approval by City Engineer in City Engineer's sole discretion as to conformance with these requirements, pursuant to Section 11.2.2.

11.2.4 *Insured Parties:* Each policy, except those for Workers' Compensation and Owner's and Contractor's Protective Liability, must name City, its officers, agents, and employees as additional insured parties on original policy and all renewals or replacements during term of the Contract. City's status as additional insured under Construction Manager's insurance does not extend to instances of sole negligence of City unmixed with any fault of Construction Manager.

11.2.5 *Deductibles:* Construction Manager assumes and bears any claims or losses to extent of deductible amounts and waives any claim it may ever have for same against City, its officers, agents, or employees. All Construction Manager insurance claim deductibles are a Cost of the Work to the extent such deductibles are paid by Construction Manager.

11.2.6 *Cancellation:* Construction Manager shall notify the Director in writing 30 days prior to any cancellation or material change to Construction Manager's insurance coverage. Within the 30 day period, Construction Manager shall provide other suitable policies in lieu of those about to be canceled or nonrenewed so as to maintain in effect the required coverage. If Construction Manager does not comply with this requirement, the City Engineer, at his or her sole discretion, may:

- 1 immediately suspend Contractor from any further performance under this Contract and begin procedures to terminate for default, or
- 2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Construction Manager under this Contract.

11.2.7 *Subrogation:* Each policy except Owner's and Contractor's Protective Liability must contain endorsement to the effect that issuer waives any claim or right in nature of subrogation to recover against City, its officers, agents, or employees.

11.2.8 *Endorsement of Primary Insurance:* Each policy, except Workers' Compensation policies must contain an endorsement that the policy is primary insurance to any other insurance available to additional insured with respect to claims arising under the Contract Documents.

11.2.9 *Liability for Premium:* Construction Manager is solely responsible for payment to insurers of all insurance premium requirements hereunder and the City is not obligated to pay any premiums to insurers.

11.2.10 *Additional Requirements for Workers' Compensation Insurance Coverage:* Construction Manager shall, in addition to meeting the obligations set forth in Table 1, maintain throughout the term of the Contract Workers' Compensation coverage as required by statute, and Construction Manager shall specifically comply with requirements set forth in Section 11.2.10. The definitions set out below shall apply only for purposes of this Section 11.2.10.

11.2.10.1 Definitions:

- 1 *Certificate of Coverage:* A copy of certificate of insurance, or coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory Workers' Compensation insurance coverage for Construction Manager's, Subcontractor's, or Supplier's employees providing services for the duration of the Contract.
- 2 *Duration of the Work:* Includes the time from Date of Commencement of the Work until Construction Manager's work under the Contract has been completed and accepted by City Council.
- 3 *Persons providing services for the Work;* as required under Section 406.096 of the Texas Labor Code, as may be amended from time to time, for employees of Construction Manager and Subcontractor employees

11.2.10.2 Construction Manager shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for employees of Construction Manager providing services on the Work, for duration of the Work.

11.2.10.3 Construction Manager shall provide a Certificate of Coverage to City prior to beginning performance.

11.2.10.4 If coverage period shown on Construction Manager's original Certificate of Coverage ends during duration of the Work, Construction Manager shall file new

Certificate of Coverage with City showing that coverage has been extended.

11.2.10.5 Construction Manager shall obtain from each person providing services on the Work, and provide to City Engineer:

- 1 Certificate of Coverage, prior to that person beginning work on the Work, so City will have on file Certificates of Coverage showing coverage for all persons providing services on the Work; and
- 2 no later than seven days after receipt by Construction Manager, new Certificate of Coverage showing extension of coverage, if coverage period shown on current Certificate of Coverage ends during the duration of the Work.

11.2.10.6 Construction Manager shall retain all required Certificates of Coverage for the duration of the Work and for one year thereafter.

11.2.10.7 Construction Manager shall notify City Engineer in writing by certified mail or personal delivery, within 10 days after Construction Manager knew or should have known, of any change that materially affects provision of coverage of any person providing services on the Work.

11.2.10.8 Construction Manager shall post on-site a notice, in text, form and manner prescribed by Texas Workers' Compensation Commission, informing all persons providing services on the Work that they are required to be covered, and stating how person may verify coverage and report lack of coverage.

11.2.10.9 Construction Manager shall contractually require each person with whom

it contracts to provide services on the Work to:

- 1 provide coverage, based on proper reporting of classification codes, payroll amounts and filing of any coverage agreements, which meets statutory requirements of Texas Labor Code, Section 401.011(44) for all its employees providing services on the Work, for the duration of the Work;
- 2 provide to Construction Manager, prior to that person's beginning work on the Work, a Certificate of Coverage showing that coverage is being provided for all employees of the person providing services on the Work, for the duration of the Work;
- 3 provide Construction Manager, prior to the end of the coverage period, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage ends during the duration of the Work;
- 4 obtain from each other person with whom it contracts, and provide to Construction Manager: (1) Certificate of Coverage, prior to other person's beginning work on the Work; and (2) new Certificate of Coverage showing extension of coverage, prior to end of coverage period, if coverage period shown on the current

Certificate of Coverage ends during duration of the Work.

- 5 retain all required Certificates of Coverage on file for the duration of the Work and for one year thereafter;
- 6 notify City Engineer in writing by certified mail or personal delivery within 10 days after person knew, or should have known, of change that materially affects provision of coverage of any person providing services on the Work; and
- 7 contractually require each person with whom it contracts to perform as required by Sections 11.2.10.1 through 11.2.10.7, with Certificates of Coverage to be provided to person for whom they are providing services.

11.2.10.10 By signing the Contract or providing or causing to be provided a Certificate of Coverage, Construction Manager is representing to City that all employees of Construction Manager who will provide services on the Work will be covered by Workers' Compensation coverage for the duration of the Work, that coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with appropriate insurance carrier. Construction Manager is not allowed to self-insure Workers' Compensation. Construction Manager may be subject to administrative penalties, criminal penalties, civil penalties, or other civil actions for providing false or misleading information.

11.2.10.11 Construction Manager's failure to comply with Section 11.2.10 is a breach of the Contract by Construction Manager,

which entitles City to declare the Contract void if Construction Manager does not remedy breach within 10 days after receipt of notice of breach from City Engineer.

11.2.11 Subcontractor Insurance Requirements: Construction Manager shall require Subcontractors and Suppliers to obtain Commercial General Liability, Workers' Compensation, Employer's Liability and Automobile Liability coverage that meets all the requirements of Section 11.2. The amount must be commensurate with the amount of the subcontract, but not

less than \$500,000 per occurrence. Construction Manager shall require all Subcontractors with whom it contracts directly, whose subcontracts exceed \$100,000, to provide proof of all insurance coverage meeting the above requirements. Construction Manager shall deliver such certificates of insurance to City. Construction Manager shall comply with all requirements set out under Section 11.2.10 as to Workers' Compensation Insurance for all Subcontractors and Suppliers.

TABLE 1
REQUIRED COVERAGE

Coverage	Limit of Liability
1 Workers' Compensation	Statutory Limits for Workers' Compensation
2 Employer's Liability	Bodily Injury by Accident \$500,000 (each accident) Bodily Injury by Disease \$,500,000 (policy limit) Bodily Injury by Disease \$500,000 (each employee)
3 Commercial General Liability: Including Construction Manager's Protective, Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, Products, and Completed Operations (for a period of one year following completion of the Work)	Combined single limit of \$1,000,000 (each occurrence), subject to general aggregate of \$4,000,000; Products and Completed Operations \$2,000,000 aggregate.
4 Owner's and Contractors' Protective Liability	\$1,000,000 combined single limit each Occurrence/aggregate
5 Installation Floater (Unless alternative coverage approved by the City Attorney)	Value of stored material or equipment, listed on Certificates of Payments, but not yet incorporated into the Work
6 Automobile Liability Insurance: (For automobiles furnished by Construction Manager in course of his performance under the Contract, including Owned, Non-owned, and Hired Auto coverage)	\$1,000,000 combined single limit each occurrence for (1) Any Auto or (2) All Owned, Hired, and Non-owned Autos.
7 Excess Coverage	\$1,000,000 each occurrence/combined aggregate in excess of limits specified for Employer's Liability, Commercial General Liability, and Automobile Liability

Coverage	Limit of Liability
<p>Pollution Legal Liability Including pollution coverage for Contractual Liability, Clean up costs, Abatement, Transport, and Non-owned disposal sites. Including Bodily Injury, and environmental damage arising from pollution conditions caused in performance of operations. Including Asbestos and Lead if part of operations (MCS 90 endorsement: \$1,000,000.00 CSL to Auto Policy and removal of Pollution Exclusion).</p>	<p>\$2,000,000 per occurrence/aggregate</p>
<p>8 Property & Casualty Coverage: "All Causes of Loss" Builders Risk Form for direct physical damage to building or plant construction on Project site. [Including but not limited to earthquake, flood, boiler and Machinery -- including testing, damage to existing or adjoining property, time element coverage, collapse, soft costs (Management, architecture, financial costs, pre-opening costs, etc.), transit coverage, off-site storage]</p>	<p>100% Contract Price, including all change orders</p>
<p>Aggregate Limits are per 12-month policy period unless otherwise indicated.</p>	

11.3 PROOF OF INSURANCE

11.3.1 Prior to commencing the Construction Work and at the request of City Engineer at any time during the term of the Construction Contract, Construction Manager shall furnish City Engineer with Certificates of Insurance, along with Affidavit from Construction Manager confirming that Certificate accurately reflects insurance coverage that is available during term of the Contract. Additionally, Construction Manager shall furnish the City Engineer with endorsement forms CG24040509-Waiver of Transfer of Rights of Recovery against Others; CA04030604-Additional Insured Endorsement; CAT353-Business Auto Extension Endorsement; WC 42304A-Workers Compensation Waiver of Transfer of Rights of Recovery against Others, or others that may be approved by City Engineer. If requested in writing by City Engineer, Construction Manager shall furnish City Engineer with certified copies of Construction Manager's actual insurance policies. Failure of Construction Manager to provide certified copies, as requested, may be deemed, at City Engineer's or City Attorney's discretion, a material breach of the Contract.

11.3.2 Notwithstanding the proof of insurance requirements, Construction Manager shall continuously maintain in effect required insurance coverage set forth in Section 11.2. Failure of Construction Manager to comply with this requirement does constitute a material breach by Construction Manager allowing City, at its option, to immediately suspend or terminate Construction Manager from performing the Work, or exercise any other remedy allowed under the Contract Documents. Construction Manager agrees that City has not waived or is not estopped to assert a material breach of the Contract because of any acts or omissions by City regarding its review or non-review of

insurance documents provided by Construction Manager, its agents, employees, or assigns.

11.4 PERFORMANCE AND PAYMENT BONDS

11.4.1 For Contracts over the value of \$25,000, Construction Manager shall provide Bonds on City's standard forms covering faithful performance of the Contract and payment of obligations arising thereunder as required in the Contract pursuant to Chapter 2253 of the Government Code except for the Preconstruction Services. The Bonds must be for 100 percent of Guaranteed Maximum Price, or if a Guaranteed Maximum Price has not been determined, in the amount of the Project Budget, and in accordance with conditions stated on standard City Performance and Payment Bond and Statutory Payment Bond forms. Bonds may be obtained from Construction Manager's usual source if it meets the requirements of the Contract Documents and is acceptable to City Engineer, and cost for the Bonds are included in the Guaranteed Maximum Price.

11.5 MAINTENANCE BONDS

11.5.1 *One-year Maintenance Bond:* Construction Manager shall provide Bond on standard City One-year Maintenance Bond form, providing for Construction Manager's correction, replacement, or restoration of any portion of the Work which is found to be not in compliance with requirements of the Contract during one-year correction period required in Section 12.2. The Maintenance Bond must be for 100% of the Guaranteed Maximum Price.

11.6 SURETY

11.6.1 A Bond that is given or tendered to City pursuant to the Contract must be executed by a surety company that is

authorized and admitted to write surety Bonds in the State of Texas.

11.6.2 If a Bond is given or tendered to City pursuant to the Contract in an amount greater than 10 percent of Surety's capital and surplus, Surety shall provide certification that Surety has reinsured that portion of the risk that exceeds 10 percent of Surety's capital and surplus. The reinsurance must be with one or more reinsurers who are duly authorized, accredited, or trusted to do business in the State of Texas. The amount reinsured by reinsurer may not exceed 10 percent of reinsurer's capital and surplus. The amount of allowed capital and surplus must be based on information received from State Board of Insurance.

11.6.3 If the amount of a Bond is greater than \$100,000, Surety shall:

- 1 also hold certificate of authority from the United States Secretary of Treasury to qualify as surety on obligations permitted or required under federal law; or
- 2 Surety may obtain reinsurance for any liability in excess of \$100,000 from reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of the Treasury to qualify as surety or reinsurer on obligations permitted or required under federal law.

11.6.4 Determination of whether Surety on the Bond or the reinsurer holds a certificate of authority from the United States Secretary of the Treasury is based on information published in Federal Register

covering the date on which Bond was executed.

11.6.5 Each Bond given or tendered to City pursuant to the Contract must be on City forms with no changes made by Construction Manager or Surety, and must be dated, executed, and accompanied by power of attorney stating that the attorney in fact executing such the bond has requisite authority to execute such Bond. The Bonds must be dated and must be no more than 30 days old.

11.6.6 Surety shall designate in its Bond, power of attorney, or written notice to City, an agent resident in Harris County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.

11.6.7 Construction Manager shall furnish information to a payment bond beneficiary as required by TEX. GOV'T CODE ANN. CH. 2253.

11.7 DELIVERY OF BONDS

11.7.1 Construction Manager shall deliver required Bonds to City within time limits stated in the Contract Documents or such earlier date as required by City Engineer and in any event prior to Date of Commencement of the Work.

ARTICLE 12 - UNCOVERING AND CORRECTION OF THE WORK

12.1 UNCOVERING OF THE WORK

12.1.1 If a portion of the Work has been covered that City Engineer has not specifically asked to observe prior to its being covered, City Engineer may request to see such work and it must be uncovered by Construction Manager. If such work is in accordance with the Contract Documents, the costs of uncovering and covering such Work

that qualify as Costs of the Work are charged to City by Change Order in accordance with Article 7. If such Work is not in accordance with the Contract Documents, Construction Manager shall pay for uncovering and shall correct the nonconforming Work promptly after receipt of Notice of Noncompliance to do so.

12.2 CORRECTION OF THE WORK

12.2.1 Construction Manager shall promptly remove work rejected by City Engineer as failing to conform to requirements of the Contract Documents, whether observed before or after the Date of Substantial Completion of a Construction Phase and whether fabricated, Installed, or completed.

12.2.2 Construction Manager bears the costs of correcting the rejected or nonconforming work including additional testing and inspections, and compensation for City's design consultant's services and expenses made necessary thereby.

12.2.3 If within one year after Date of Substantial Completion of a Construction Phase or after the date of commencement of warranties established under Section 9.6.5, or by other applicable special warranty required by the Contract, whichever is later in time, any of the Work is found not to be in accordance with the requirements of the Contract, Construction Manager shall correct such work promptly after receipt of Notice of Noncompliance to do so.

12.2.4 The one-year correction period for portions of the Work completed after Date of Substantial Completion of a Construction Phase will begin on the date of acceptance of that portion of the Work. This obligation under this Section survives acceptance of the Work under the Contract and termination of the Contract.

12.2.5 The one-year correction period does not establish a duration for the Construction Manager's general warranty under Section 3.12 and other obligations under the Contract. City retains the right to recover damages from the Construction Manager as long as may be permitted by the applicable statutes of limitations and repose.

12.2.6 If Construction Manager does not proceed with correction of the nonconforming work within the reasonable time fixed by Notice of Noncompliance, City may correct nonconforming work or remove nonconforming work and store salvageable Products at Construction Manager's expense. Construction Manager shall pay the costs of correction of nonconforming work and removal and storage of salvageable Products to City. If Construction Manager does not pay costs of the correction or removal and storage within 10 days after written notice, City may sell the Products at auction or at private sale. City will account for proceeds thereof after deducting costs and damages that would have been borne by Construction Manager, including compensation for services of city's design consultant and necessary expenses. If the proceeds of sale do not cover costs that Construction Manager should have borne, Construction Manager shall pay the value of the deficiency to City.

12.2.7 Construction Manager shall pay the cost of correcting work originally installed by Construction Manager, City, or by separate contractors and damaged by Construction Manager's correction or removal of Construction Manager's Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If City Engineer prefers to accept work which is not in accordance with requirements of the Contract Documents, City Engineer may do so only by issuance of

Change Order, instead of requiring its removal and correction. City Engineer and the Construction Manager will mutually agree on the Guaranteed Maximum Price reduction. The reduction will become effective even if final payment has been made.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAWS

13.1.1 This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston.

13.1.2 Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

13.2 SUCCESSORS

13.2.1 The Contract binds and benefits the Parties and their legal successors and permitted assigns; however, this Section 13.2.1 does not alter the restrictions on assignment and disposal of assets set out in Section 13.3. The Contract does not create any personal liability on the part of any officer or agent of City.

13.3 BUSINESS STRUCTURE AND ASSIGNMENTS

13.3.1 Construction Manager may not assign the Contract at law or otherwise, or dispose of all or substantially all of its assets without City Engineer's prior written consent. Nothing in this Section, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Construction Manager shall immediately furnish City with proof of the assignment and the name, telephone

number, and address of the assignee and a clear identification of the fees to be paid to the assignee.

13.3.2 Any series, as defined by the TEX. BUS. ORG. CODE ANN., affiliate, subsidiary, or successor to which Construction Manager assigns or transfers assets shall join in privity and be jointly and severally liable under this Contract. Contractor shall not delegate any portion of its performance under this Agreement without the City Engineer's prior written.

13.4 WRITTEN NOTICE

13.4.1 All notices required or permitted by the Contract must be in writing and must be effected by hand delivery; registered or certified mail, return receipt requested; or facsimile with confirmation copy mailed to receiving Party. Notice is sufficient if made or addressed with proper postage to the address stated in the Agreement for each Party ("Notice Address") or faxed to the facsimile number stated in the Agreement for each Party. The notice is deemed delivered on the earlier of:

- 1 the date the Notice is actually received;
- 2 the third day following deposit in a United States Postal Service post office or receptacle; or
- 3 the date the facsimile is sent unless the facsimile is sent after 5:00 p.m. local time of the recipient and then it is deemed received on the following day.

Any Party may change its Notice Address or facsimile number at any time by giving written notice of the change to the other Party in the manner provided for in this Section at

least 15 days prior to the date the change is effected.

13.5 RIGHTS AND REMEDIES

13.5.1 Duties and obligations imposed by the Contract and rights and remedies available thereunder are in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

13.5.2 No act or failure to act by City or Construction Manager is a waiver of rights or duties afforded them under the Contract, nor does the act or failure to act constitute approval of or acquiescence in a breach of the Contract. No waiver, approval or acquiescence is binding unless in writing and, in the case of City, signed by City Engineer.

13.6 TESTS AND INSPECTIONS

13.6.1 Construction Manager shall give City Engineer and City's design consultant(s) timely notice of the time and place where tests and inspections are to be made. Construction Manager shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

13.6.2 City will employ and pay for services of an independent testing laboratory to perform inspections or acceptance tests required by the Contract Documents except:

- 1 inspections or tests covered by Section 13.6.3;
- 2 those otherwise specifically provided in the Contract Documents; or
- 3 costs incurred in connection with tests or inspections conducted pursuant to Section 12.2.2.

13.6.3 Construction Manager is responsible for and shall initially pay all costs in connection with inspection or testing required in connection with City Engineer's acceptance of a Product to be incorporated into the Work, or of materials, mix designs, or equipment submitted for approval prior to Construction Manager's purchase thereof for incorporation into the Work.

13.6.4 Neither observations by City Engineer or City's design consultant(s), nor inspections, tests, or approvals by others, relieves Construction Manager from Construction Manager's obligations to perform the Work in accordance with the Contract Documents.

13.6.5 If testing, inspection, or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, Construction Manager shall bear all costs made necessary by such failure, including those of repeated procedures and compensation for City's services and expenses.

13.7 INTEREST

13.7.1 No interest will accrue on late payments by City except as provided under Chapter 2251 of the Government Code.

13.8 PARTIES IN INTEREST

13.8.1 The Contract does not bestow any rights upon any third party, but binds and benefits the Parties only.

13.9 ENTIRE CONTRACT

13.9.1 The Contract merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants, express or implied, or other terms of any kind, exist between the Parties regarding the Contract.

13.10 WRITTEN AMENDMENT

13.10.1 Changes to the Contract that cannot be made by Modifications, must be made by written amendment, which will not be effective until approved by City Council.

13.11 COMPLIANCE WITH LAWS

13.11.1 Construction Manager shall comply with the Americans with Disabilities Act of 1990 as amended (ADA) and Texas Architectural Barriers Act and all regulations relating to either statute.

13.11.2 Construction Manager shall comply with all applicable federal, state, and City laws, ordinances, rules and regulations. Nothing herein shall be construed to require that Construction Manager ensures that the contract documents are prepared in accordance with applicable laws.

13.12 ENFORCEMENT

13.12.1 City Attorney or designee will have the right to enforce all legal rights and obligations under the Contract without further authorization.

13.13 SEVERABILITY

13.13.1 If any part of the Contract is for any reason found to be unenforceable, all other parts remain enforceable to the extent permitted by law unless the result materially prejudices either Party.

13.14 ANTI-BOYCOTT OF ISRAEL

13.14.1 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.

13.15 ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING & RELATED ACTIVITIES

13.15.1 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 this Agreement's effective date. Contractor shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Contractor or its subcontractors providing services or goods under this Agreement.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CITY FOR CAUSE

14.1.1 Each of the following acts or omissions of Construction Manager or occurrences shall constitute an "Event of Default" under the Contract:

- 1 Construction Manager refuses or fails to supply enough properly skilled workers or proper Products;
- 2 Construction Manager disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
- 3 Construction Manager is guilty of material breach of any duty or obligation of Construction Manager under the Contract;

- 4 Construction Manager has had any other contract with City terminated for cause at any time subsequent to the effective date of the Contract as set out in the Agreement; or,
- 5 Construction Manager fails to utilize Ultra Low Sulfur Diesel Fuel, as required in Section 3.9.1.1.

14.1.2 If an Event of Default occurs, City Engineer may, at its option and without prejudice to any other rights or remedies which City may have, deliver a written notice to Construction Manager and Surety describing the Event of Default and giving the Construction Manager 10 days to cure the Event of Default. If after the 10 day cure period, Construction Manager has failed or refused to cure the Event of Default, then City Engineer may deliver a second written notice to Construction Manager and Surety giving notice of the termination of the Contract or of the termination of Construction Manager's performance under the Contract ("Notice of Termination"). If City Engineer issues a Notice of Termination, then City Engineer may, subject to any prior rights of Surety and any other rights of City under the Contract Documents or at law:

- 1 request that Surety take over and restart the Work within thirty (30) days of termination and complete the Work within a reasonable period of time as established by the City Engineer; or
- 2 take possession of the site and all materials, equipment, tools, and construction equipment and machinery on the site owned by Construction Manager; and

- 3 finish the Work by whatever reasonable method City Engineer may deem expedient.

14.1.3 After Construction Manager's receipt of a Notice of Termination, and except as otherwise directed in writing by City Engineer, Construction Manager shall:

- 1 stop the Work on the date and to the extent specified in the Notice of Termination;
- 2 place no further orders or subcontracts for Products or services;
- 3 suspend all orders and subcontracts to the extent that they relate to performance of work terminated;
- 4 assign to City, in the manner, at the times, and to the extent directed by City Engineer, all rights, title, and interest of Construction Manager, under the terminated supply orders and subcontracts. City may settle or pay claims arising out of termination of the orders and subcontracts;
- 5 settle all outstanding liabilities and all claims arising out of the termination of supply orders and subcontracts with approval of City Engineer;
- 6 take action as may be necessary, or as City Engineer may direct, for protection and preservation of property related to the Work that is in possession of Construction Manager, and in which City has or may acquire an interest; and
- 7 secure the Work in a safe state before leaving the site, return

all rented equipment, providing any necessary safety measures, shoring, or other devices.

14.1.4 If City terminates the Contract or terminates Construction Manager's performance under the Contract for any one or more of the reasons stated in Section 14.1.1, Construction Manager may not receive any further payment until the Work is complete, subject to Section 14.1.5.

14.1.5 If the unpaid balance of the Guaranteed Maximum Price exceeds the costs of finishing the Work, including liquidated damages and other amounts due under the Contract, the balance will be paid to City. If the costs of finishing the Work exceed the unpaid balance, Construction Manager shall, within 10 days of receipt of written notice setting out the amount of the excess costs, pay the difference to City. The amount to be paid to Construction Manager or City will be certified by City Engineer in writing, and this obligation for payment shall survive termination of the Contract or termination of Construction Manager's performance under the Contract. Termination of the Construction Manager for cause shall not relieve the Surety from its obligation to complete the Project.

14.2 TERMINATION BY THE CITY FOR CONVENIENCE

14.2.1 City Engineer may, without cause and without prejudice to any other rights or remedies of City, give Construction Manager and Surety a Notice of Termination with seven days written notice.

14.2.2 After receipt of City's Notice of Termination, and except as otherwise approved by City Engineer, Construction Manager shall conform to requirements of Section 14.1.3.

14.2.3 After receipt of the Notice of Termination, Construction Manager shall submit to City its termination Claim, in forms required by City Engineer. The Claim will be submitted to City promptly, but no later than six months from the effective date of termination, unless one or more extensions are granted by City Engineer in writing. If Construction Manager fails to submit its termination Claim within the time allowed, in accordance with Section 14.2.4, City Engineer will determine, on the basis of available information, the amount, if any, due to Construction Manager because of termination, and City Engineer's determination is final and binding on the Parties. City will then pay to Construction Manager the amount so determined.

14.2.4 City Engineer will determine, on the basis of information available to City Engineer, the amount due, if any, to Construction Manager for the termination as follows:

- 1 Payment for all Work performed in accordance with the Contract Documents up to the date of termination determined in the manner prescribed for monthly payments in Article 9 and other applicable Contract Documents, except no retainage is withheld by City with respect to the terminated Work either for payment determined by percentage of completion or for materials and equipment delivered to the site, in storage or in transit.
- 2 Reasonable termination expenses that would qualify as Cost of the Work, including, to the extent they

qualify as Costs of the Work, costs for settling and paying Subcontractor and Supplier claims arising out of termination of the Work under their respective Subcontracts and purchase orders, reasonable cost of preservation and protection of City's property after termination if required, and the cost of Claim preparation Termination expenses do not include field or central office overhead, salaries of employees of Construction Manager or litigation costs (including, but not limited to, attorneys' fees).

No amount is allowed for anticipated profit or central office overhead on uncompleted work, or any cost or lost profit for other business of Construction Manager alleged to be damaged by the termination.

14.2.5 Construction Manager shall promptly remove from the site any construction equipment, tools, and temporary facilities not needed for Work not terminated, except the temporary facilities that City Engineer may wish to purchase and retain.

14.2.6 Construction Manager shall cooperate with City Engineer during the transition period.

14.2.7 City will take possession of the Work and materials delivered to the site, in storage, or in transit, as of date or dates specified in the Notice of Termination, and is responsible for maintenance, utilities, security, and insurance, as stated in Notice of Termination.

14.3 SUSPENSION BY THE CITY FOR CONVENIENCE

14.3.1 City Engineer may, without cause, after giving Construction Manager and Surety 24-hour prior written notice, order Construction Manager to suspend, delay, or interrupt the Work in whole or in part for such period of time as City Engineer may determine.

14.3.2 An adjustment will be made in Contract Time equivalent to the time of suspension.

14.3.3 Adjustment will be made to Guaranteed Maximum Price for increases in the Cost of the Work, caused by such suspension, delay, or interruption of the Work plus a proportionate increase in the Construction Manager's Fee in accordance with Section 7.3. No adjustment shall be made to the extent that:

- 1 performance was, or would have been, suspended, delayed, or interrupted by another cause for which Construction Manager is responsible; or
- 2 adjustment is made or denied under another provision of the Contract.

14.4 TERMINATION BY CONSTRUCTION MANAGER

14.4.1 Construction Manager may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of Construction Manager, directly related to one of these events:

- 1 issuance of an order of a court or other public authority having jurisdiction;

- 2 act of government, such as a declaration of national emergency that makes material unavailable; or,
- 3 if repeated suspensions, delays, or interruptions by City as described in Section 14.3 constitute, in the aggregate, more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less;

Construction Manager shall deliver written notice to City Engineer describing the reason for termination, giving the proposed termination date, and granting City a reasonable opportunity to respond and cure any City default before termination is effective.

14.4.2 If the Contract is terminated pursuant to this Section 14.4, Construction Manager shall comply with the requirements of Sections 14.2.2 through 14.2.7.

END OF DOCUMENT

EXHIBIT "B"
KEY PERSONNEL AND DUTIES

Direct Salary Expense or "DSE" is defined as the direct salary rates of Construction Manager's employees directly engaged on the Project, plus the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as, employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and/or benefits. For the purpose of this Agreement, the cost of the contributions and for the "Construction Phase" as equal to 40% of direct salaries.

Pre-Construction Staff	Role or Title	Direct Salary (hourly rate)	Direct Salary Expense (includes burden)	Total Billable (includes O&M)
Jimmy McBee	Preconstruction Project Manager	\$50.46/hr.	\$74.03/hr.	\$90.57/hr.
Jordan Brown	Doc. Coordination Reviewer	\$75.69/hr.	\$104.22/hr.	\$127.50/hr.
Farzana Sultana	Estimator	\$34.86/hr.	\$47.71/hr.	\$58.36/hr.
Scott Drake	Estimator	\$34.86/hr.	\$47.71/hr.	\$58.36/hr.
Efren Garcia	Estimator	\$28.44/hr.	\$38.98/hr.	\$47.69/hr.
Dustin Carr	Project Executive	\$66.52/hr.	\$94.98/hr.	\$116.20/hr.
Bryan Hall	Project Director	\$51.84/hr.	\$75.86/hr.	\$92.81/hr.
Joseph Costello	Project Manager	\$47.27/hr.	\$68.39/hr.	\$83.67/hr.
Robin Welle	Asst. Project Manager	\$27.52/hr.	\$38.22/hr.	\$46.75/hr.
Derek Baldwin	Project Superintendent	\$57.34/hr.	\$81.37/hr.	\$91.55/hr.
Michael Vitale	Safety Manager	\$45.87/hr.	\$66.60/hr.	\$81.48/hr.
Bryan Downing	Scheduler	\$58.72/hr.	\$83.16/hr.	\$101.73/hr.
Jordan Soden	Project Administrator	\$29.82/hr.	\$41.18/hr.	\$50.38/hr.

Construction Staff	Role or Title	Direct Salary	Direct Salary Expense (includes burden)
Dustin Carr	Project Executive	\$66.52/hr.	\$94.98/hr.
Bryan Hall	Project Director	\$51.84/hr.	\$75.86/hr.
Joseph Costello	Project Manager	\$47.27/hr.	\$68.39/hr.
Robin Welle	Asst. Project Manager	\$27.52/hr.	\$38.22/hr.
Derek Baldwin	Project Superintendent	\$57.34/hr.	\$81.37/hr.
Juan Garcia	Asst. Superintendent	\$38.99/hr.	\$57.66/hr.
Michael Vitale	Safety Manager	\$45.87/hr.	\$66.60/hr.
Bryan Downing	Scheduler	\$58.72/hr.	\$83.16/hr.
Jordan Soden	Project Administrator	\$29.82/hr.	\$31.74/hr.
Billy Casiano	Foreman	\$22.90/hr.	\$41.18/hr.
Joel Maldonado	Survey/Layout	\$35.78/hr.	\$48.89/hr.
	Carpenter	\$25.69/hr.	\$35.33/hr.
	Laborer	\$21.94/hr.	\$30.48/hr.

EXHIBIT "C"
GUARANTEED MAXIMUM PRICE PROPOSAL

_____ ("Construction Manager") hereby submits to the City of Houston Texas ("the City") pursuant to the provisions of the Construction Manager At-Risk Agreement by and between the City and Construction Manager dated _____, a Guaranteed Maximum Price for the Project (as defined in the Agreement) based on the Contract Documents (as defined by the Agreement), as follows:

1. Cost of Work \$ _____
 - a. The following Cash Allowances are included in the Cost of Work above:
 1. _____
 2. _____
 - b. The following Alternates are included in the Cost of Work above:
 1. _____
 2. _____
2. Construction Phase Fee (____ %) \$ _____
Percentage of Cost of Work
3. Construction Manager's Contingency (____%) \$ _____
Percentage of Cost of
Work

=====
4. Guaranteed Maximum Price (GMP) \$ _____
(GMP = 1 + 2 + 3)

For GMP Proposal Cost Breakdown see Exhibit 1 Schedule of Values attached hereto.

5. The GMP for the Project includes all Claims, Work, and Change Orders in existence before date of signing this GMP.
6. The Contract Documents upon which the GMP is based are set forth in Exhibit 6 attached hereto.
7. Construction Manager shall provide complete performance of the Work for the GMP. In the event of a conflict among the Contract Documents, the Construction Manager shall fulfill the greater of the requirements set forth in the Agreement, the Document 00700 – General Conditions, the Specifications and the Drawings.

8. The Clarifications & Assumptions made by the Construction Manager are set forth in Exhibit 3.
9. Construction Manager shall achieve Substantial Completion within 365 days from issuance of Notice to Proceed.
10. Construction Manager waives all rights to an extension of time or delay damages for any events or circumstances prior to the date of signing this GMP.

The following exhibits are incorporated into the GMP:

1. Exhibit 1 – Schedule of Values
2. Exhibit 2 – Project Team and Burden Rates
3. Exhibit 3 – Clarifications & Assumptions
4. Exhibit 4 – Insurance
5. Exhibit 5 – Bonds
6. Exhibit 6 – List of Contract Documents

The insurance and bonds for this Guaranteed Maximum Price form have been reviewed as to form by the undersigned legal assistant and have been found to meet established Legal Department criteria. Legal Department has not reviewed the content of this document or its exhibits, except for Exhibit 4 and Exhibit 5.

Legal Assistant

CITY ENGINEER

Name: _____

Date of Signing: _____

Date

CONSTRUCTION MANAGER

Christensen Building Group, LLC

Signature: _____

Name: _____

Title: _____

Date of Signing: _____

EXHIBIT "D"
FORM OF BONDS

The following documents are incorporated by reference:

- City of Houston Standard Document No. 00610 – Performance Bond
- City of Houston Standard Document No. 00611 – Payment Bond
- City of Houston Standard Document No. 00612 – One-Year Maintenance Bond

EXHIBIT "E"
ADDITIONAL SERVICES REQUISITION

Date __, 20__ Requisition Number _____

Contractor: _____

Project Name: _____ Project Number _____

Gentlemen:

Please refer to the Agreement dated _____, 20__ between the City of Houston ("City") and the undersigned ("Construction Manager") as amended to the date hereof (such agreement as so modified and amended being hereafter called the "Agreement") pursuant to which Construction Manager is to perform certain services. The terms which are defined in the Agreement shall have the same meanings when used in this letter.

1. City has requested the performance of the services described below which Construction Manager deems to be Additional Preconstruction Services.

(Insert Description of Services)

2. Construction Manager agrees to perform the Additional Preconstruction Services described above subject to and in accordance with the terms and provisions of the Agreement for a fee which will be determined in accordance with the Agreement but which will not exceed _____ Dollars (\$_____) and for reimbursement of expenses in accordance with the Agreement incurred solely in connection with the performance of such Additional Preconstruction Services, but which reimbursement for expenses will not exceed _____).

3. Construction Manager will perform the services in accordance with any schedule attached hereto (attach schedule if applicable), but in any event not later than _____ (_____) days after Construction Manager is authorized to proceed.

If the foregoing is acceptable to you, please so execute by signing the enclosed copy of this letter at the space provided for this purpose and by inserting the date upon which Construction Manager is authorized to commence performance of the Additional Preconstruction Services described in Paragraph 1 above.

Sincerely yours,

Construction Manager

By: _____

Name: _____

Title: _____

Accepted this _____ day of _____, 2020. Construction Manager is authorized to commence performance of the Additional Preconstruction Services on _____, 2020.

CITY

By: _____

Name: _____

Title: _____

PART I: PRECONSTRUCTION PHASE SERVICES

ORIGINAL CONTRACT AMOUNT (\$ _____)

PREVIOUS ADDITIONS (\$ _____)

PREVIOUS DEDUCTIONS (\$ _____)

NET BALANCE CONTRACT AMOUNT (\$ _____)

THIS (Addition) (Deduction): (\$ _____)

ADJUSTED CONTRACT AMOUNT (\$ _____)

xc:

EXHIBIT "F"
CITY'S WAGE RATES

[TO BE ADDED PRIOR TO EXECUTION OF CONTRACT]

Document 00820

**WAGE SCALE AND PAYROLL REQUIREMENTS FOR ENGINEERING
CONSTRUCTION**

Wage Scale Requirements

- 1.1 Contractor and its Subcontractors must pay the general prevailing wage rates for building construction for each craft or type of worker or mechanic employed in the execution of any building construction or repair under the Contract in accordance with Chapter 2258 of the Texas Government Code and City of Houston, Texas Ordinance Nos. 85-2070, 2000-1114, 2001-152, 2006-91 and 2006-168, and 2009- 247 all as amended from time to time. City Council has determined the prevailing wage rate in the locality in which the work is being performed, which is set forth in Exhibit "A".
- 1.2 This prevailing wage rate does not prohibit the payment of more than the rates stated.
- 1.3 In bidding, Contractor warrants and represents that it has carefully examined the classifications for each craft or type of worker needed to execute the Contract and determined that such classifications in Exhibit "A" include all necessary categories to perform the work under the Contract.
- 1.4 The wage scale for engineering construction is to be applied to all site work greater than five feet from an exterior wall of new building under construction or from an exterior wall of an existing building.
- 1.5 If Contractor believes that an additional classification for a particular craft or type of worker is necessary to perform work under the Contract, it must submit with its bid a request to the Contract Compliance Division of the Office of Business Opportunity ("OBO") to use an additional labor classification not listed in Exhibit "A" and specify the proposed new classification. OBO shall determine whether a proposed classification is already covered in Exhibit "A", and, if it is, specify which classification is appropriate. OBO's decision is conclusive. If OBO decides that a new classification is necessary, it will determine the appropriate prevailing wage rate for any resurveyed, amended, new, or additional craft or type of worker not covered by Exhibit "A". Such determination must be decided in accordance with procedures established by OBO, and in compliance with Chapter 2258 of the Texas Government Code and City of Houston, Texas Ordinance Nos. 85-2070, 2000-1114, 2001-152, 2006-91, 2006-168 and 2009-247 subject to City Council approval.
- 1.6 Contractor must not use any labor classification not covered by Exhibit "A" until such classification is established and approved for use by OBO.
- 1.7 A Contractor or Subcontractor who violates Chapter 2258 of the Texas Government Code must pay to the City, \$60 per each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates set forth in Exhibit "A".
- 1.8 The City may withhold money required to be withheld under Chapter 2258 of the Texas

**CITY OF HOUSTON
REQUIREMENTS
STANDARD DOCUMENT**

WAGE SCALE AND PAYROLL

FOR ENGINEERING CONSTRUCTION

Government Code from the final payment to Contractor or earlier payments if City Council makes a determination that there is good cause to believe that Contractor has not complied with these provisions and Chapter 2258 of the Government Code, in which case the City may withhold the money at any time subsequent to the finding by City Council.

1.9 Contractor and Subcontractors must keep records specifying:

- (1) the name and classification of each worker employed under the Contract; and
- (2) the actual per diem wages paid to each worker, and the applicable hourly rate.

The records must be open at all reasonable hours for inspection by the officers and agents of the City.

1.10 The hourly cost of salary for non-exempt workers for labor in excess of 40 hours per worker per week, shall be calculated at 1.5 times the worker's base pay, plus 1.0 times fringe benefits, for the applicable craft and level.

Certified Payroll Requirements

- 2.1 Employees are paid weekly, and payrolls are submitted weekly using the City of Houston's electronic payroll submission module, unless the prime Contractor has been instructed to do otherwise by the Office of Business Opportunity. When no work is done after a Contractor has started work, the Contractor is required to submit a weekly compliance statement indicating no work was performed. The payrolls must reflect the exact work and classification of the workers, the exact amount that they were paid. Workers must be paid the contracted amount (prevailing wage rates). The Contractor will be penalized \$60.00 a day for each employee who is underpaid per Texas Government Code §2258-023 for all contracts.
- 2.2 Payrolls must be submitted electronically & indicate whether the worker worked inside or outside the building area when both wage rates are applicable to the contract.
- 2.3 Payrolls must be submitted each week until all work by the contractor is complete and the electronic payroll submission is marked as final in the system.
- 2.4 Payrolls must cover a seven-day period from the start of the work week and must be consecutive seven-day periods until all work is complete.
- 2.5 Payrolls must have employees' names, addresses, last four digits of the social security numbers, and job classifications. The job classifications must be the same as the classifications on the prevailing wage rate schedule.
- 2.6 A payroll deduction authorization form must be submitted for each employee for any deductions other than Federal and FICA taxes.
- 2.7 Employees must be paid overtime (time and a half) for all hours worked over 40 hours a week on both federally and City-funded contracts.

CITY OF HOUSTON

WAGE SCALE AND PAYROLL

REQUIREMENTS

STANDARD DOCUMENT

FOR ENGINEERING CONSTRUCTION

- 2.8 The Contractor has the responsibility to comply with all Internal Revenue Service rules and regulations. Contractors who submit certified payrolls with **Owner Operators (truckers)** must submit a signed tax liability statement from Owner Operator acknowledging their responsibility for Federal Income Tax and FICA reporting obligations.
- 2.9 If the Contractor wants to use the apprentice wage rates for an employee, the apprenticeship certificates must be submitted to the Office of Business Opportunity in advance of the employee working on the project and appearing on the payroll. You must comply with the listed number of journeymen to apprentices as listed.
- 2.10 A poster of the Prevailing Wage Rate Schedule should be clearly displayed on each job site from the time the project starts until the work is completed, or in case of annual service agreements, in the Contractor's office.
- 2.11 The Contractor shall submit the "Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees" (Exhibit "B") to the Monitoring Authority listed in Document 00495 prior to final execution of the contract.
- 2.12 During the work, ALL Subcontractors shall submit the "Certificate from Subcontractor Appointing Officer or Employee to Supervise Payment of Employees" (Exhibit "C") to the Monitoring Authority listed in Document 00495.
- 2.13 Upon completion of the Project, as part of the contract-awarding department's total clearance process, the Office of Business Opportunity's Contract Compliance Section must review whether the Wage Rate and Payroll Requirements were met and report the results to the department.

REST OF PAGE INTENTIONALLY LEFT BLANK

EXHIBIT "A"

Wage Determination Publication Date:

January 3, 2020

for

General Decision Number: **TX20200038 01/03/2020 TX38**

Superseded General Decision Number: TX20190038

State: Texas
Construction Type: Highway
Counties: Austin, Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, San Jacinto and Waller Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number
0

Publication Date
01/03/2020

* SUTX2011-013 08/10/2011

**CITY OF HOUSTON
STANDARD DOCUMENT**

**WAGE SCALE AND PAYROLL REQUIREMENTS
FOR ENGINEERING CONSTRUCTION**

**LABOR CLASSIFICATIONS AND PREVAILING WAGE RATES FOR
ENGINEERING CONSTRUCTION 2020**

CLASSIFICATION	RATE	CLASSIFICATION	RATE
Asphalt Distributor Operator	\$14.06	Mechanic	\$16.96
Asphalt Paving Machine Operator	\$14.32	Milling Machine Operator	\$13.53
Asphalt Raker	\$12.36	Motor Grader Operator, Rough	\$14.23
Broom or Sweeper Operator	\$12.68	Motor Grader Operator, Fine Grade	\$15.69
Cement Mason / Concrete Finisher- Paving and Structures	\$12.98	Off Road Hauler Operator	\$14.60
Concrete Paving, Curing, Float Texturing Machine Operator	\$11.71	Painter-Structures	\$18.62
Concrete Paving Finishing Machine Operator	\$13.07	Pavement Marking Machine Operator	\$11.18
Concrete Paving, Saw Operator	\$13.99	Piledriver Operator	\$14.95
Crane Operator, Hydraulic 80 tons or less	\$13.86	Pipelayer	\$12.12
Crane Operator, Lattice boom 80 tons or less	\$14.97	Reinforcing Steel Worker	\$15.15
Crane Operator, Lattice boom over 80 tons	\$15.80	Structural Steel Welder	\$12.85
Electrician * 3 Journeyman 2 Apprentice Allowed	\$27.11	Roller Operator, Asphalt	\$11.95
Excavator, 50,000 pounds or less	\$12.71	Roller Operator, Other	\$11.57
Excavator, over 50,000 pounds	\$14.53	Scraper Operator	\$13.47
Flagger	\$10.33	Servicer Operator	\$13.97
Form Builder / Form Setter- Structures	\$12.23	Spreader Box Operator	\$13.58
Form Builder / Form Setter- Paving and Curb	\$12.34	Structural Steel Worker	\$14.39
Foundation Drill Operator - Crawler Mounted	\$17.43	Crawler Tractor Operator	\$13.68
Foundation Drill Operator - Truck Mounted	\$15.89	Truck Driver, Lowboy-float	\$16.03
Front End Loader Operator, 3 CY or less	\$13.32	Truck Driver, Single-Axle	\$11.46
Front End Loader Operator, over 3 CY	\$13.17	Truck Driver, Single-or Tandem Axle Dump	\$11.48
Laborer Common	\$11.02	Truck Driver, Tandem Axle Tractor w/ Semi-Trailer	\$12.27
Laborer- Utility	\$11.73	Work Zone Barricade Servicer	\$11.67
Loader/Backhoe Operator	\$14.29		
Welders - Receive rate prescribed for craft performing operation to which welding is incidental			
* Apprentices- must be in an approved USDOL Program and cannot exceed ratios			

Engineering Prevailing Wages Classification Definitions

Asphalt Distributor Operator

Drives distributor truck, sets spray bars and operates valves and levers to control distribution of bituminous material for highway surfacing. May oil, grease or otherwise service and adjust equipment as needed. Performs other related duties.

Asphalt Paving Machine Operator

Operates paving machine that spreads and levels asphaltic concrete on highway subgrade. Controls movement of machine, raises and lowers screed, regulates width of screed. May, oil, grease, service and adjust equipment as needed. Performs other related duties.

Asphalt Raker

Distributes asphaltic materials evenly over road surface by raking and brushing material to correct thickness; directs Laborers when to add or take away material to fill low spots or to reduce high spots. Performs other related duties.

Asphalt Shoveler

A general term used on construction work covering many unskilled classifications requiring work of a physical nature. A laborer works with all crews doing everything from pick and shovel work to cleaning up lumber with hammer, shoveling and placing concrete, uses air tools, cleans concrete joints and fills joints with sealing compound from bucket or with hose and nozzle from a central source, applies coating of oil to inside face of forms, may help set and strip forms, unloads and transports reinforcing steel, cures newly poured concrete, helps lower pipe into ditch for pipelayers, builds fences, works with dirt crew keeping construction layout stakes out of the way of dirt moving equipment.

Broom or Sweeper Operator

Operates a self-propelled machine to sweep and clean roadway surfaces. They may also oil, grease, service and adjust equipment as needed. Performs other related duties.

Bulldozer Operator

Operates a crawler tractor with a bulldozer mounted in front of chassis to level, distribute and push earth or other material. May operate a ripper attachment to break up rock or other hard material. May use a push block on front of tractor to push load scrapers. May oil, grease, or otherwise service and make minor repairs to equipment as needed. Performs other related duties.

Carpenter, Rough

Works from plans to build, assemble, fit together, align, plum, and set in place forms for molding concrete structures. Forms may be wood, steel, aluminum, fiberglass or any other type of material. Checks form while concrete is placed. May install miscellaneous materials integral to concrete structures. May set precast concrete elements. Prepares for slip forming traffic rail and median barrier. May install permanent metal deck forms. May work with power tools Performs other related duties.

Concrete Finisher, Paving

Finishes the exposed surfaces of fresh concrete paving, median barrier and every element of concrete structures to the final grade and contour structures to the final grade and contour with the use of straight edges and steel trowels. Operates bridge deck finishing machine. Finishes concrete curbs and gutters. Finishes exposed surface of concrete after forms have been removed by patching

imperfections with fresh concrete, rubbing surface with abrasive stone, and directing others in removing excess or defective concrete with power tools. Performs other related duties.

Concrete Finisher, Structures

A worker semi-skilled in concrete finishing who assists Concrete finisher by performing specific or general duties of lesser skill and keeping Concrete Finisher supplied with materials, tools, and supplies; cleaning working area an equipment; and holding materials and tools. Performs other related duties.

Concrete Paving Curbing Machine Operator

Operates self - propelled machine(s) which may or may not travel on concrete paving forms, spreading and leveling fresh concrete to grade by use of augers and screeds. May oil, grease or otherwise service and make adjustments to equipment as necessary. Performs other related duties.

Concrete Paving Finishing Machine Operator

Operates self - propelled machine(s) which may or may not travel on concrete paving forms, spreading and leveling fresh concrete to grade by use of augers and screeds. May oil, grease or otherwise service and make adjustments to equipment as necessary. Performs other related duties.

Concrete Paving Joint Sealer Operator

Cleans and seals joints requiring a hot or cold sealing compound in concrete paving, sidewalks, driveway and approach slabs. May oil, grease or make necessary repairs adjustments to equipment as needed. Performs other related duties.

Concrete Paving Saw Operator

Operates a water-cooled power saw with either or an abrasive blade to saw expansion and contraction joints in concrete paving. May also be used to saw asphaltic pavements. May oil grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Concrete Paving Spreader Operator

Operates self - propelled machine(s) which may or may not travel on concrete paving forms, spreading and leveling fresh concrete to grade by use of augers and screeds. May oil, grease or otherwise service and make adjustments to equipment as necessary. Performs other related duties.

Concrete Rubber

Finishes the exposed surface of concrete masonry after the forms have been removed by patching holes and broken corners with fresh concrete, rubbing surface with abrasive stone to remove rough spots, and removing high spots and defective concrete with hand chisel and hammer or pneumatic chisel and powered abrasive stone. Performs other related duties.

Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel Operator

A worker who operates a lattice boom type crane can hoist and move materials, raise and lower heavy weights and perform other related operations. May be crawler type or rubber tired. May include placement of rock riprap, clamshell, dragline, pipe and pile driving operations. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Crusher and Screed Plant Operator

Operates a crusher or screening plant through which rock is run to break it into crushed stone for construction or to control flow of materials not needed. May include minor repairs and may service and make necessary adjustments to equipment as needed. Performs other related duties.

Electrician *3 Journeyman 2 Apprentice

Plans and directs the layout of metal electrical conduit, installs wiring systems, switch-panels, buss bars, works on overhead distribution systems and underground distribution systems. Performs other related duties.

Flagger

A worker who directs traffic in or around a construction site. May use signs or devices to direct traffic. May help assemble, position and clean devices or equipment used to direct traffic. Must be able to effectively communicate with the public. May require certain level of training by TXDOT specifications. Performs other related duties.

Form Builder/Setter, Structures

Fits together, aligns and sets to grade metal and wooden forms for placement of concrete. Forms may be wood, steel, aluminum, fiberglass or any other type of material. Checks forms while concrete is placed. May install miscellaneous materials integral to concrete structures. May set precast concrete elements. Prepares for slip forming traffic rail and median barrier. May install permanent metal deck forms. May work with power tools. Performs other related duties.

Form Liner, Paving & Curb

Fits together, panels align and sets to grade metal and wooden forms for placement of concrete. Works with survey crew to set stringline for panels or moles. Performs other related duties.

Form Setter, Paving & Curb

Fits together, align and set to grade metal and wooden forms for placement of concrete paving and curbs. Works with survey crew to set stringline for paving, curb and gutter curb. Performs other related duties.

Foundation Drill Operator, Crawler Mounted

Operates a hole-drilling machine that is crawler mounted. May include geotechnical operations such as soils nails, rock nails, tiebacks, anchors and jet grouting. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Foundation Drill Operator, Truck Mounted

Operates a hole drilling machine that is mounted on the rear of a rubber-tired vehicle or truck. May include soils nails, rock nails, tiebacks, anchors and jet grouting. Drive truck from location to location or may have laborer who drives truck. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Front End Loader Operator

Operates a rubber tired, skid steer or crawler type tractor with an attached scoop type bucket on front end. Machine is used to load materials from stockpiles, excavation, charging batch plants, loading and unloading trucks. May be used with attachments in lieu of the bucket. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Laborer, Common

A general term used on construction work covering many unskilled classifications requiring work of a physical nature. A laborer works with all crews doing everything from pick and shovel work to cleaning up lumber with hammer, shoveling and placing concrete, uses air tools, cleans concrete joints and fills joints with sealing compound from bucket or with hose and nozzle from a central source, applies coating of oil to inside face of forms, may help set and strip forms, unloads and

transports reinforcing steel, cures newly poured concrete, helps lower pipe into ditch for pipelayers, builds fences, works with dirt crew keeping construction layout stakes out of the way of dirt moving equipment.

Laborer, Utility

Performs a variety of manual duties, usually working in a utility capacity by working on multiple projects and tasks where demands require workmen with varied experience and ability to work without close direction. Unloads and transports reinforcing steel. May occasionally place and tie reinforcing steel. Directs common laborers in pouring concrete. Erects shoring and bracing. Assists in installation of pipe. Installs, operate and maintains dewatering systems. May assist equipment operators in positioning machines, verifying grades and signaling operators. Directs truck drivers and scraper operators to dumping positions to maintain grades as directed. Uses power tools and air tools. May work as lead man in a labor crew. His performance of a wide variety of construction jobs distinguishes him from a helper assigned to a specific craft. Installs and maintains erosion control. Is more or less a general utility construction worker. May be second step in learning a skill and may later become a helper in a specific classification. Performs other related duties.

Manhole Builder

Constructs a means of permanent access to water and sewer lines for maintenance purposes. This work consists of laying brick or concrete slab at bottom of ditch up to an approximate grade line near the surface of the ground. Brick or block is normally laid to form a nearly circular manhole. Brick or block is laid in by eyesight and is normally to a plumb line. Chipped or culled brick can be used quite often is. No effort may be made to keep mortar off the face of the brick and joints are not pointed. May apply coating of concrete to interior and exterior surface. Performs other related duties.

Mechanic

Assembles, set up, adjusts and maintains and repairs all types of construction equipment and trucks. He may perform the duties of a welder in repair of equipment. Performs other related duties.

Milling Machine Operator, Fine Grade

Operates a power-driven milling machine that planes material of the to roadbed and discharges the material into a hauling unit or a windrow. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Mixer Operator

Performs a variety of manual duties, usually working in a utility capacity by working on multiple projects and tasks where demands require workmen with varied experience and ability to work without close direction. Unloads and transports reinforcing steel. May occasionally place and tie reinforcing steel. Directs common laborers in pouring concrete. Erects shoring and bracing. Assists in installation of pipe. Installs, operate and maintains dewatering systems. May assist equipment operators in positioning machines, verifying grades and signaling operators. Directs truck drivers and scraper operators to dumping positions to maintain grades as directed. Uses power tools and air tools. May work as lead man in a labor crew. His performance of a wide variety of construction jobs distinguishes him from a helper assigned to a specific craft. Installs and maintains erosion control. Is more or less a general utility construction worker. May be second step in learning a skill and may later become a helper in a specific classification. Performs other related duties.

Motor Grader Operator, Rough

Operates a motor grader. Equipment is used to grade excavation and embankment and to lay asphalt, base and other materials. May blade haul roads and do other general motor grader work but does not perform finish grade work to close specification tolerances. This operator may be a learner in the first phase of learning the skills of motor grader work. May oil, grease or otherwise service and

make necessary adjustments to equipment as needed. Performs other related duties.

Motor Grader Operator

Operates a motor grader. Equipment is used to grade excavation and embankment and to lay asphalt, base and other materials. May blade haul roads and do other general motor grader work but does not perform finish grade work to close specification tolerances. This operator may be a learner in the first phase of learning the skills of motor grader work. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Oiler

A learner or semi-skilled worker who under the direction of the watch engineer. May oil and grease or otherwise service all engines and necessary equipment as needed. He may clean, and paint engine room as needed. Performs other related duties.

Painter, Structures

Paints and stains structural steel and concrete surfaces of bridges, retaining walls, or other structures. Directs cleaning and abrasive blasting of surfaces prior to painting or staining. Performs other related duties.

Pavement Marking Machine Operator

Operates machine used in laying paint stripes or markers on all types of paving. Loads machine with appropriate materials and may walk or ride on machine. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Piledriverman

Sets in place, aligns, plumbs direct driving of timber, concrete, steel, pipe and any other type of piling. Sets, drives and pulls steel, concrete and other types of sheet piling. Rigs pile and leads and bracing. Signals operator. Splices piles before and after driving. Directs pile cutoff. May direct jetting or drilling equipment in connection with installing piles to grade. Performs other related duties.

Pipelayer

Installs concrete, clay, steel, ductile iron, plastic, corrugated pipe and any other type of pipe for storm drainage, water lines, gas lines and sanitary sewer lines. Lays underground communication and electrical ducts. May install and set electrical ground boxes, hand holes, manholes, inlets and other structures. Caulks joints, makes threaded and flanged connections. Installs valves and other accessories. Performs other related duties.

Reinforcing Steel Setter, Paving

Works from plans to lay out and install reinforcing steel within forms or in mats of concrete paving. May direct unloading of material. Determines rigging required to complete work. Gives direction to reinforcing steel worker or common or utility laborers. May install miscellaneous materials integral to concrete structure or paving. May work with power tools. Performs other related duties.

Reinforcing Steel Setter, Structure

Works from plans to lay out and install reinforcing steel within forms or in mats of concrete paving. May direct unloading of material. Determines rigging required to complete work. Gives direction to reinforcing steel worker or common or utility laborers. May install miscellaneous materials integral to concrete structure or paving. May work with power tools. Performs other related duties.

Roller Operator, Pneumatic, Self-Propelled

Operates a self-propelled machine with either steel wheels pneumatic tires, which is used to compact and smooth all bituminous materials. May oil, grease or otherwise service and make necessary

adjustments to equipment as needed. Performs other related duties.

Roller Operator, Steel Wheel, Flat Wheel/Tamping

Operates a self-propelled machine with either steel wheels or pneumatic tires which is used to compact earth fills, subgrade, flexible base and all other types of materials except bituminous. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Roller Operator, Steel Wheel, Plant Mix Pavement

Operates a self-propelled machine with either steel wheels pneumatic tires, which is used to compact and smooth all bituminous materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Scraper Operator

Operates a self-contained wheeled tractor scraper both self loading or assisted by crawler tractors or other scrapers. Used to excavate and transport earth or other materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Servicer

Drives a truck, which carries various fuels, oils, greases and filters. Must have knowledge of and is responsible for the correct oiling and greasing and changing of filters on equipment according to the manufacturers' specifications. Uses compressed air grease guns, wrenches and other tools. May make adjustments to clutches, brakes and other mechanical items. Keeps record of service preventive maintenance records. May have laborer assisting him. May require CDL if driving truck on public highways. Performs other related duties.

Sign Installer (PGM)

Sets forms, reinforcing steel, anchor bolts and pours concrete for Sign foundations. Fabricates and erects pipe and angle Frameworks by bolting, welding or other means prior to installation of signs that are normally prefabricated. Works from plans in location and drilling holes for proper location and alignment of signs. May direct hoisting of signs into place. Fastens signs to framework by bolting and other means. Locates and sets lighting brackets. May perform other work associated with signing projects. Supervises sign erector helper. Performs other related duties.

Slip Form Machine Operator

Cleans and seals joints requiring a hot or cold sealing compound in concrete paving, sidewalks, driveway and approach slabs. May oil, grease or make necessary repairs adjustments to equipment as needed. Performs other related duties.

Spreader Box operator

Operates spreader box by adjusting hopper and strike off blade so that the gravel, stone or other material may be spread to a specific depth on road surface during seal coat and surface treatment operations. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Structural Steel Worker

Works from plans to lay out and install reinforcing steel within forms or in mats of concrete paving. May direct unloading of material. Determines rigging required to complete work. Gives direction to reinforcing steel worker or common or utility laborers. May install miscellaneous materials integral to concrete structure or paving. May work with power tools. Performs other related duties.

Tractor operator, Crawler Type

Operates a crawler tractor with a bulldozer mounted in front of chassis to level, distribute and push earth or other material. May operate a ripper attachment to break up rock or other hard material. May use a push block on front of tractor to push load scrapers. May oil, grease, or otherwise service and make minor repairs to equipment as needed. Performs other related duties.

Tractor Operator, Pneumatic

Operates a gasoline or diesel powered agricultural tractor that tows compaction rollers, plow, disc, water tanks, scrapers and other similar operations. May use other miscellaneous attachments. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

Traveling Mixer Operator

Drives a gasoline or diesel truck upon which is mounted a concrete mixer. Operates concrete mixer and dumps concrete on the grade, into forms or into concrete pumps or buckets. Cleans mixer drum. May require CDL license for on highway use. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.

Truck driver, lowboy-Float

Drives a heavy-duty diesel-powered truck to which is attached a trailer upon which heavy equipment is hauled. Driver is often required to operate heavy equipment to load or unload the lowboy. May require CDL license for on highway use. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.

Truck driver, Single Axle, Heavy

Drive a light capacity truck for transporting loads of construction material. The truck is of single rear axle type, may have various kinds of beds attached, such as dump, flat bed, tank, etc. May require CDL license for driving on highway. May services and make necessary adjustments for proper operation equipment. Performs other related duties.

Truck driver, Single Axle-Light

Drive a light capacity truck for transporting loads of construction material. The truck is of single rear axle type, may have various kinds of beds attached, such as dump, flat bed, tank, etc. May require CDL license for driving on highway. May services and make necessary adjustments for proper operation equipment. Performs other related duties.

Truck Driver, Tandem Axle, Semi-Trailer

Drives a diesel-powered tractor pulling a semi trailer hauling materials. Hauls dirt, rock, aggregates or other material. May require CDL license for driving on highway. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.

Work Zone Barricade Servicer

Fabricates, erects and maintains temporary traffic control devices, including arrow boards, signs, barricades, channelizing devices, barrels and all message boards. May operates a truck during traffic control operations.

WELDERS - Receives rate for craft being performed to which welding is incidental.

EXHIBIT "B"

CERTIFICATE FROM CONTRACTOR APPOINTING OFFICER OR EMPLOYEE TO
SUPERVISE PAYMENT OF EMPLOYEES

Project Name _____

Project WBS#: _____ Date _____

Email Address: _____

(I) (We) hereby certify that (I am) (we are) the **Prime Contractor** for _____

_____ (specify type of job)
in connection with construction of the above-mentioned Project, and that (I) (we) have appointed
_____, whose signature appears below, to supervise the payment of (my)
(our) employees beginning _____, 20____; that he/she is in a position to have full
knowledge of the facts set forth in the payroll documents and in the statement of compliance required
by the Copeland Act and the City of Houston, which he/she is to execute with (my) (our) full authority
and approval until such time as (I) (we) submit to the City of Houston a new certificate appointing
some other person for the purposes hereinabove stated.

_____ Phone: _____
(Identifying Signature of Appointee)

Attest: _____
(Name of Firm or Corporation)

By: _____ By: _____
(Signature) (Signature)

_____ _____
(Title) (Title)

NOTE: This certificate must be executed by an authorized officer of a corporation or by a member of a partnership, and shall be executed prior to and be submitted with the first payroll. Should the appointee be changed, a new certificate must accompany the first payroll for which the new appointee executes a statement of compliance required by the Copeland Act and the City of Houston.

EXHIBIT "C"

CERTIFICATE FROM SUBCONTRACTOR APPOINTING OFFICER OR EMPLOYEE TO
SUPERVISE PAYMENT OF EMPLOYEES

Project Name _____

Project WBS#: _____ Date _____

Email Address: _____

(I) (We) hereby certify that (I am) (we are) the **Sub Contractor** for _____

_____ (specify type of job)
in connection with construction of the above-mentioned Project, and that (I) (we) have appointed
_____, whose signature appears below, to supervise the payment of (my)
(our) employees beginning _____, 20____; that he/she is in a position to have full
knowledge of the facts set forth in the payroll documents and in the statement of compliance required
by the Copeland Act and the City of Houston, which he/she is to execute with (my) (our) full authority
and approval until such time as (I) (we) submit to the City of Houston a new certificate appointing
some other person for the purposes hereinabove stated.

(Identifying Signature of Appointee) Phone: _____

Attest: _____
(Name of Firm or Corporation)

By: _____ By: _____
(Signature) (Signature)

(Title) (Title)

NOTE: This certificate must be executed by an authorized officer of a corporation or by a member of a partnership, and shall be executed prior to and be submitted with the first payroll. Should the appointee be changed, a new certificate must accompany the first payroll for which the new appointee executes a statement of compliance required by the Copeland Act and the City of Houston.

END OF DOCUMENT

Document 00821

WAGE SCALE AND PAYROLL REQUIREMENTS FOR BUILDING CONSTRUCTION

Wage Scale Requirements

- 1.1 Contractor and its Subcontractors must pay the general prevailing wage rates for building construction for each craft or type of worker or mechanic employed in the execution of any building construction or repair under the Contract in accordance with Chapter 2258 of the Texas Government Code and City of Houston, Texas Ordinance Nos. 85-2070, 2000-1114, 2001-152, 2006-91 and 2006-168, and 2009- 247 all as amended from time to time. City Council has determined the prevailing wage rate in the locality in which the work is being performed, which is set forth in Exhibit "A".
- 1.2 This prevailing wage rate does not prohibit the payment of more than the rates stated.
- 1.3 In bidding, Contractor warrants and represents that it has carefully examined the classifications for each craft or type of worker needed to execute the Contract and determined that such classifications in Exhibit "A" include all necessary categories to perform the work under the Contract.
- 1.4 The wage scale for building construction is to be applied to work on a building including an area within 5 feet of the exterior wall.
- 1.5 If Contractor believes that an additional classification for a craft or type of worker is necessary to perform work under the Contract, it must submit with its bid a request to the Contract Compliance Division of the Office of Business Opportunity ("OBO") to use an additional labor classification not listed in Exhibit "A" and specify the proposed new classification. OBO shall determine whether a proposed classification is already covered in Exhibit "A", and, if it is, specify which classification is appropriate. OBO's decision is conclusive. If OBO decides that a new classification is necessary, it will determine the appropriate prevailing wage rate for any resurveyed, amended, new, or additional craft or type of worker not covered by Exhibit "A". Such determination must be decided in accordance with procedures established by OBO, and in compliance with Chapter 2258 of the Texas Government Code and City of Houston, Texas Ordinance Nos. 85-2070, 2000-1114, 2001-152, 2006-91, 2006-168, and 2009-247 subject to City Council approval.
- 1.6 Contractor must not use any labor classification not covered by Exhibit "A" until such classification is established and approved for use by OBO.
- 1.7 A Contractor or Subcontractor who violates Chapter 2258 of the Texas Government Code must pay to the City, \$60 per each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates set forth in Exhibit "A".
- 1.8 The City may withhold money required to be withheld under Chapter 2258 of the Texas Government Code from the final payment to Contractor or earlier payments if City Council makes a determination that there is good cause to believe that Contractor has not complied with these provisions and Chapter 2258 of the Government Code, in which case the City may

withhold the money at any time subsequent to the finding by City Council.

1.9 Contractor and Subcontractors must keep records specifying:

- (1) the name and classification of each worker employed under the Contract; and
- (2) the actual per diem wages paid to each worker, and the applicable hourly rate.

The records must be open at all reasonable hours for inspection by the officers and agents of the City.

1.10 The hourly cost of salary for non-exempt workers for labor in excess of 40 hours per worker per week, shall be calculated at 1.5 times the worker's base pay, plus 1.0 times fringe benefits, for the applicable craft and level.

Certified Payroll Requirements

- 2.1 Employees are paid weekly, and payrolls are submitted weekly using the City of Houston's electronic payroll submission module, unless the prime Contractor has been instructed to do otherwise by the Office of Business Opportunity. When no work is done after a Contractor has started work, the Contractor is required to submit a weekly compliance statement indicating no work was performed. The payrolls must reflect the exact work and classification of the workers, the exact amount that they were paid. Workers must be paid the contracted amount (prevailing wage rates). The Contractor will be penalized \$60.00 a day for each employee who is underpaid per Texas Government Code §2258-023 for all contracts.
- 2.2 Payrolls must be submitted electronically & indicate whether the worker worked inside or outside the building area when both wage rates are applicable to the project.
- 2.3 Payrolls must be submitted each week until all work by the contractor is complete and the electronic payroll submission is marked as final in the system.
- 2.4 Payrolls must cover a seven-day period from the start of the work week and must be consecutive seven-day periods until all work is complete.
- 2.5 Payrolls must have employees' names, addresses, last four digits of the social security numbers, and job classifications. The job classifications must be the same as the classifications on the prevailing wage rate schedule.
- 2.6 A payroll deduction authorization form must be submitted for each employee for any deductions other than Federal and FICA taxes and court ordered child support.
- 2.7 Employees must be paid overtime (time and a half) for all hours worked over 40 hours a week on both federally and City-funded contracts.
- 2.8 The Contractor has the responsibility to comply with all Internal Revenue Service rules and regulations. Contractors who submit certified payrolls with **Owner Operators (truckers)** must submit a signed tax liability statement from each Owner Operator acknowledging their responsibility for Federal Income Tax and FICA reporting obligations.
- 2.9 If the Contractor wants to use the apprentice wage rates for an employee, the apprenticeship

**CITY OF HOUSTON
STANDARD DOCUMENT**

**WAGE SCALE
FOR BUILDING CONSTRUCTION**

certificates must be submitted to the Office of Business Opportunity in advance of the employee working on the project and appearing on the payroll. Contractor must comply with posted number of journeymen to apprentices as listed on the wage rate.

- 2.10 A poster of the Prevailing Wage Rate Schedule should be clearly displayed on each job site from the time the project starts until the work is completed, or in case of annual service agreements, in the Contractor's office.
- 2.11 The Contractor shall submit the "Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees" (Exhibit "B") to the Monitoring Authority listed in Document 00495 prior to final execution of the contract.
- 2.12 During the course of the work, Subcontractors shall submit the "Certificate from Subcontractor Appointing Officer or Employee to Supervise Payment of Employees" (Exhibit "C") to the Monitoring Authority listed in Document 00495.
- 2.13 Upon completion of the Project, as part of the contract-awarding department's total clearance process, the Office of Business Opportunity's Contract Compliance Section must review whether the Wage Rate and Payroll Requirements were met and report the results to the department.

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EXHIBIT "A"

Wage Determination Publication Date:

January 3, 2020

for

General Decision Number: **TX20200253 01/03/2020 TX253**

Superseded General Decision Number: TX20190253

State: Texas
Construction Type: Building
County: Harris County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number
0

Publication Date
01/03/2020

CITY OF HOUSTON
STANDARD DOCUMENT

WAGE SCALE
FOR BUILDING CONSTRUCTION

CITY OF HOUSTON, TEXAS
LABOR CLASSIFICATIONS AND PREVAILING WAGE RATES FOR BUILDING CONSTRUCTION
2020

Worker Classification	Ratio	Base Rate	Fringe Benefit	Wage Total
Acoustical Ceiling Mechanic		\$17.27	\$3.98	\$21.25
Asbestos Worker/ Heat & Frost Insulator *	Ratio 1/1 – Apprentice	\$24.28	\$14.16	\$38.44
Asbestos Abatement Worker (ceilings, walls, floors only)	Ratio 1/3	\$14.00	\$0.00	\$14.00
Boilermaker *	Ratio 5/1 – Apprentice	\$28.00	\$22.35	\$50.35
Bricklayer *	Ratio 1/3 – Mason Tender Brick	\$18.87	\$0.00	\$18.87
Carpenter * (excludes acoustical ceiling installation, drywall hanging, form work and metal stud installation work)	Ratio 2/1 – Apprentice	\$23.05	\$8.78	\$31.83
Caulker		\$15.36	\$0.00	\$15.36
Cement Mason/Concrete Finisher *	Ratio 1/3 – Mason Tender Concrete Concrete	\$13.93	\$0.00	\$13.93
Drywall Finisher/Taper *	Ratio 1/3 – Apprentice	\$16.27	\$3.66	\$19.93
Drywall Hanger and Metal Stud Installer *	Ratio 1/3 – Apprentice	\$17.44	\$3.93	\$21.37
Electrician (Excludes Low Voltage Wiring and Installation of Alarms)	Ratio 3/2 – Apprentice	\$32.25	\$9.24	\$41.49
Electrician (Alarm Installation Only) *	Ratio 1/1 – Apprentice	\$17.97	\$3.37	\$21.34
Electrician (Low Voltage Wiring Only) *		\$18.00	\$1.68	\$19.68
Elevator Mechanic *	Ratio 1/1 – Apprentice	\$42.60	\$33.705	\$76.305
Formworker *		\$12.77	\$0.00	\$12.77
Floor Layer (carpet)		\$20.00	\$0.00	\$20.00
Glazier *	Ratio 1/3 – Apprentice	\$23.27	\$7.12	\$30.39
Insulator * (Batt)		\$14.87	\$0.73	\$15.60
Ironworker (Ornamental)		\$24.42	\$7.12	\$31.54
Ironworker *(Reinforcing)	Ratio 1/3 – Apprentice	\$12.14	\$0.00	\$12.14
Ironworker *(Structural)	Ratio 1/3 – Apprentice	\$24.42	\$7.12	\$31.54
Lather *	Ratio 1/3	\$19.73	\$0.00	\$19.73
Painter * (Brush, Roller, and Spray, excludes drywall finishing/taping)	Ratio 1/3 – Apprentice	\$17.24	\$4.41	\$21.65
Pipe Fitter *(including HVAC Pipe installation)	Ratio 1/1 – Apprentice	\$33.30	\$12.26	\$45.56
Plasterer	Ratio 1/3 – Plasterer Tenders	\$19.92	\$1.00	\$20.92
Roofer *	Ratio 1/3 – Apprentice	\$15.40	\$0.00	\$15.40
Plumber *	Ratio 3/2 – Apprentice	\$36.15	\$11.04	\$47.19
Sheet Metal Worker *(excludes HVAC unit installation)	Ratio 2/1 – Apprentice	\$27.72	\$13.70	\$41.42
Sheet Metal Worker *(HVAC duct installation only)	Ratio 2/1 – Apprentice	\$27.72	\$13.70	\$41.42
Sheet Metal Worker *(HVAC unit installation only)	Ratio 2/1 – Apprentice	\$20.05	\$2.24	\$22.29
Sprinkler Fitter * (Fire sprinklers)	Ratio 1/1 – Apprentice	\$29.53	\$21.27	\$50.80
Tile Finisher *	Ratio 1/3 – Apprentice	\$12.00	\$0.00	\$12.00
Tile Setter *	Ratio 1/3 – Apprentice	\$16.17	\$0.00	\$16.17
Truck Driver (1/single axle truck)		\$14.18	\$0.00	\$14.18
Truck Driver (dump truck)		\$12.39	\$1.18	\$13.57
Truck Driver (flatbed truck)		\$19.65	\$8.57	\$28.22
Truck Driver (semi-trailer truck)		\$12.50	\$0.00	\$12.50
Truck Driver (water truck)		\$12.00	\$4.11	\$16.11

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Waterproofer		\$14.39	\$0.00	\$14.39
Laborers:				
Common or General Laborer		\$11.76	\$0.00	\$11.76
Landscape and Irrigation		\$9.52	\$0.00	\$9.52
Mason Tender (Brick)		\$13.47	\$0.00	\$13.47
Mason Tender (Cement /Concrete)		\$10.48	\$0.00	\$10.48
Pipelaye		\$12.94	\$0.00	\$12.94
Roof Tearoff		\$11.28	\$0.00	\$11.28
Power Equipment Operator:				
Backhoe / excavator / trackhoe		\$13.94	\$0.00	\$13.94
Bobcat / skid steer / skid loader		\$13.93	\$0.00	\$13.93
Bulldozer		\$22.75	\$0.00	\$22.75
Crane – Power Equipment Operator		\$34.85	\$9.85	\$44.70
Drill		\$16.22	\$0.34	\$16.56
Forklift		\$16.00	\$0.00	\$16.00
Grader/blade		\$13.37	\$0.00	\$13.37
Loader		\$13.55	\$0.94	\$14.49
Mechanic		\$17.52	\$3.33	\$20.85
Paver (asphalt, aggregate, and concrete)		\$16.03	\$0.00	\$16.03
Roller		\$16.00	\$0.00	\$16.00
Welders - Receive rate prescribed for craft performing operation in which welding is incidental.				
* Apprentices must be part of an approved Department of Labor apprenticeship program.				

Building Construction Prevailing Wages Classification Definitions

Asbestos Worker/Insulator * - Ratio 1 Journeyman / 1 Apprentice (1 Journeyman / 1 Apprentice)
(Including application of all insulating materials, protective coverings, coatings and finishing to all type of mechanical systems). Applies insulating material to exposed surfaces of structures, such as air ducts, hot and cold pipes, storage tanks, and cold storage rooms: Reads blueprints and selects required insulation material (in sheet, tubular, or roll form), such as fiberglass, foam rubber, styrofoam, cork, or urethane, based on material's heat retaining or excluding characteristics. Brushes adhesives on or attaches metal adhesive-backed pins to flat surfaces as necessary to facilitate application of insulation material. Measures and cuts insulation material to specified size and shape for covering flat or round surfaces, using tape measure, knife, or scissors. Fits, wraps, or attaches required insulation material around or to structure, following blueprint specifications. Covers or seals insulation with preformed plastic covers, canvas strips, sealant, or tape to secure insulation to structure, according to type of insulation used and structure covered, using staple gun, trowel, paintbrush, or caulking gun.

Asbestos Abatement Worker * (Ceilings, Floors, & Walls only)
Removes asbestos from ceilings, walls, beams, boilers, and other structures, following hazardous waste handling guidelines: Assembles scaffolding and seals off work area, using plastic sheeting and duct tape. Positions mobile decontamination unit or portable showers at entrance of work area. Builds connecting walkway between mobile unit or portable showers and work area, using hand tools, lumber, nails, plastic sheeting, and duct tape. Positions portable air evacuation and filtration system inside work area. Sprays chemical solution over asbestos covered surfaces, using tank with attached hose and nozzle, to soften asbestos. Cuts and scrapes asbestos from surfaces, using knife and scraper. Shovels asbestos into plastic disposal bags and seals bags, using duct tape. Cleans work area of loose asbestos, using vacuum, broom, and dustpan. Places asbestos in disposal bags and seals bags, using duct tape. Dismantles scaffolding and temporary walkway, using hand tools, and places plastic sheeting and disposal bags into transport bags. Seals bags, using duct tape, and loads bags into truck.

Boilermaker * - Ratio 5 Journeymen / 1 Apprentice
Assembles, analyzes defects in, and repairs boilers, pressure vessels, tanks, and vats in field, following blueprints and using hand tools and portable power tools and equipment: Locates and marks reference points for columns or plates on foundation, using master straightedge, squares, transit, and measuring tape, and applying knowledge of geometry. Attaches rigging or signals crane operator to lift parts to specified position. Aligns structures or plate sections to assemble boiler frame, tanks, or vats, using plumb bobs, levels, wedges, dogs, or turnbuckles. Hammers, flame cuts, files, or grinds irregular edges of sections or structural parts to facilitate fitting edges together. Bolts or arc-welds structures and sections together. Positions drums and headers into supports and bolts or welds supports to frame. Aligns water tubes and connects and expands ends to drums and headers, using tube expander. Bells, beads with power hammer, or welds tube ends to ensure leak proof joints. Bolts or welds casing sections, uptakes, stacks, baffles, and such fabricated parts as chutes, air heaters, fan stands, feeding tube, catwalks, ladders, coal hoppers, and safety hatch to frame, using wrench. Installs manholes, hand holes, valves, gauges, and feed water connection in drums to complete assembly of water tube boilers. Assists in testing assembled vessels by pumping water or gas under specified pressure into vessel and observing instruments for evidence of leakage. Repairs boilers or tanks in field by unbolting or flame cutting defective sections or tubes, straightening plates, using torch or jacks, installing new tubes, fitting and welding new sections and replacing worn lugs on bolts. May rivet and caulk sections of vessels, using pneumatic riveting and caulking hammers.

Bricklayer * (See Mason Tender) - Ratio 1 Journeyman /3 Mason Tender Brick

Lays building materials, such as brick, structural tile, and concrete cinder, glass, gypsum, and terra cotta block (except stone) to construct or repair walls, partitions, arches, sewers, and other structures: Measures distance from reference points and marks guidelines on working surface to lay out work. Spreads soft bed (layer) of mortar that serves as base and binder for block, using trowel. Applies mortar to end of block and positions block in mortar bed. Taps block with trowel to level, align, and embed in mortar, allowing specified thickness of joint. Removes excess mortar from face of block, using trowel. Finishes mortar between brick with pointing tool or trowel. Breaks bricks to fit spaces too small for whole brick, using edge of trowel or brick hammer. Determines vertical and horizontal alignment of courses, using plumb bob, gauge line (tightly stretched cord), and level. Fastens brick or terra cotta veneer to face of structures, with tie wires embedded in mortar between bricks, or in anchor holes in veneer brick. May weld metal parts to steel structural members. May apply plaster to walls and ceiling, using trowel, to complete repair work.

Carpenter * (Including Acoustical Ceiling Work) - Ratio 2 Journeymen /1 Apprentice

Constructs, erects, installs, and repairs structures and fixtures of wood, plywood, and wallboard, using carpenter's hand tools and power tools, and conforming to local building codes: Studies blueprints, sketches, or building plans for information pertaining to type of material required, such as lumber or fiberboard, and dimensions of structure or fixture to be fabricated. Selects specified type of lumber or other materials. Prepares layout, using rule, framing square, and calipers. Marks cutting and assembly lines on materials, using pencil, chalk, and marking gauge. Shapes materials to prescribed measurements, using saws, chisels, and planes. Assembles cut and shaped materials and fastens them together with nails, dowel pins, or glue. Verifies trueness of structure with plumb bob and carpenter's level. Erects framework for structures and lays subflooring. Builds stairs and lays out and installs partitions and cabinetwork. Covers sub floor with building paper to keep out moisture and lays hardwood, parquet, and wood-strip-block floors by nailing floors to sub floor or cementing them to mastic or asphalt base. Applies shock-absorbing, sound-deadening, and decorative paneling to ceilings and walls. Fits and installs prefabricated window frames, doors, doorframes, weather stripping, interior and exterior trim, and finish hardware, such as locks, letter drops, and kick plates. Constructs forms and chutes for pouring concrete. Erects scaffolding and ladders for assembling structures above ground level. May weld metal parts to steel structural members.

Cement Mason/Concrete Finisher *(Mason Tender Cement/Concrete) - Ratio 1 Journeyman /3 Mason Tender Cement

Finisher; concrete floater Smooths and finishes surfaces of poured concrete floors, walls, sidewalks, or curbs to specified textures, using hand tools or power tools, including floats, trowels, and screeds: Signals concrete deliverer to position truck to facilitate pouring concrete. Moves discharge chute of truck to direct concrete into forms. Spreads concrete into inaccessible sections of forms, using rake or shovel. Levels concrete to specified depth and workable consistency, using hand held screed and floats to bring water to surface and produce soft topping. Smooths, and shapes surfaces of freshly poured concrete, using straightedge and float or power screed. Finishes concrete surfaces, using power trowel, or wets and rubs concrete with abrasive stone to impart finish. Removes rough or defective spots from concrete surfaces, using power grinder or chisel and hammer, and patches holes with fresh concrete or epoxy compound. Molds expansion joints and edges, using edging tools, jointers, and straightedge. May sprinkle colored stone chips, powdered steel, or coloring powder on concrete to produce prescribed finish. May produce rough concrete surface, using broom. May mix cement, using hoe or concrete-mixing machine. May direct sub grade work, mixing of concrete, and setting of forms.

Drywall Finisher/Taper

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Wallboard and plasterboard; sheetrock taper; taper and bedder; taper and floater. Seals joints between plasterboard or other wallboards to prepare wall surface for painting or papering; Mixes sealing compound by hand or with portable electric mixer, and spreads compound over joints between boards, using trowel, broad knife, or spatula. Presses paper tape over joint to embed tape into compound and seal joint, or tapes joint, using mechanical applicator that spreads compound and embeds tape in one operation. Spreads and smooth's cementing material over tape, using trowel or floating machine to blend joint with wall surface. Sands rough spots after cement has dried. Fills cracks and holes in walls and ceiling with sealing compound. Installs metal molding at corners in lieu of sealant and tape. Usually works as member of crew. May apply texturing compound and primer to walls and ceiling preparatory to final finishing, using brushes, roller, or spray gun. May countersink nails or screws below surface of wall prior to applying sealing compound, using hammer or screwdriver.

Drywall Hanger

Dry-wall installer; gypsum dry-wall systems installer. Plans gypsum drywall installations, erects metal framing and furring channels for fastening drywall, and installs drywall to cover walls, ceilings, soffits, shafts, and movable partitions in residential, commercial, and industrial buildings: Reads blueprints and other specifications to determine method of installation, work procedures, and material, tool, and work aid requirements. Lays out reference lines and points for use in computing location and position of metal framing and furring channels and marks position for erecting metalwork, using chalk line. Measures, marks, and cuts metal runners, studs, and furring channels to specified size, using tape measure, straightedge and hand and portable power cutting tools. Secures metal framing to walls and furring channels to ceilings, using hand and portable power tools. Measures and marks cutting lines on drywall, using square, tape measure, and marking devices. Scribes cutting lines on drywall, using straightedge and utility knife and breaks board along cut lines. Fits and fastens board into specified position on wall, using screws, hand tools, portable power tools, or adhesive. Cuts openings into board for electrical outlets, vents, or fixtures, using keyhole saw or other cutting tools. Measures, cuts, assembles, and installs metal framing and decorative trim for windows, doorways, and vents. Fits, aligns, and hangs doors and installs hardware, such as locks and kick plates (Includes Installing Metal Studs).

Electrician * Ratio 3 Journeymen /2 Apprentice

Plans layout, installs, and repairs wiring, electrical fixtures, apparatus, and control equipment: Plans new or modified installations to minimize waste of materials, provide access for future maintenance, and avoid unsightly, hazardous, and unreliable wiring, consistent with specifications and local electrical codes. Prepares sketches showing location of wiring and equipment, or follows diagrams or blueprints, ensuring that concealed wiring is installed before completion of future walls, ceilings, and flooring. Measures, cuts, bends, threads, assembles, and installs electrical conduit, using tools, such as hacksaw, pipe threader, and conduit bender. Pulls wiring through conduit. Splices wires by stripping insulation from terminal leads, using knife or pliers, twisting or soldering wires together, and applying tape or terminal caps. Connects wiring to lighting fixtures and power equipment, using hand tools. Installs control and distribution apparatus, such as switches, relays, and circuit-breaker panels, fastening in place with screws or bolts, using hand tools and power tools. Connects power cables to equipment, such as electric range or motor, and installs grounding leads. Tests continuity of circuit to ensure electrical compatibility and safety of components, using testing instruments, such as ohmmeter, battery and buzzer, and oscilloscope. Observes functioning of installed equipment or system to detect hazards and need for adjustments, relocation, or replacement (Including Pulling Wire and Low Voltage Wiring and Installation of Fire Alarms, Security Systems, Telephones, and Computers).

Elevator Mechanic * - Ratio 1 Journeyman /1 Apprentice

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FOOTNOTES: a. - Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Paid Holidays: New Year's Day; Memorial Day; Independence Day Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day.

Erector; elevator installer; elevator mechanic. Assembles and installs electric and hydraulic freight and passenger elevators, escalators, and dumbwaiters, determining layout and electrical connections from blueprints. Studies blueprints and lays out location of framework, counterbalance rails, motor pump, cylinder, and plunger foundations. Drills holes in concrete or structural steel members with portable electric drill. Secures anchor bolts or welds brackets to support rails and framework, and verifies alignment with plumb bob and level. Cuts prefabricated sections of framework, rails, and other elevator components to specified dimensions, using acetylene torch, power saw, and disk grinder. Installs cables, counterweights, pumps, motor foundations, escalator drives, guide rails, elevator cars, and control panels, using hand tools. Connects electrical wiring to control panels and electric motors. Installs safety and control devices. Positions electric motor and equipment on top of elevator shaft, using hoists and cable slings.

Formbuilder/Formsetter

Constructs built-in-place or prefabricated wooden forms, according to specifications, for molding concrete structures. Studies blueprints and diagrams to determine type and dimension of forms to be constructed. Saws lumber to blueprint dimensions, using handsaw or power saw, and nails lumber together to make form panels. Erects built-in-place forms or assembles and installs prefabricated forms on construction site according to blueprint specifications, using hand tools, plumb rule, and level. Inserts spreaders and tie rods between opposite faces of form to maintain specified dimensions. Anchors and braces forms to fixed objects, using nails, bolts, anchor rods, steel cables, planks, and timbers.

Glazier

Installs glass in windows, skylights, store fronts, and display cases, or on surfaces, such as building fronts, interior walls, ceilings, and tabletops. Marks outline or pattern on glass, and cuts glass, using glasscutter. Breaks off excess glass by hand or with notched tool. Fastens glass panes into wood sash with glazier's points, and spreads and smoothes putty around edge of panes with knife to seal joints. Installs mirrors or structural glass on building fronts, walls, ceilings, or tables, using mastic, screws, or decorative molding. Bolts metal hinges, handles, locks, and other hardware to prefabricated glass doors. Sets glass doors into frame and fits hinges. May install metal window and doorframes into which glass panels are to be fitted. May press plastic adhesive film to glass or spray glass with tinting solution to prevent light glare. May install stained glass windows.

Insulator (Batt and Foam)

Applies batt and form insulation to walls, ceilings and other surfaces according to manufacturers specifications and blue print instructions. May use sealants such as cement plaster or asphalt compound to seal insulation; may spread concrete over floor slabs to form wearing floor; brushes adhesives, cuts insulating materials to specified shape to cover surfaces; uses tape or other sealants to adhere insulation to surfaces. May use staple gun, towel, paintbrushes and caulking guns.

Ironworker (Reinforcing)

Positions and secures steel bars in concrete forms to reinforce concrete; places rods in forms, spacing and fastening together with wire and pliers. Cuts bars using hacksaw, bar cutters or acetylene torch. Bends steel rods with hand tools or rod bending machine; reinforces concrete with wire mesh; welds reinforcing bars together.

Ironworker (Structural)

Erector; ironworker; steel erector; structural-iron erector; structural-iron worker; structural steel erector. Performs any combination of following duties to raise, place, and unite girders, columns, and other structural-steel members to form completed structures or structure frameworks, working as member of crew: Sets up hoisting equipment for raising and placing structural-steel members. Fastens steel members to cable of hoist, using chain, cable, or rope. Signals worker operating hoisting equipment to lift and place steel member. Guides member, using tab line (rope) or rides on member to guide it into position. Pulls, pushes, or pries steel members into approximate position while member is supported by hoisting device. Forces members into final position, using turnbuckles, crowbars, jacks, and hand tools. Aligns rivet holes in member with corresponding holes in previously placed member by driving drift pins or handle of wrench through holes. Verifies vertical and horizontal alignment of members, using plumb bob and level.

Lather

Fastens wooden, metal, or rockboard lath to walls, ceilings, and partitions of buildings to provide supporting base for plaster, fireproofing, or acoustical material, using hand tools and portable power tools: Erects horizontal metal framework to which laths are fastened, using nails, bolts, and studgun. Drills holes in floor and ceiling, using portable electric tool, and drives ends of wooden or metal studs into holes to provide anchor for furring or rockboard lath. Wires horizontal strips to furring to stiffen framework. Cuts lath to fit openings and projections, using hand tools or portable power tools. Wires, nails, clips, or staples lath to framework, ceiling joists, and flat concrete surfaces. Bends metal lath to fit corners, or attaches preformed corner reinforcements. Wires plasterer's channels to overhead structural framework to provide support for plaster or acoustical ceiling tile.

Painter (Brush, Roller, and Spray)

Applies coats of paint, varnish, stain, enamel, or lacquer to decorate and protect interior or exterior surfaces, trimmings, and fixtures of buildings and other structures: Reads work order or receives instructions from supervisor or homeowner regarding painting. Smooths surfaces, using sandpaper, brushes, or steel wool, and removes old paint from surfaces, using paint remover, scraper, wire brush, or blowtorch to prepare surfaces for painting. Fills nail holes, cracks, and joints with caulk, putty, plaster, or other filler, using caulking gun and putty knife. Selects premixed paints, or mixes required portions of pigment, oil, and thinning and drying substances to prepare paint that matches specified colors. Removes fixtures, such as pictures and electric switchcovers, from walls prior to painting, using screwdriver. Spreads dropcloths over floors and room furnishings, and covers surfaces, such as baseboards, doorframes, and windows with masking tape and paper to protect surfaces during painting. Paints surfaces, using brushes, spray gun, or paint rollers. Simulates wood grain, marble, brick, or tile effects. Applies paint with cloth, brush, sponge, or fingers to create special effects. Erects scaffolding or sets up ladders to perform tasks above ground level.

Pipe fitter * (HVAC Pipe Only) - Ratio 1Journeyman /1 Apprentice (See Schedule included)

Lays out, assembles, installs, and maintains pipe systems, pipe supports, and related hydraulic and pneumatic equipment for steam, hot water, heating, cooling, lubricating, sprinkling, and industrial production and processing systems, applying knowledge of system operation, and following blueprints: Selects type and size of pipe, and related materials and equipment, such as supports, hangers, and hydraulic cylinders, according to specifications. Inspects work site to determine presence of obstructions and to ascertain that holes cut for pipe will not cause structural weakness. Plans installation or repair to avoid obstructions and to avoid interfering with activities of other workers. Cuts pipe, using saws, pipe cutter, hammer and chisel, cutting torch, and pipe cutting machine. Threads pipe, using pipe threading machine. Bends pipe, using pipe bending tools and pipe bending machine. Assembles and installs variety of metal and nonmetal pipes, tubes, and fittings, including iron, steel, copper, and plastic. Connects pipes, using threaded, caulked, soldered,

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brazed, fused, or cemented joints, and hand tools. Secures pipes to structure with brackets, clamps, and hangers, using hand tools and power tools. Installs and maintains hydraulic and pneumatic components of machines and equipment, such as pumps and cylinders, using hand tools. Installs and maintains refrigeration and air-conditioning systems, including compressors, pumps, meters, pneumatic and hydraulic controls, and piping, using hand tools and power tools, and following specifications and blueprints. Increases pressure in pipe system and observes connected pressure gauge to test system for leaks.

Pipe Fitter * (Excluding HVAC Pipe)

Lays out, assembles, installs, and maintains pipe systems, pipe supports, and related hydraulic and pneumatic equipment for steam, hot water, heating, cooling, lubricating, sprinkling, and industrial production and processing systems, applying knowledge of system operation, and following blueprints. Selects type and size of pipe, and related materials and equipment, such as supports, hangers, and hydraulic cylinders, according to specifications. Inspects work site to determine presence of obstructions and to ascertain that holes cut for pipe will not cause structural weakness. Plans installation or repair to avoid obstructions and to avoid interfering with activities of other workers. Cuts pipe, using saws, pipe cutter, hammer and chisel, cutting torch, and pipe cutting machine. Threads pipe, using pipe-threading machine. Bends pipe, using pipe bending tools and pipe bending machine. Assembles and installs variety of metal and nonmetal pipes, tubes, and fittings, including iron, steel, copper, and plastic. Connects pipes, using threaded, caulked, soldered, brazed, fused, or cemented joints, and hand tools. Secures pipes to structure with brackets, clamps, and hangers, using hand tools and power tools. Installs and maintains hydraulic and pneumatic components of machines and equipment, such as pumps and cylinders, using hand tools. Installs and maintains refrigeration and air-conditioning systems, including compressors, pumps, meters, pneumatic and hydraulic controls, and piping, using hand tools and power tools, and following specifications and blueprints. Increases pressure in pipe system and observes connected pressure gauge to test system for leaks. May weld pipe supports to structural steel members. May observe production machines in assigned area of manufacturing facility to detect machinery malfunctions. May operate machinery to verify repair. May modify programs of automated machinery, such as robots and conveyors, to change motion and speed of machine, using teach pendant, control panel, or keyboard and display screen of robot controller and programmable controller. May be designated Steam Fitter (construction) when installing piping systems that must withstand high pressure

Plasterer * See Plaster Tender - Ratio 1 Journeyman /3 Plaster Tenders

Applies coats of plaster to interior walls, ceilings, and partitions of buildings, to produce finished surface, according to blueprints, architect's drawings, or oral instructions, using hand tools and portable power tools. Directs workers to mix plaster to desired consistency and to erect scaffolds. Spreads plaster over lath or masonry base, using trowel, and smoothes plaster with darby and float to attain uniform thickness. Applies scratch, brown, or finish coats of plaster to wood, metal, or board lath successively. Roughens undercoat with scratcher (wire or metal scraper) to provide bond for succeeding coats of plaster.

Plumber * (Excluding HVAC Pipe) - Ratio 3 Journeymen /2 Apprentice

Assembles, installs, and repairs pipes, fittings, and fixtures of heating, water, and drainage systems, according to specifications and plumbing codes. Studies building plans and working drawings to determine work aids required and sequence of installations. Inspects structure to ascertain obstructions to be avoided to prevent weakening of structure resulting from installation of pipe. Locates and marks position of pipe and pipe connections and passage holes for pipes in walls and floors, using ruler, spirit level, and plumb bob. Cuts openings in walls and floors to accommodate pipe and pipe fittings, using hand tools and power tools. Cuts and threads pipe, using pipe cutters, cutting torch, and pipe-threading machine. Bends pipe to required angle by use of pipe-bending

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machine or by placing pipe over block and bending it by hand. Assembles and installs valves, pipe fittings, and pipes composed of metals, such as iron, steel, brass, and lead, and nonmetals, such as glass, vitrified clay, and plastic, using hand tools and power tools. Joins pipes by use of screws, bolts, fittings, solder, plastic solvent, and caulks joints. Fills pipe system with water or air and reads pressure gauges to determine whether system is leaking. Installs and repairs plumbing fixtures, such as sinks, commodes, bathtubs, water heaters, hot water tanks, garbage disposal units, dishwashers, and water softeners. Repairs and maintains plumbing by replacing washers in leaky faucets, mending burst pipes, and opening clogged drains.

Roofer

Covers roofs with roofing materials other than sheet metal, such as composition shingles or sheets, wood shingles, or asphalt and gravel, to waterproof roofs: Cuts roofing paper to size, using knife, and nails or staples it to roof in overlapping strips to form base for roofing materials. Installs gutters and down spouts. Aligns roofing material with edge of roof, and overlaps successive layers, gauging distance of overlap with chalk line, gauge on shingling hatchet, or by lines on shingles. Fastens composition shingles or sheets to roof with asphalt, cement, or nails. Punches holes in slate, tile, terra cotta, or wooden shingles, using punch and hammer. Cuts strips of flashing and fits them into angles formed by walls, vents, and intersecting roof surfaces. When applying asphalt or tar and gravel to roof, mops or pours hot asphalt or tar onto roof base. Applies alternate layers of hot asphalt or tar and roofing paper until roof covering is as specified. Applies gravel or pebbles over top layer, using rake or stiff bristled broom.

Sheet metal worker * Ratio 2 Journeymen /1 Apprentice (Including Setting HVAC Duct & System Installs)

Fabricates, assembles, installs and repairs sheet metal products, including sheet metal roof (also see Roofer). Operates soldering and welding equipment to join together sheet metal parts. Seals seams and joints with sealant. Installs roof sheets, trims, flashing, gutters down spouts and other related items. Performs other related duties.

Sprinkler Fitter (Fire) * - Ratio 1 Journeyman /1 Apprentice

Lays out, assembles, installs, and maintains pipe systems, pipe supports, and related hydraulic and pneumatic equipment for steam, hot water, heating, cooling, lubricating, sprinkling, and industrial production and processing systems, applying knowledge of system operation, and following blueprints: Selects type and size of pipe, and related materials and equipment, such as supports, hangers, and hydraulic cylinders, according to specifications. Inspects work site to determine presence of obstructions and to ascertain that holes cut for pipe will not cause structural weakness. Plans installation or repair to avoid obstructions and to avoid interfering with activities of other workers. Cuts pipe, using saws, pipe cutter, hammer and chisel, cutting torch, and pipe cutting machine. Threads pipe, using pipe-threading machine. Bends pipe, using pipe bending tools and pipe bending machine. Assembles and installs variety of metal and nonmetal pipes, tubes, and fittings, including iron, steel, copper, and plastic. Connects pipes, using threaded, caulked, soldered, brazed, fused, or cemented joints, and hand tools. Secures pipes to structure with brackets, clamps, and hangers, using hand tools and power tools. Installs and maintains hydraulic and pneumatic components of machines and equipment, such as pumps and cylinders, using hand tools. Installs and maintains refrigeration and air-conditioning systems, including compressors, pumps, meters, pneumatic and hydraulic controls, and piping, using hand tools and power tools, and following specifications and blueprints. Increases pressure in pipe system and observes connected pressure gauge to test system for leaks. May weld pipe supports to structural steel members. May observe production machines in assigned area of manufacturing facility to detect machinery malfunctions. May operate machinery to verify repair. May modify programs of automated machinery, such as robots and conveyors, to change motion and speed of machine, using teach pendant, control panel,

or keyboard and display screen of robot controller and programmable controller.

Tile Finisher

Supplies and mixes construction materials for TILE SETTER (construction) 861.381-054, applies grout, and cleans installed tile. Moves tiles, tile setting tools, and work devices from storage area to installation site manually or using wheelbarrow. Mixes mortar and grout according to standard formulas and request from TILE SETTER (construction), using bucket, water hose, spatula, and portable mixer. Supplies TILE SETTER (construction) with mortar, using wheelbarrow and shovel. Applies grout between joints of installed tile, using grouting trowel. Removes excess grout from tile joints with wet sponge and scrapes corners and crevices with trowel. Wipes surface of tile after grout has set to remove grout residue and polish tile, using nonabrasive materials. Cleans installation site, mixing and storage areas, and installation machines, tools, and equipment, using water and various cleaning tools. Stores tile setting materials, machines, tools, and equipment. May apply caulk, sealers, acid, steam, or related agents to caulk, seal, or clean installed tile, using various application devices and equipment. May modify mixing, grouting, grinding, and cleaning procedures according to type of installation or material used. May assist TILE SETTER (construction) to position and secure metal lath, wire mesh, or felt paper prior to installation of tile. May cut marked tiles to size, using power saw or tile cutter.

Tile Setter

Applies tile to walls, floors, ceilings, and promenade roof decks, following design specifications: Examines blueprints, measures and marks surfaces to be covered, and lays out work. Measures and cuts metal lath to size for walls and ceilings with tin snips. Tacks lath to wall and ceiling surfaces with staple gun or hammer. Spreads plaster base over lath with trowel and levels plaster to specified thickness, using screed. Spreads concrete on sub floor, with trowel and levels it with screed. Spreads mastic or other adhesive base on roof deck, using serrated spreader to form base for promenade tile. Cuts and shapes tile with tile cutters and biters. Positions tile and taps it with trowel handle to affix tile to plaster or adhesive base.

Truck Driver

Drives truck with capacity of more than 3 tons, to transport materials to and from specified destinations: Drives truck to destination, applying knowledge of commercial driving regulations and area roads. Prepares receipts for load picked up. Collects payment for goods delivered and for delivery charges. May maintain truck log, according to state and federal regulations. May maintain telephone or radio contact with supervisor to receive delivery instructions. May load and unload truck. May inspect truck equipment and supplies, such as tires, lights, brakes, gas, oil, and water. May perform emergency roadside repairs, such as changing tires, installing light bulbs, tire chains, and spark plugs. May position blocks and tie rope around items to secure cargo during transit.

Laborers

Common Laborer

Performs any combination of the following tasks in erecting, repairing and wrecking buildings; dig, spread and level dirt and gravel; lift carry and hold building materials, tools and supplies; clean tools, equipment, materials and work areas; mix, pour and spread concrete, asphalt, gravel and other materials; join, wrap and seal sections of pipe; routine non-machine tasks such as removing forms from set concrete, filling expansion joints with asphalt, and placing culverts in trench. May also signal construction equipment operators; measure distances from grade stakes, drive stakes and stretch lines; bolt, nail align and block up under forms; mix and finish poured concrete, erect scaffolding; spread paint or coating to seal surfaces; caulking compounds to seal surfaces; remove projections

from concrete, and mount pipe hangers.

Mason Tender Brick

Mason Tender Cement

Pipe layer

Lay pipe for storm or sanitation sewers, drains, and water mains. Perform any combination of the following tasks: grade trenches or culverts, position pipe, or seal joints.

Plaster Tender

Tends machine that pumps plaster or stucco through spray gun for application to ceilings, walls, and partitions of buildings: Starts and stops machine on signals from PLASTERER (construction). Fills hopper of machine with plaster. Turns valves to regulate pump and compressor. Assists in erecting scaffolds.

Power Equipment Operator:

Asphalt Paver (operator)

Operator; bituminous-paving-machine operator; blacktop-paver operator; blacktop spreader; mechanical-spreader operator; paving-machine operator, asphalt or bituminous. Operates machine that spreads and levels hot-mix bituminous paving material on sub grade of highways and streets: Bolts extensions to screed to adjust width, using wrenches. Lights burners to heat screed. Starts engine and controls paving machine to push dump truck and maintain constant flow of asphalt into hopper. Observes distribution of paving material along screed and controls direction of screed to eliminate voids at curbs and joints. Turns valves to regulate temperature of asphalt flowing from hopper when asphalt begins to harden on screed.

Backhoe (operator)

Operates power-driven machine, equipped with movable shovel, to excavate or move coal, dirt, rock, sand, and other materials: Receives written or oral instructions from supervisor regarding material to move or excavate. Pushes levers and depresses pedals to move machine, to lower and push shovel into stockpiled material, to lower and dig shovel into surface of ground, and to lift, swing, and dump contents of shovel into truck, car, or onto conveyor, hopper, or stockpile. Observes markings on ground, hand signals, or grade stakes to remove material, when operating machine at excavation site.

Crane (operator)

Operates electric-, diesel-, gasoline-, or steam-powered guy-derrick or stiff-leg derrick (mast supported by fixed legs or tripod), to move products, equipment, or materials to and from quarries, storage areas, and processes, or to load and unload trucks or railroad cars: Pushes and pulls levers and depresses pedals to raise, lower, and rotate boom and to raise and lower load line in response to signals.

Forklift (operator)

Drives gasoline-, liquefied gas-, or electric-powered industrial truck equipped with lifting devices, such as forklift, boom, scoop, lift beam and swivel-hook, fork-grapple, clamps, elevating platform, or trailer hitch, to push, pull, lift, stack, tier, or move products, equipment, or materials in warehouse, storage yard, or factory: Moves levers and presses pedals to drive truck and control movement of lifting apparatus. Positions forks, lifting platform, or other lifting device under, over, or around loaded

**CITY OF HOUSTON
STANDARD DOCUMENT**

**WAGE SCALE
FOR BUILDING CONSTRUCTION**

pallets, skids, boxes, products, or materials or hooks tow trucks to trailer hitch, and transports load to designated area. Unloads and stacks material by raising and lowering lifting device.

Slab & Wall Saw (See Related Power Equipment Operator Above)
Use associated power equipment operators already defined.

Apprentices

Apprentices may be used in any of the crafts listed above where noted, if they are currently certified in a program recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor, providing the proper ratio between journeyman and apprentice is observed. Apprentice certification certificates must be supplied with the first weekly payroll upon which the apprentice's name appears.

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Pipe fitters * Apprentice Schedule (Excluding HVAC Pipe)

Journeyman	Indentured Apprentice	Apprentice Applicant	Total
1	1	0	1 to 1
3	2	1	3 to 3
5	3	2	5 to 5
8	4	3	8 to 7
12	5	4	12 to 9
16	6	5	16 to 11
20	7	6	20 to 13
25	8	7	25 to 15
30	9	8	30 to 17
40	10	9	40 to 19
50	11	10	50 to 21

NOTE: Continue after 50 Journeyman — ONE (1) Indentured Apprentice and one (1) Apprentice Applicant for every ten (10) Journeyman

*** When Apprentices are shown, Helpers cannot be utilized**

APPRENTICES (see definitions)

Registered Apprenticeship Ratios

For All Apprentices

Apprentice duties consist but are not limited to reading blue prints, lay out, fabrication, installation, and assembly. Other duties are the setting up and operation of fabrication machines, using hand tools, power tools, lifting/handling devices, sealing if necessary according to their particular craft. Apprentices also are trained in the preparation process of a job that include but not limited to staging, planning, distribution, and sectioning of materials. Apprentices may be used in any of the crafts listed where noted on the Prevailing Wage Rate Schedule, if they are currently certified in a program recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor, providing the proper ratio between journeyman and apprentice is observed. Apprentice certification certificates must be supplied with the first weekly payroll upon which the apprentice's name appears. Laborers cannot be utilized when Apprentices are shown

Asbestos Worker / Insulator

City of Houston allows the use of 1 Journeyman and 1 Apprentice, the Apprentice can be used with the first Journeyman. No other Apprentices can be added until the 2th Journeyman is added. All Apprentices are to be under the direct supervision of a Journeyman.

- 1 Journeyman w/ 1 Apprentice
- 2 Journeymen w/ 2 Apprentices

Boilermakers

City of Houston allows the use of 5 Journeymen and 1 Apprentice, the Apprentice can be used with the first Journeyman. No other Apprentices can be added until the 6th Journeyman is added. All Apprentices are to be under the direct supervision of a Journeyman.

- 1-5 Journeymen w/ 1 Apprentice
- 6-10 Journeymen w/ 2 Apprentices

Carpenter

City of Houston allows the use of 2 Journeymen and 1 Apprentice, the Apprentice can be used with the first Journeyman. No other Apprentices can be added until the 4th Journeyman is added. All Apprentices are to be under the direct supervision of a Journeyman.

- 1-2 Journeymen w/ 1 Apprentice
- 3-4 Journeymen w/ 2 Apprentices
- 5-6 Journeymen w/ 3 Apprentices

Electrician

City of Houston allows the use of 3 Journeymen and 2 Apprentices, the Apprentice can be used with the first Journeyman. No other Apprentices can be added until the 3rd Journeyman is added. All Apprentices are to be under the direct supervision of a Journeyman. All Journeymen and Apprentices must hold a current license from the State of Texas.

- 1 Journeyman w/ 1 Apprentice
- 2 Journeymen w/ 1 Apprentice
- 3 Journeymen w/ 2 Apprentices
- 4 Journeymen w/ 3 Apprentices
- 5 Journeymen w/ 3 Apprentices
- 6 Journeymen w/ 4 Apprentices
- 7 Journeymen w/ 4 Apprentices
- 8 Journeymen w/ 4 Apprentices
- 9 Journeymen w/ 4 Apprentices
- 10 Journeymen w/ 5 Apprentices

Plumbers

City of Houston allows the use of 3 Journeymen and 2 Apprentices, the Apprentice can be used with the first Journeyman. No other Apprentices can be added until the 3rd Journeyman is added. All Apprentices are to be under the direct supervision of a Journeyman. All Journeymen and Apprentices must hold a current license from the State of Texas.

**CITY OF HOUSTON
STANDARD DOCUMENT**

**WAGE SCALE
FOR BUILDING CONSTRUCTION**

- 1 Journeyman w/ 1 Apprentice
- 2 Journeymen w/ 1 Apprentice
- 3 Journeymen w/ 2 Apprentices
- 4 Journeymen w/ 3 Apprentices
- 5 Journeymen w/ 3 Apprentices
- 6 Journeymen w/ 4 Apprentices
- 7 Journeymen w/ 4 Apprentices
- 8 Journeymen w/ 4 Apprentices
- 9 Journeymen w/ 4 Apprentices
- 10 Journeymen w/ 5 Apprentices

Sprinkler Fitter

City of Houston allows the use of 1 Journeyman and 1 Apprentice, the Apprentice can be used with the first Journeyman. No other Apprentices can be added until the 2th Journeyman is added. All Apprentices are to be under the direct supervision of a Journeyman.

- 1 Journeyman w/ 1 Apprentice
 - 2 Journeymen w/ 2 Apprentices
- Sheetmetal Worker**

City of Houston allows the use of 2 Journeymen and 1 Apprentice, the Apprentice can be used with the first Journeyman. No other Apprentices can be added until the 4th Journeyman is added. All Apprentices are to be under the direct supervision of a Journeyman.

- 1-2 Journeymen w/ 1 Apprentice
- 3-4 Journeymen w/ 2 Apprentices
- 5-6 Journeymen w/ 3 Apprentices

Pipefitter

City of Houston allows the use of 1 Journeymen and 1 Apprentice, the Apprentice can be used with the first Journeyman. No other Apprentices can be added until the 4th Journeyman is added. All Apprentices are to be under the direct supervision of a Journeyman.

- 1 Journeyman w/ 1 Apprentice
- 2 Journeymen w/ 1 Apprentice
- 3 Journeymen w/ 2 Apprentices
- 4 Journeymen w/ 3 Apprentices
- 5 Journeymen w/ 3 Apprentices
- 6 Journeymen w/ 4 Apprentices
- 7 Journeymen w/ 4 Apprentices
- 8 Journeymen w/ 4 Apprentices
- 9 Journeymen w/ 4 Apprentices
- 10 Journeymen w/ 5 Apprentices

Welders

Receive rate prescribed for craft performing operation in which welding is incidental

Pipefitters * Apprentice Schedule (Excluding HVAC Pipe)

**CITY OF HOUSTON
STANDARD DOCUMENT**

**WAGE SCALE
FOR BUILDING CONSTRUCTION**

NOTE: Continue after 50 Journeyman - ONE (1) Indentured Apprentice and one (1) Apprentice Applicant for every ten (10) Journeyman

Journeyman	Indentured Apprentice	Apprentice Applicant	Total
1	1	0	1 to 1
3	2	1	3 to 3
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8	4	3	8 to 7
12	5	4	12 to 9
16	6	5	16 to 11
20	7	6	20 to 13
25	8	7	25 to 15
30	9	8	30 to 17
40	10	9	40 to 19
50	11	10	50 to 21

When Apprentices are shown, Helpers cannot be utilized

If there are questions as to the classification of a worker, contact the Contract Compliance Officer in writing with a description of the work to be performed. After reviewing the Contract Compliance Officer will respond in writing with the classification and wage rate to be paid the worker in question.

EXHIBIT "B"

CERTIFICATE FROM CONTRACTOR APPOINTING OFFICER OR EMPLOYEE
TO SUPERVISE PAYMENT OF EMPLOYEES

Project Name _____

Project WBS#: _____ Date _____

Email Address: _____

(I) (We) hereby certify that (I am) (we are) the **Prime Contractor** for _____

_____ (specify type of job)
In connection with construction of the above-mentioned Project, and that (I) (we) have appointed _____, whose signature appears below, to supervise the payment of (my) (our) employees beginning _____, 20____; that he/she is in a position to have full knowledge of the facts set forth in the payroll documents and in the statement of compliance required by the Copeland Act and the City of Houston, which he/she is to execute with (my) (our) full authority and approval until such time as (I) (we) submit to the City of Houston a new certificate appointing some other person for the purposes hereinabove stated.

_____ Phone: _____
(Identifying Signature of Appointee)

Attest: _____
(Name of Firm or Corporation)

By: _____ By: _____
(Signature) (Signature)

_____ _____
(Title) (Title)

NOTE: This certificate must be executed by an authorized officer of a corporation or by a member of a partnership, and shall be executed prior to and be submitted with the first payroll. Should the appointee be changed, a new certificate must accompany the first payroll for which the new appointee executes a statement of compliance required by the Copeland Act and the City of Houston.

EXHIBIT "C"

CERTIFICATE FROM SUBCONTRACTOR APPOINTING OFFICER OR EMPLOYEE TO
SUPERVISE PAYMENT OF EMPLOYEES

Project Name _____

Project WBS#: _____ Date _____

Email Address: _____

(I) (We) hereby certify that (I am) (we are) the **Sub Contractor** for _____

_____ (specify type of job)
in connection with construction of the above-mentioned Project, and that (I) (we) have appointed
_____, whose signature appears below, to supervise the payment of (my)
(our) employees beginning _____, 20____; that he/she is in a position to have full knowledge of the
facts set forth in the payroll documents and in the statement of compliance required by the Copeland
Act and the City of Houston, which he/she is to execute with (my) (our) full authority and approval
until such time as (I) (we) submit to the City of Houston a new certificate appointing some other
person for the purposes hereinabove stated.

_____ Phone: _____
(Identifying Signature of Appointee)

Attest: _____
(Name of Firm or Corporation)

By: _____
(Signature)

By: _____
(Signature)

(Title)

(Title)

NOTE: This certificate must be executed by an authorized officer of a corporation or by a member of a partnership, and shall be executed prior to and be submitted with the first payroll. Should the appointee be changed, a new certificate must accompany the first payroll for which the new appointee executes a statement of compliance required by the Copeland Act and the City of Houston.

END OF DOCUMENT

EXHIBIT "G"
MASTER PROJECT SCHEDULE

[TO BE ADDED PRIOR TO EXECUTION OF CONTRACT]

NORTH BELT POLICE STATION
WBS NO.: G-000165-0001-4

EXHIBIT "G"

MASTER PROJECT SCHEDULE:

- August 1, 2020 – Notice to proceed given to Perkins+Will to begin design/construction drawings
- August 1, 2020 to January 1, 2022 - (17 1/2 months)
 - o Phase I - Schematic Design/Design Development/Project Manual - (4 months)
 - o Phase II - Contract Documents - (8 months)
 - o CoH Reviews and Approvals including Code Enforcement - (3 months)
 - o Bidding/Negotiations/GMP Approval - (2 1/2 months)
- January 18, 2022 - Notice to proceed given to Christensen Building Group, LLC start construction phase
- January 18, 2022 to January 18, 2023 - (12 months)
 - o Phase III - Commence building construction/procurement and execution
- Total project execution design/bidding & negotiation/construction - August 1, 2020 to January 18, 2023 - (29 1/2 months = 2 years – 5 1/2 months)
 - o Architectural/Engineering design/construction drawings/CoH review (15 months)
 - o Bidding/Negotiations/GMP Approval (2 1/2 months)
 - o Building Construction - (12 months)

EXHIBIT "H"

MWBE SUBCONTRACT TERMS

Construction Manager shall insure that all subcontracts with MWBE subcontractor and suppliers are clearly labeled **"THIS CONTRACT IS SUBJECT TO MEDIATION"** and contain the following terms:

- 1) (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").
- 2) (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for inspection for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall change the time for bringing a cause of action.
- 3) Within five business days of execution of this subcontract, Engineer (prime engineer) 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.
- 4) Any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to mediation. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to mediation.
 - a) Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to mediation.
 - b) All mediations shall be conducted in Houston, Texas unless the parties agree to another location in writing.



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

District B

Item Creation Date: 6/17/2020

25CONS432 – De-Appropriate/Appropriate Funds - Star
Service, Inc. Kashmere Multi-Service Center HVAC
Improvements

Agenda Item#: 25.

Summary:

ORDINANCE de-appropriating \$430,392.00 from Equipment Acquisition Consolidated Fund previously appropriated for Task Order and Job Order Contracting Program for FY2020 (Approved by Ordinance No. 2020-376); appropriating \$430,392.00 out of Equipment Acquisition Consolidated Fund; awarding contract to **STAR SERVICE, INC** for HVAC Improvements at Kashmere Multi-Service Center; setting a deadline for the bidder's execution of the contract and delivery of all bonds, insurance, and other required contract documents to the City; holding the bidder in default if it fails to meet the deadlines; providing funding for contingencies relating to construction of facilities financed by the Equipment Acquisition Consolidated Fund - **DISTRICT B - DAVIS**

Background:

RECOMMENDATION: Approve an Ordinance (i) awarding a construction contract to Star Service, Inc.; (ii) de-appropriating the sum of \$430,392.00 out of the Equipment Acquisition Consolidated Fund for the Task Order and Job Order (TOC/JOC) Contracting Program for FY20 (previously appropriated by Ordinance No. 2020-376); and (iii) appropriating those funds for the project.

SPECIFIC EXPLANATION: The General Services Department (GSD) recommends that City Council award a construction contract to Star Services, Inc. on the proposal amount of \$391,265.00 to provide HVAC improvements at the Kashmere Multi-Service Center, for the Houston Health Department.

On May 6, 2020, Ordinance No. 2020-376, City Council authorized the appropriation of \$1,880,000.00 out of the Equipment Acquisition Consolidated Fund for the TOC/JOC Contracting Program for FY20, for HVAC improvements for the Houston Health Department. GSD has determined that it is more cost-effective to engage a specialized HVAC contractor to perform the work. The requested action will de-appropriate \$430,392.00 out of the TOC/JOC Contracting Program for FY20, and appropriate an equivalent amount to the construction contract with Star Service, Inc. for the project.

PROJECT LOCATION: 4802 Lockwood Dr., Houston, TX 77026

PROJECT DESCRIPTION: The project consists of replacement and improvements to HVAC

equipment and systems including but not limited to eleven rooftop units, exhaust fans, piping, control systems, and an addition of electrical transient voltage surge suppressors to existing electrical panels.

The contract duration for this project is 100 calendar days from the date of Notice to Proceed.

PROPOSALS: On January 24 and January 31, 2020, GSD advertised a Request for Competitive Sealed Proposals (CSP) for construction services for the Kashmere Multi-Service Center HVAC Improvements. The CSP contained selection criteria that ranked respondents on experience, key personnel, safety, and Hire Houston First. The Statements of Qualifications were due on April 9, 2020, and four firms responded. GSD formed a selection committee comprised of representatives from GSD and Houston Health Department to evaluate the respondents. All four firms received sufficient points and were requested to submit proposals. Three firms submitted proposals. Star Service, Inc. submitted the lowest proposal and offers the best value for the City based on the advertised criteria.

The three proposers are ranked as follows:

PROPOSER:

1. **Star Service, Inc.**
2. Rincon Air & Heat Company, LLC
3. Hudson Mechanical, Inc

AWARD: It is recommended that City Council award the construction contract to Star Service, Inc. and appropriate funds for the project.

FUNDING SUMMARY:

\$ 391,265.00	Construction Contract Services
<u>\$ 39,127.00</u>	10% Contingency
\$ 430,392.00	Total Contract Services

M/WBE PARTICIPATION: An M/WBE goal was not established for this project because the construction cost did not exceed the threshold of \$1,000,000.00 required for a goal-oriented contract as authorized by Houston Code of Ordinances §15-82.

PAY OR PLAY PROGRAM: The proposed contract requires compliance with the City's 'Pay or Play' Ordinance regarding health benefits for employees of City contractors. In this case, the contractor agrees to "Play" and provide health benefits to eligible employees in compliance with City policy.

HIRE HOUSTON FIRST: The proposed contract requires compliance with the City's 'Hire Houston First' (HHF) Ordinance that promotes economic opportunity for Houston businesses and supports job creation. In this case, Star Service, Inc. is a designated HHF company, but they were the successful awardee without application of the HHF preference.

CIP FISCAL NOTE: No significant Fiscal Operating impact is anticipated as a result of this project.

-

Capital Project Information: See the attached Form A for a breakdown of capital costs.

WBS No: H-000063-0011-4

DIRECTOR'S SIGNATURE/DATE:

C. J. Messiah, Jr.
General Services Department

Stephen L. Williams, M.Ed., MPA
Houston Health Department

Prior Council Action:

Ordinance No. 2020-376; Dated May 6, 2020

Amount of Funding:

De-appropriate/Appropriate:

\$430,392.00 Equipment Acquisition Consolidated Fund (1800)

Contact Information:

Jacquelyn L. Nisby
Council Liaison
Phone: 832.393.8023

ATTACHMENTS:

Description

Signed Coversheet
25CONS432 - Maps
2020-663 Executed Ordinance

Type

Signed Cover sheet
Backup Material
Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/7/2020

District B

Item Creation Date: 6/17/2020

25CONS432 – De-Appropriate/Appropriate Funds - Star Service, Inc. Kashmere Multi-Service Center HVAC Improvements

Agenda Item#: 20.

Background:

RECOMMENDATION: Approve an Ordinance (i) awarding a construction contract to Star Service, Inc.; (ii) de-appropriating the sum of \$430,392.00 out of the Equipment Acquisition Consolidated Fund for the Task Order and Job Order (TOC/JOC) Contracting Program for FY20 (previously appropriated by Ordinance No. 2020-376); and (iii) appropriating those funds for the project.

SPECIFIC EXPLANATION: The General Services Department (GSD) recommends that City Council award a construction contract to Star Services, Inc. on the proposal amount of \$391,265.00 to provide HVAC improvements at the Kashmere Multi-Service Center, for the Houston Health Department.

On May 6, 2020, Ordinance No. 2020-376, City Council authorized the appropriation of \$1,880,000.00 out of the Equipment Acquisition Consolidated Fund for the TOC/JOC Contracting Program for FY20, for HVAC improvements for the Houston Health Department. GSD has determined that it is more cost-effective to engage a specialized HVAC contractor to perform the work. The requested action will de-appropriate \$430,392.00 out of the TOC/JOC Contracting Program for FY20, and appropriate an equivalent amount to the construction contract with Star Service, Inc. for the project.

PROJECT LOCATION: 4802 Lockwood Dr., Houston, TX 77026

PROJECT DESCRIPTION: The project consists of replacement and improvements to HVAC equipment and systems including but not limited to eleven rooftop units, exhaust fans, piping, control systems, and an addition of electrical transient voltage surge suppressors to existing electrical panels.

The contract duration for this project is 100 calendar days from the date of Notice to Proceed.

PROPOSALS: On January 24 and January 31, 2020, GSD advertised a Request for Competitive Sealed Proposals (CSP) for construction services for the Kashmere Multi-Service Center HVAC Improvements. The CSP contained selection criteria that ranked respondents on experience, key personnel, safety, and Hire Houston First. The Statements of Qualifications were due on April 9, 2020, and four firms responded. GSD formed a selection committee comprised of representatives from GSD and Houston Health Department to evaluate the respondents. All four firms received sufficient points and were requested to submit proposals. Three firms submitted proposals. Star Service, Inc. submitted the lowest proposal and offers the best value for the City based on the advertised criteria.

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FUNDING SUMMARY:

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\$ 430,392.00	Total Contract Services

M/WBE PARTICIPATION: An M/WBE goal was not established for this project because the construction cost did not exceed the threshold of \$1,000,000.00 required for a goal-oriented contract as authorized by Houston Code of Ordinances §15-82.

PAY OR PLAY PROGRAM: The proposed contract requires compliance with the City's 'Pay or Play' Ordinance regarding health benefits for employees of City contractors. In this case, the contractor agrees to "Play" and provide health benefits to eligible employees in compliance with City policy.

HIRE HOUSTON FIRST: The proposed contract requires compliance with the City's 'Hire Houston First' (HHF) Ordinance that promotes economic opportunity for Houston businesses and supports job creation. In this case, Star Service, Inc. is a designated HHF company, but they were the successful awardee without application of the HHF preference.

CIP FISCAL NOTE: No significant Fiscal Operating impact is anticipated as a result of this project.


-

Capital Project Information: See the attached Form A for a breakdown of capital costs.

WBS No: H-000063-0011-4

DIRECTOR'S SIGNATURE/DATE:

DocuSigned by:

 6/23/2020
C. J. Messiah, Jr.
General Services Department

Stephen L. Williams, M.Ed., MPA
Houston Health Department

Prior Council Action:

Ordinance No. 2020-376; Dated May 6, 2020

Amount of Funding:

De-appropriate/Appropriate:

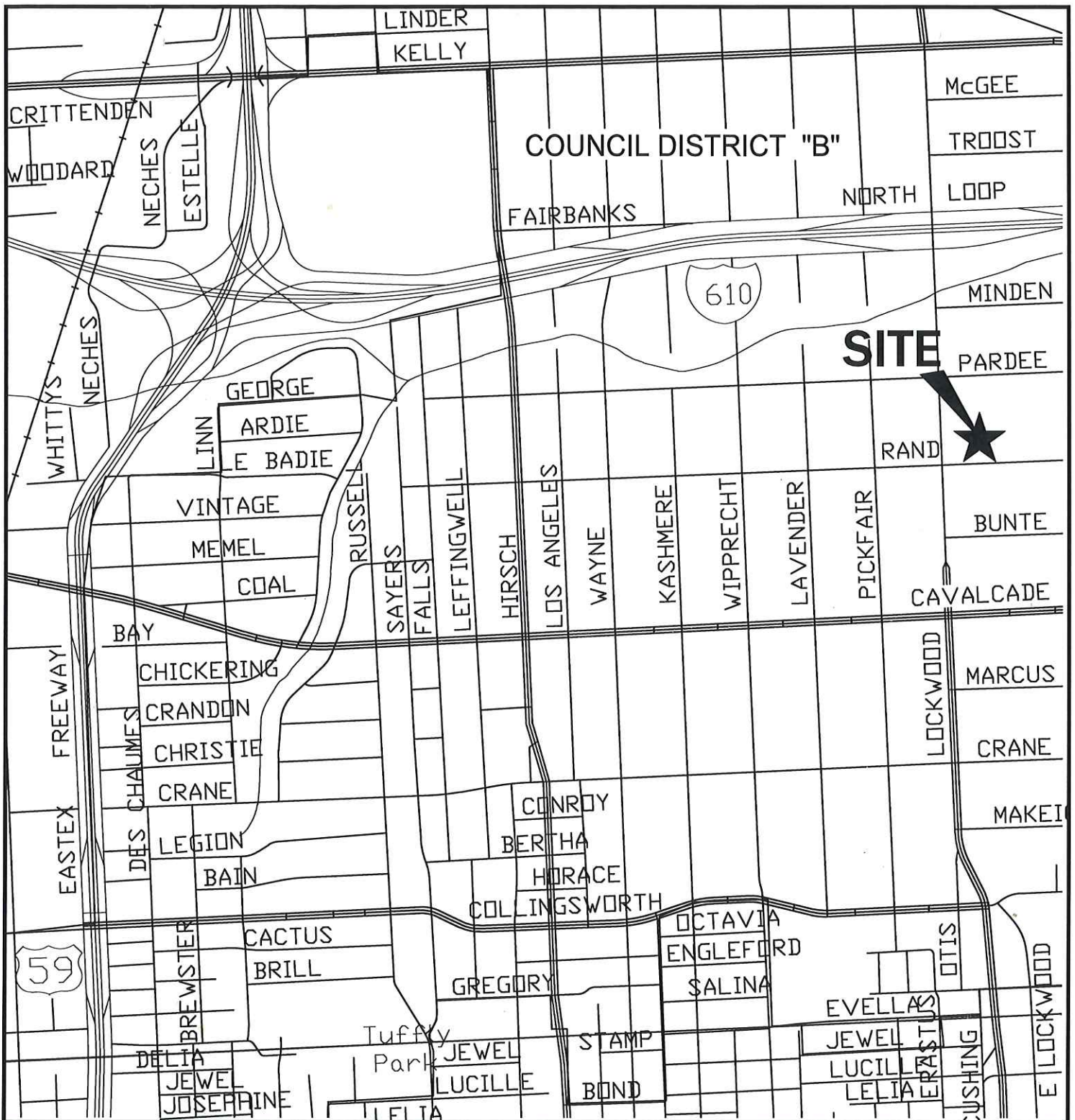
\$430,392.00 Equipment Acquisition Consolidated Fund (1800)

Contact Information:

Jacquelyn L. Nisby
Council Liaison

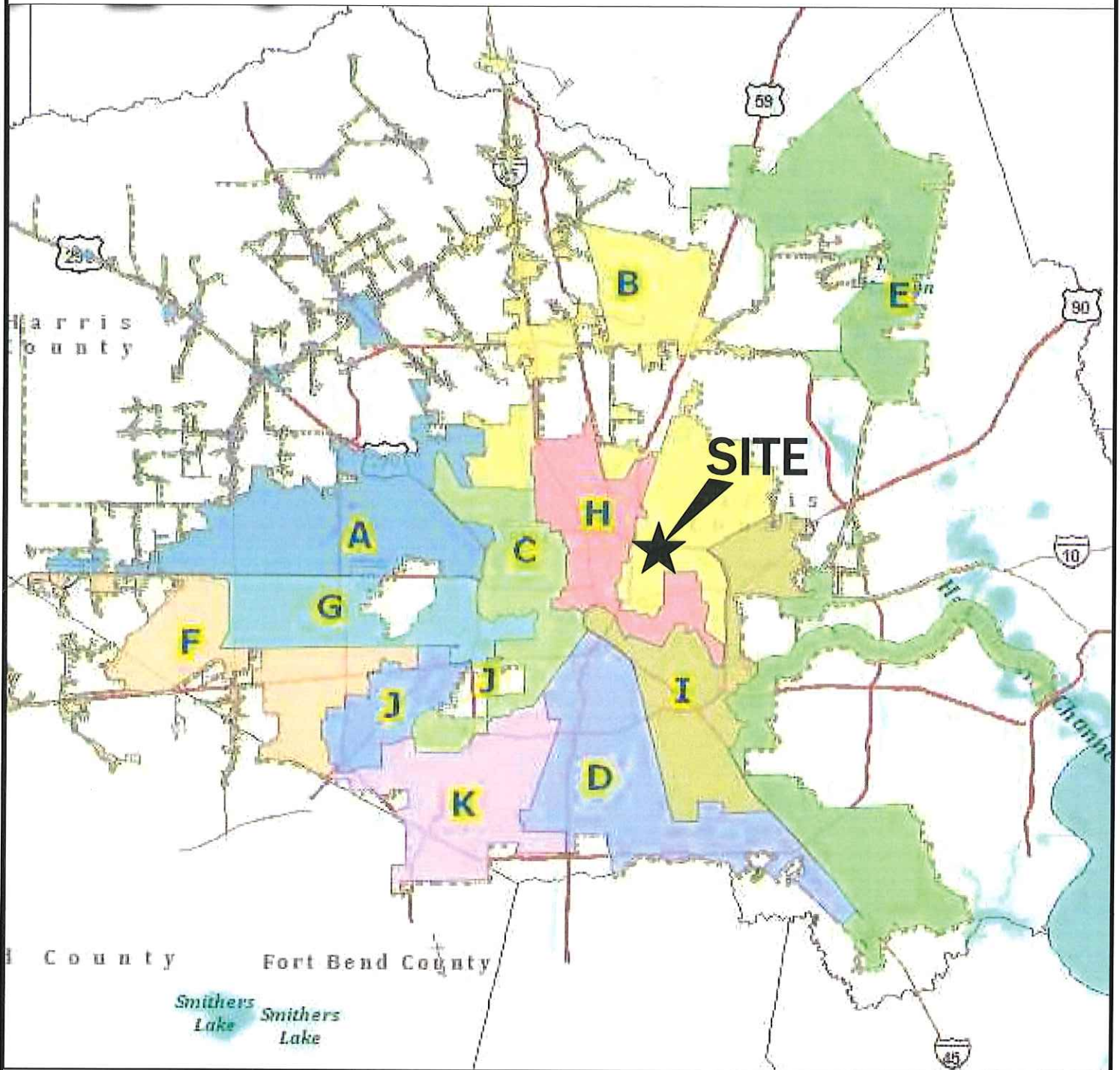
Phone: 832.393.8023

DS

KASHMERE NEIGHBORHOOD LIBRARY
4802 LOCKWOOD DR. HOUSTON, TX 77026

CITY OF HOUSTON
HARRIS COUNTY, TEXAS



KASHMERE NEIGHBORHOOD LIBRARY
4802 LOCKWOOD DR. HOUSTON, TX 77026

COUNCIL DISTRICT "B"

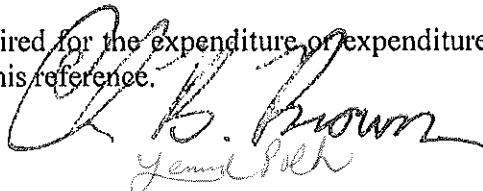
KEYMAP No. 454U

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.
- (x) 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 available


Gerald Polk

Date: 7-28, 2020

City Controller of the City of Houston, Texas

 1800-3800-520126-520755

FUND REF:


AMOUNT: 430,392.00

ENCUMB. NO.: 42-9522
35206

OK 0A 46-16186

FMS 3-27716

City of Houston, Texas Ordinance No. 2020-663

 AN ORDINANCE DE-APPROPRIATING THE SUM OF \$430,392.00 FROM THE EQUIPMENT ACQUISITION CONSOLIDATED FUND PREVIOUSLY APPROPRIATED FOR THE TASK ORDER AND JOB ORDER CONTRACTING PROGRAM FOR FY2020 (APPROVED BY ORDINANCE NO. 2020-376); APPROPRIATING THE SUM OF \$430,392.00 OUT OF THE EQUIPMENT ACQUISITION CONSOLIDATED FUND; AWARDED A CONTRACT TO STAR SERVICE, INC. FOR HVAC IMPROVEMENTS AT THE KASHMERE MULTI-SERVICE CENTER; SETTING A DEADLINE FOR THE BIDDER'S EXECUTION OF THE CONTRACT AND DELIVERY OF ALL BONDS, INSURANCE, AND OTHER REQUIRED CONTRACT DOCUMENTS TO THE CITY; HOLDING THE BIDDER IN DEFAULT IF IT FAILS TO MEET THE DEADLINES; PROVIDING FUNDING FOR CONTINGENCIES RELATING TO CONSTRUCTION OF FACILITIES FINANCED BY THE EQUIPMENT ACQUISITION CONSOLIDATED FUND; 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. The City council hereby de-appropriates the sum of money set out in the title of this Ordinance, out of the fund set out in such title.

Section 2. The City council appropriates the sum or sums of money set out in the title of this Ordinance, out of the respective fund or funds set out in such title as follows: The sum of **\$391,265.00** is appropriated for construction of the Project described in the title, the sum of **\$39,127.00** for contingency, relating to construction of facilities financed by the funds described in such title page.

Section 3. The City Council hereby finds and determines that the lowest responsible bid was submitted by the bidder named in the title hereof in the amount of **\$391,265.00** (which amount is only an estimate if unit prices are included in the bid proposal of said bidder). The Contract for said work is hereby awarded to said bidder. The bidder must execute the Contract and deliver to the City's Director of the General Services Department all required bonds, insurance certificates, MWBE information, and all other contract documents required to be provided in post bid procedures in a form acceptable to the City Attorney within 5 days of the date of passage of this Ordinance by City Council. If the bidder does so, the Mayor is hereby authorized to execute the Contract.

Section 4. If bidder fails to comply by the above deadline, it shall be in default. The Director shall give the bidder notice of default and recommend award of the Contract to the next lowest bidder. The City Attorney is authorized to declare forfeit the bid bond of the bidder.

Section 5. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertakings referenced in the title of this Ordinance, in the event of changed circumstances.

Section 6. 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 7. 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 29th day of July, 2020.

APPROVED this _____ day of _____, 20__.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.

Patricia Hanley
City Secretary

CRC [Signature]
Requested By: C.J. Messiah, Jr., Director, General Services Department
Contact: Greg Quintero (832) 393-8069

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

Date: 7-17-2020


Brenda Lewis
Legal Assistant

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: AUG - 4 2020

CERTIFICATE OF CITY CONTROLLER

I, Chris Brown, City Controller of the City of Houston, Texas, pursuant to Article II, Section 19a of the Charter of the City of Houston, with respect to the sum of \$430,392.00 required for the project referenced in the title of this ordinance, do hereby certify as follows:

To the extent that the \$430,392.00 will be paid by commercial paper proceeds, funds will be received into the treasury and available before the maturity of said obligation, and such anticipated funds have not already been appropriated for any other purpose. Such sum will be received as a cash draw(s) to the City of Houston pursuant to the General Obligation Commercial Paper Program, Series E, Ordinance No. 2002-1122.


City Controller *General Public*

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	



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

District H

Item Creation Date: 6/17/2020

25CONS433 – De-Appropriate/Appropriate Funds – Rincon
Air & Heat Company, LLC Denver Harbor Multi-Service
Center HVAC Improvements

Agenda Item#: 26.

Summary:

ORDINANCE de-appropriating \$872,080.00 from Equipment Acquisition Consolidated Fund previously appropriated for Task Order and Job Order Contracting Program for FY2020 (Approved by Ordinance No. 2020-376); appropriating \$872,080.00 out of Equipment Acquisition Consolidated Fund, awarding contract to **RINCON AIR & HEAT COMPANY, LLC** for HVAC Improvements at Denver Harbor Multi-Service Center; setting a deadline for the bidder's execution of the contract and delivery of all bonds, insurance, and other required contract documents to the City; holding the bidder in default if it fails to meet the deadlines; providing funding for contingencies relating to construction of facilities financed by the Equipment Acquisition Consolidated Fund - **DISTRICT H - CISNEROS**

Background:

RECOMMENDATION: Approve an Ordinance (i) awarding a construction contract to Rincon Air & Heat Company, LLC; (ii) de-appropriating the sum of \$872,080.00 out of the Equipment Acquisition Consolidated Fund for the Task Order and Job Order (TOC/JOC) Contracting Program for FY20 (previously appropriated by Ordinance No. 2020-376); and (iii) appropriating those funds for the project.

SPECIFIC EXPLANATION: The General Services Department (GSD) recommends that City Council award a construction contract to Rincon Air & Heat Company, LLC on the proposal amount of \$792,800.00 to provide HVAC improvements at the Denver Harbor Multi-Service Center, for the Houston Health Department.

On May 6, 2020, Ordinance No. 2020-376, City Council authorized the appropriation of \$1,880,000.00 out of the Equipment Acquisition Consolidated Fund for the TOC/JOC Contracting Program for FY20, for HVAC improvements for the Houston Health Department. GSD has determined that it is more cost-effective to engage a specialized HVAC contractor to perform the work. The requested action will de-appropriate \$872,080.00 out of the TOC/JOC Contracting Program for FY20, and appropriate an equivalent amount to the construction contract with Rincon Air & Heat Company, LLC for the project.

PROJECT LOCATION: 6402 Market St., Houston, TX 77020

PROJECT DESCRIPTION: The project consists of replacement, repairs, and improvements to

HVAC equipment and systems including two chillers, pumps, Air Handling Unit Variable Frequency Drives, fan powered terminal units, Variable Air Volume Units, piping, and control systems, and an addition of electrical transient voltage surge suppressors to existing electrical panels.

The contract duration for this project is 100 calendar days from the date of Notice to Proceed.

PROPOSALS: On January 24 and January 31, 2020, GSD advertised a Request for Competitive Sealed Proposals (CSP) for construction services for the Denver Harbor Multi-Service Center HVAC Improvements. The CSP contained selection criteria that ranked respondents on experience, key personnel, safety, and Hire Houston First. The Statements of Qualifications were due on April 16, 2020, and two firms responded. GSD formed a selection committee comprised of representatives from GSD and Houston Health Department to evaluate the respondents. Both firms received sufficient points and submitted proposals. Rincon Air & Heat Company, LLC submitted the lowest proposal and offers the best value for the City based on the advertised criteria.

The two proposers are ranked as follows:

PROPOSER:

1. **Rincon Air & Heat Company, LLC**
2. Star Service, Inc.

AWARD: It is recommended that City Council award the construction contract to Rincon Air & Heat Company, LLC and appropriate funds for the project.

FUNDING SUMMARY:

\$ 792,800.00	Construction Contract Services
<u>\$ 79,280.00</u>	10% Contingency
\$ 872,080.00	Total Contract Services

M/WBE PARTICIPATION: An M/WBE goal was not established for this project because the construction cost did not exceed the threshold of \$1,000,000.00 required for a goal-oriented contract as authorized by Houston Code of Ordinances §15-82.

PAY OR PLAY PROGRAM: The proposed contract requires compliance with the City's 'Pay or Play' Ordinance regarding health benefits for employees of City contractors. In this case, the contractor agrees to "Play" and provide health benefits to eligible employees in compliance with City policy.

HIRE HOUSTON FIRST: The proposed contract requires compliance with the City's 'Hire Houston First' (HHF) Ordinance that promotes economic opportunity for Houston businesses and supports job creation. In this case, Rincon Air & Heat Company, LLC is a designated HHF company, but they were the successful awardee without application of the HHF preference.

CIP FISCAL NOTE: No significant Fiscal Operating impact is anticipated as a result of this project.

-

Capital Project Information: See the attached Form A for a breakdown of capital costs.

WBS No: H-000063-0012-4

DIRECTOR'S SIGNATURE/DATE:

C. J. Messiah, Jr.
General Services Department

Stephen L. Williams, M.Ed., MPA
Houston Health Department

Prior Council Action:

Ordinance No. 2020-376; Dated May 6, 2020

Amount of Funding:

De-appropriate/Appropriate:

\$872,080.00 Equipment Acquisition Consolidated Fund (1800)

Contact Information:

Jacquelyn L. Nisby
Council Liaison
Phone: 832.393.8023

ATTACHMENTS:

Description

Signed Coversheet
25CONS433 - Maps
2020-664 Executed Ordinance

Type

Signed Cover sheet
Backup Material
Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/7/2020

District H

Item Creation Date: 6/17/2020

25CONS433 – De-Appropriate/Appropriate Funds – Rincon Air & Heat Company, LLC
Denver Harbor Multi-Service Center HVAC Improvements

Agenda Item#: 21.

Background:

RECOMMENDATION: Approve an Ordinance (i) awarding a construction contract to Rincon Air & Heat Company, LLC; (ii) de-appropriating the sum of \$872,080.00 out of the Equipment Acquisition Consolidated Fund for the Task Order and Job Order (TOC/JOC) Contracting Program for FY20 (previously appropriated by Ordinance No. 2020-376); and (iii) appropriating those funds for the project.

SPECIFIC EXPLANATION: The General Services Department (GSD) recommends that City Council award a construction contract to Rincon Air & Heat Company, LLC on the proposal amount of \$792,800.00 to provide HVAC improvements at the Denver Harbor Multi-Service Center, for the Houston Health Department.

On May 6, 2020, Ordinance No. 2020-376, City Council authorized the appropriation of \$1,880,000.00 out of the Equipment Acquisition Consolidated Fund for the TOC/JOC Contracting Program for FY20, for HVAC improvements for the Houston Health Department. GSD has determined that it is more cost-effective to engage a specialized HVAC contractor to perform the work. The requested action will de-appropriate \$872,080.00 out of the TOC/JOC Contracting Program for FY20, and appropriate an equivalent amount to the construction contract with Rincon Air & Heat Company, LLC for the project.

PROJECT LOCATION: 6402 Market St., Houston, TX 77020

PROJECT DESCRIPTION: The project consists of replacement, repairs, and improvements to HVAC equipment and systems including two chillers, pumps, Air Handling Unit Variable Frequency Drives, fan powered terminal units, Variable Air Volume Units, piping, and control systems, and an addition of electrical transient voltage surge suppressors to existing electrical panels.

The contract duration for this project is 100 calendar days from the date of Notice to Proceed.

PROPOSALS: On January 24 and January 31, 2020, GSD advertised a Request for Competitive Sealed Proposals (CSP) for construction services for the Denver Harbor Multi-Service Center HVAC Improvements. The CSP contained selection criteria that ranked respondents on experience, key personnel, safety, and Hire Houston First. The Statements of Qualifications were due on April 16, 2020, and two firms responded. GSD formed a selection committee comprised of representatives from GSD and Houston Health Department to evaluate the respondents. Both firms received sufficient points and submitted proposals. Rincon Air & Heat Company, LLC submitted the lowest proposal and offers the best value for the City based on the advertised criteria.

The two proposers are ranked as follows:

PROPOSER:

1. Rincon Air & Heat Company, LLC
2. Star Service, Inc.

AWARD: It is recommended that City Council award the construction contract to Rincon Air & Heat Company, LLC and appropriate funds for the project.

FUNDING SUMMARY:

\$ 792,800.00	Construction Contract Services
\$ 79,280.00	10% Contingency
\$ 872,080.00	Total Contract Services

M/WBE PARTICIPATION: An M/WBE goal was not established for this project because the construction cost did not exceed the threshold of \$1,000,000.00 required for a goal-oriented contract as authorized by Houston Code of Ordinances §15-82.

PAY OR PLAY PROGRAM: The proposed contract requires compliance with the City's 'Pay or Play' Ordinance regarding health benefits for employees of City contractors. In this case, the contractor agrees to "Play" and provide health benefits to eligible employees in compliance with City policy.

HIRE HOUSTON FIRST: The proposed contract requires compliance with the City's 'Hire Houston First' (HHF) Ordinance that promotes economic opportunity for Houston businesses and supports job creation. In this case, Rincon Air & Heat Company, LLC is a designated HHF company, but they were the successful awardee without application of the HHF preference.

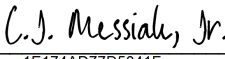
CIP FISCAL NOTE: No significant Fiscal Operating impact is anticipated as a result of this project.

Capital Project Information: See the attached Form A for a breakdown of capital costs.

WBS No: H-000063-0012-4

DIRECTOR'S SIGNATURE/DATE:

DocuSigned by:

 6/23/2020
C.J. Messiah, Jr.
General Services Department

Stephen L. Williams, M.Ed., MPA
Houston Health Department

Prior Council Action:

Ordinance No. 2020-376; Dated May 6, 2020

Amount of Funding:

De-appropriate/Appropriate:

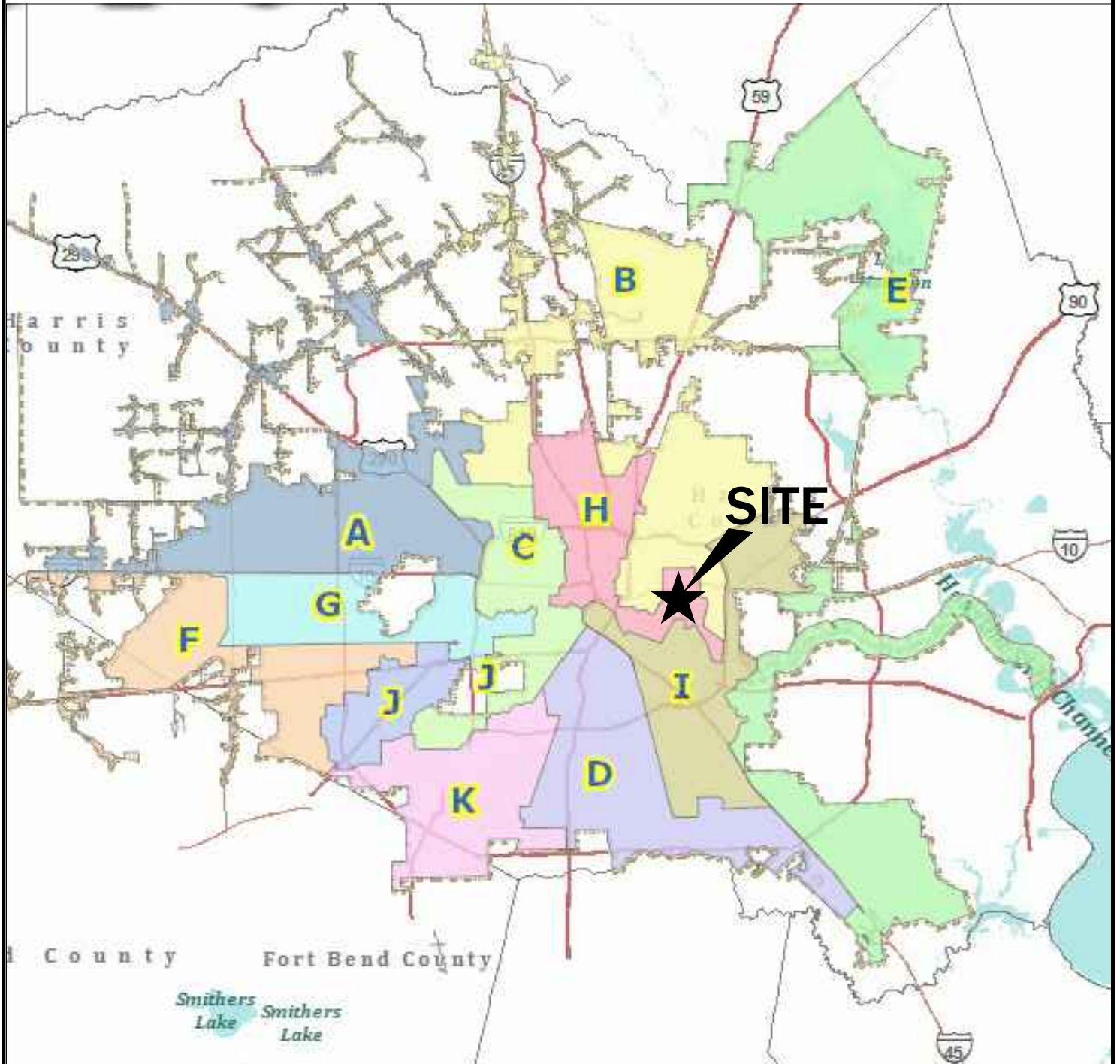
\$872,080.00 Equipment Acquisition Consolidated Fund (1800)

Contact Information:

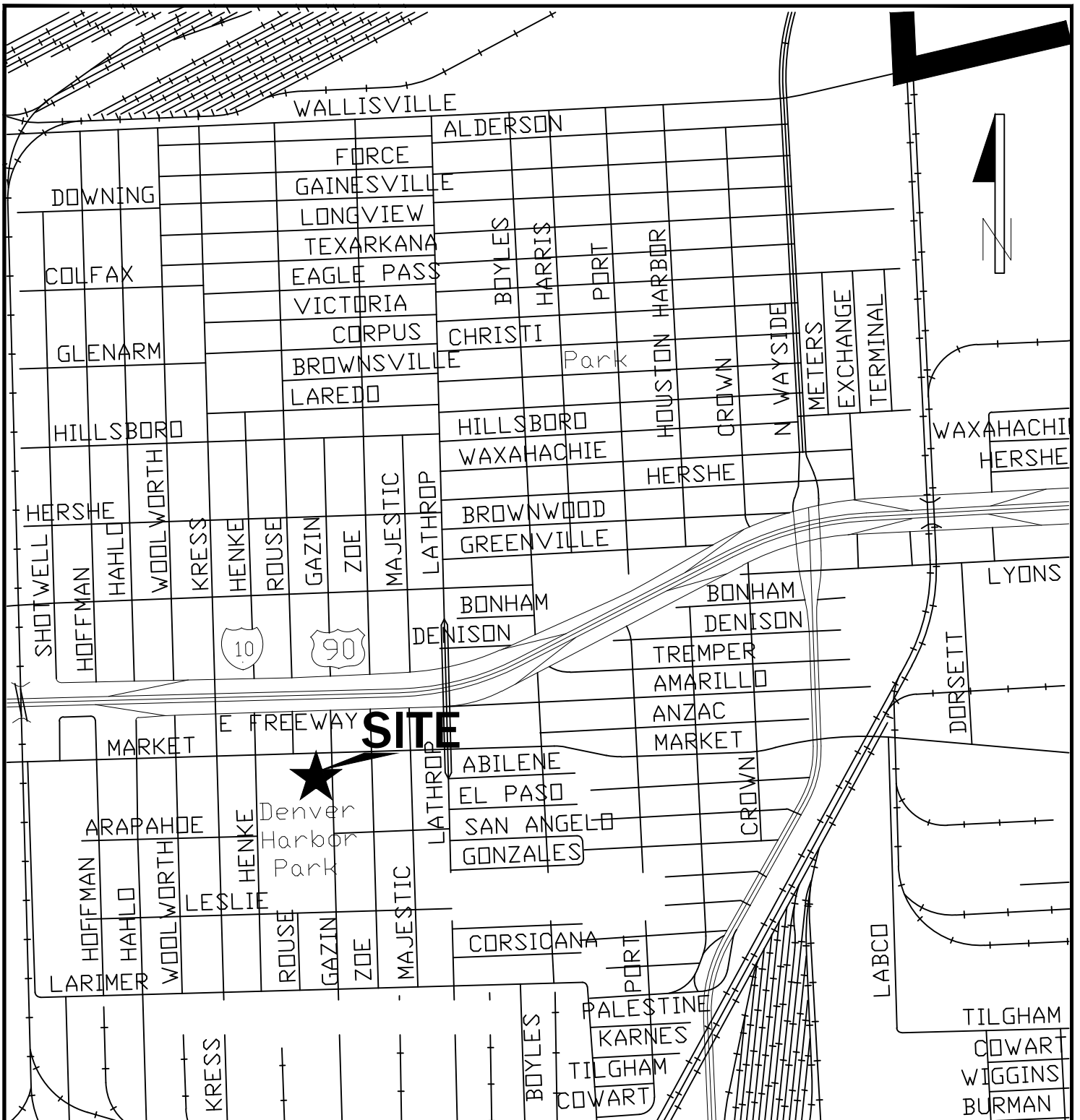
Jacquelyn L. Nisby
Council Liaison
Phone: 832.393.8023

DS


CITY OF HOUSTON
HARRIS COUNTY, TEXAS



**DENVER HARBOR MULTI-SERVICE CENTER HVAC IMPROVEMENTS
6402 MARKET ST. HOUSTON, TX 77020**



DENVER HARBOR MULTI-SERVICE CENTER HVAC IMPROVEMENTS **6402 MARKET ST. HOUSTON, TX 77020**

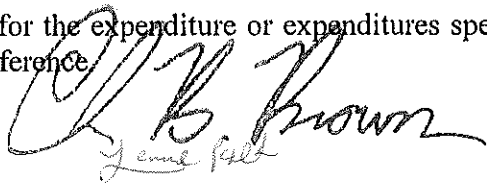
Controller's Office

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.
- (X) 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 available

Date: 7-29, 2020


City Controller of the City of Houston, Texas

SEC FUND REF: 1800-3800 530126 530755 AMOUNT: \$792,080.00 ENCUMB. NO.: FR 3.5205
OA 46.16185 872,080.00 PO 43.9531
FMBB 3.37963 City of Houston, Texas Ordinance No. 2020-664

 AN ORDINANCE DE-APPROPRIATING THE SUM OF \$872,080.00 FROM THE EQUIPMENT ACQUISITION CONSOLIDATED FUND PREVIOUSLY APPROPRIATED FOR THE TASK ORDER AND JOB ORDER CONTRACTING PROGRAM FOR FY2020 (APPROVED BY ORDINANCE NO. 2020-376); APPROPRIATING THE SUM OF \$872,080.00 OUT OF THE EQUIPMENT ACQUISITION CONSOLIDATED FUND, AWARDING A CONTRACT TO RINCON AIR & HEAT COMPANY, LLC FOR HVAC IMPROVEMENTS AT THE DENVER HARBOR MULTI-SERVICE CENTER; SETTING A DEADLINE FOR THE BIDDER'S EXECUTION OF THE CONTRACT AND DELIVERY OF ALL BONDS, INSURANCE, AND OTHER REQUIRED CONTRACT DOCUMENTS TO THE CITY; HOLDING THE BIDDER IN DEFAULT IF IT FAILS TO MEET THE DEADLINES; PROVIDING FUNDING FOR CONTINGENCIES RELATING TO CONSTRUCTION OF FACILITIES FINANCED BY THE EQUIPMENT ACQUISITION CONSOLIDATED FUND; 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. The City council hereby de-appropriates the sum of money set out in the title of this Ordinance, out of the fund set out in such title.

Section 2. The City council appropriates the sum or sums of money set out in the title of this Ordinance, out of the respective fund or funds set out in such title as follows: The sum of **\$792,800.00** is appropriated for construction of the Project described in the title, the sum of **\$79,280.00** for contingency, relating to construction of facilities financed by the funds described in such title page.

Section 3. The City Council hereby finds and determines that the lowest responsible bid was submitted by the bidder named in the title hereof in the amount of **\$792,800.00** (which amount is only an estimate if unit prices are included in the bid proposal of said bidder). The Contract for said work is hereby awarded to said bidder. The bidder must execute the Contract and deliver to the City's Director of the General Services Department all required bonds, insurance certificates, MWBE information, and all other contract documents required to be provided in post bid procedures in a form acceptable to the City Attorney within 5 days of the date of passage of this Ordinance by City Council. If the bidder does so, the Mayor is hereby authorized to execute the Contract.

Section 4. If bidder fails to comply by the above deadline, it shall be in default. The Director shall give the bidder notice of default and recommend award of the Contract to the next lowest bidder. The City Attorney is authorized to declare forfeit the bid bond of the bidder.

Section 5. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertakings referenced in the title of this Ordinance, in the event of changed circumstances.

Section 6. 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 7. 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 29th day of July, 2020
APPROVED this _____ day of _____, 20__.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the
foregoing Ordinance is AUG - 4 2020.

Art J. Hunsel
City Secretary

OK
CRC: _____
Requested By: C.J. Messiah, Jr., Director, General Services Department
Contact: Greg Quintero (832) 393-8069

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

Date: 7.20.2020
Rebecca Antonio Ruiz
Legal Assistant

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: AUG - 4 2020

CERTIFICATE OF CITY CONTROLLER

I, Chris Brown, City Controller of the City of Houston, Texas, pursuant to Article II, Section 19a of the Charter of the City of Houston, with respect to the sum of \$872,080.00 required for the project referenced in the title of this ordinance, do hereby certify as follows:

To the extent that the \$872,080.00 will be paid by commercial paper proceeds, funds will be received into the treasury and available before the maturity of said obligation, and such anticipated funds have not already been appropriated for any other purpose. Such sum will be received as a cash draw(s) to the City of Houston pursuant to the General Obligation Commercial Paper Program, Series E, Ordinance No. 2002-1122.

A handwritten signature in cursive script, appearing to read "Chris Brown", written over a horizontal line.

City Controller *Gene Path*

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	



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

District J

Item Creation Date: 6/17/2020

25CONS437–Award Construction Contract – ERC
Environmental & Construction Services, Inc. Midwest Police
Station Restoration - Hurricane Harvey

Agenda Item#: 27.

Summary:

ORDINANCE appropriating \$71,949.59 out of Miscellaneous Capital Projects/Acquisitions CP Series E, awarding contract to **ERC ENVIRONMENTAL & CONSTRUCTION SERVICES, INC** for Midwest Police Station Restoration Hurricane Harvey Project; setting a deadline for the bidder's execution of the contract and delivery of all bonds, insurance, and other required contract documents to the City; holding the bidder in default if it fails to meet the deadlines; providing funding for contingencies financed by the Miscellaneous Capital Projects/Acquisitions CP Series E - **DISTRICT J - POLLARD**

Background:

RECOMMENDATION: Award construction contract and appropriate funds for the project.

SPECIFIC EXPLANATION: On August 26, 2017, Hurricane Harvey flooded the Midwest Police Station, causing extensive water damage. This project will restore the facility. Therefore, the General Services Department recommends that City Council award a construction contract to ERC Environmental & Construction Services, Inc. on its low bid amount of \$65,408.72 to provide construction services for the Midwest Police Station Restoration Hurricane Harvey, for the Houston Police Department.

PROJECT DESCRIPTION: The project will replace missing and damaged ceiling tiles, gypsum board; vinyl baseboards and flooring; repair and paint damaged wall partitions; professionally clean carpet; remove and replace interior window seal components.

PROJECT LOCATION: 7277 Regency Square Blvd, Houston, TX 77036

The contract duration for this project is 75 calendar days.

BIDS: The following six bids were received on May 7, 2020:

<u>Bidder</u>	<u>Bid Amount</u>
1. ERC Environmental & Construction Services, Inc.	\$ 65,408.72
2. FMG Construction, LLC	\$ 92,000.00
3. W&R Construction Company, LLC	\$165,500.00

4. FDI Construction, LLC	\$168,570.00
5. Prestige Building Group, LLC	\$169,000.00
6. Dunhill Development and Construction, LLC	\$190,000.00

AWARD: It is recommended that City Council award the construction contract to ERC Environmental & Construction Services, Inc., and appropriate funds for the project.

FUNDING SUMMARY:

\$ 65,408.72	Construction Contract Services
\$ <u>6,540.87</u>	10% Contingency
\$ 71,949.59	Total Contract Services

M/WBE PARTICIPATION: An M/W/BE goal was not established for this project because the construction cost did not exceed the threshold of \$1M required for a goal-oriented contract as authorized by Houston Code of Ordinances §15-82.

DISASTER RECOVERY NOTE: This item is related to the impact of Hurricane Harvey DR4332, and it is the City's intent to seek reimbursement from the Federal Emergency Management Agency ("FEMA") and other eligible sources for such expenditures.

CIP FISCAL NOTE: No significant Fiscal Operating impact is anticipated as a result of this project.

Capital Project Information: See attached Form A for a breakdown of capital costs.

WBS No: G-HARVEY-1083-4-01-1E

DIRECTOR'S SIGNATURE/DATE:

C. J. Messiah, Jr.
General Services Department

Art Acevedo
Chief of Police
Houston Police Department

Amount of Funding:

\$71,949.59
Miscellaneous Capital Projects/Acquisitions CP Series E
Fund 4039

Contact Information:

Jacquelyn L. Nisby

Council Liaison

Phone: 832.393.8023

ATTACHMENTS:**Description**

Signed Coversheet

2020-673 Executed Ordinance

Type

Signed Cover sheet

Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/14/2020

District J

Item Creation Date: 6/17/2020

25CONS437–Award Construction Contract – ERC Environmental & Construction Services,
Inc. Midwest Police Station Restoration - Hurricane Harvey

Agenda Item#: 11.

Background:

RECOMMENDATION: Award construction contract and appropriate funds for the project.

SPECIFIC EXPLANATION: On August 26, 2017, Hurricane Harvey flooded the Midwest Police Station, causing extensive water damage. This project will restore the facility. Therefore, the General Services Department recommends that City Council award a construction contract to ERC Environmental & Construction Services, Inc. on its low bid amount of \$65,408.72 to provide construction services for the Midwest Police Station Restoration Hurricane Harvey, for the Houston Police Department.

PROJECT DESCRIPTION: The project will replace missing and damaged ceiling tiles, gypsum board; vinyl baseboards and flooring; repair and paint damaged wall partitions; professionally clean carpet; remove and replace interior window seal components.

PROJECT LOCATION: 7277 Regency Square Blvd, Houston, TX 77036

The contract duration for this project is 75 calendar days.

BIDS: The following six bids were received on May 7, 2020:

<u>Bidder</u>	<u>Bid Amount</u>
1. ERC Environmental & Construction Services, Inc.	\$ 65,408.72
2. FMG Construction, LLC	\$ 92,000.00
3. W&R Construction Company, LLC	\$165,500.00
4. FDI Construction, LLC	\$168,570.00
5. Prestige Building Group, LLC	\$169,000.00
6. Dunhill Development and Construction, LLC	\$190,000.00

AWARD: It is recommended that City Council award the construction contract to ERC Environmental & Construction Services, Inc., and appropriate funds for the project.

FUNDING SUMMARY:

\$ 65,408.72	Construction Contract Services
\$ 6,540.87	10% Contingency
\$ 71,949.59	Total Contract Services

M/WBE PARTICIPATION: An M/W/BE goal was not established for this project because the construction cost did not exceed the threshold of \$1M required for a goal-oriented contract as authorized by Houston Code of Ordinances §15-82.

DISASTER RECOVERY NOTE: This item is related to the impact of Hurricane Harvey DR4332, and it is the City's intent to seek reimbursement from the Federal Emergency Management Agency ("FEMA") and other eligible sources for such expenditures.

CIP FISCAL NOTE: No significant Fiscal Operating impact is anticipated as a result of this project.

Capital Project Information: See attached Form A for a breakdown of capital costs.

WBS No: G-HARVEY-1083-4-01-1E

DIRECTOR'S SIGNATURE/DATE:

DocuSigned by:

C.J. Messiah, Jr. 6/22/2020

1E174AD77D5841F...
C. J. Messiah, Jr.
General Services Department

Art Acevedo
Chief of Police
Houston Police Department

Amount of Funding:

\$71,949.59 Miscellaneous Capital Projects/Acquisitions CP Series E (4039)

Contact Information:

Jacquelyn L. Nisby
Council Liaison
Phone: 832.393.8023

DS
JLN

ATTACHMENTS:

Description

[Ordinance](#)

[Form 1295](#)

[Tax Delinquent Report](#)

[Maps](#)

Type

Ordinance/Resolution/Motion

Backup Material

Backup Material

Backup Material

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.
- (x) 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 available

Cliff Brown
General Polk

Date: 7-28, 2020 City Controller of the City of Houston, Texas

FUND REF: 4089-1000 530126 530755 AMOUNT: \$71,949.00 ENCUMB. NO.: FR 3-5198
PMBB 3-27691 DO 48-9511
OA 46-16167

City of Houston, Texas Ordinance No. 2020-673

AN ORDINANCE APPROPRIATING THE SUM OF \$71,949.59 OUT OF THE MISCELLANEOUS CAPITAL PROJECTS/ACQUISITIONS CP SERIES E, AWARDING A CONTRACT TO ERC ENVIRONMENTAL & CONSTRUCTION SERVICES, INC. FOR MIDWEST POLICE STATION RESTORATION HURRICANE HARVEY PROJECT; SETTING A DEADLINE FOR THE BIDDER'S EXECUTION OF THE CONTRACT AND DELIVERY OF ALL BONDS, INSURANCE, AND OTHER REQUIRED CONTRACT DOCUMENTS TO THE CITY; HOLDING THE BIDDER IN DEFAULT IF IT FAILS TO MEET THE DEADLINES; PROVIDING FUNDING FOR CONTINGENCIES FINANCED BY THE MISCELLANEOUS CAPITAL PROJECTS/ACQUISITIONS CP SERIES E; 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. The City council appropriates the sum or sums of money set out in the title of this Ordinance, out of the respective fund or funds set out in such title as follows: The sum of **\$65,408.72** is appropriated for construction of the Project described in the title, the sum of **\$6,540.87** for contingency, relating to construction of facilities financed by the funds described in such title page.

Section 2. The City Council hereby finds and determines that the lowest responsible bid was submitted by the bidder named in the title hereof in the amount of **\$65,408.72** (which amount is only an estimate if unit prices are included in the bid proposal of said bidder). The Contract for said work is hereby awarded to said bidder. The bidder must execute the Contract and deliver to the City's Director of the General Services Department all required bonds, insurance certificates, MWBE information, and all other contract documents required to be provided in post bid procedures in a form acceptable to the City Attorney within 5 days of the date of passage of this Ordinance by City Council. If the bidder does so, the Mayor is hereby authorized to execute the Contract.

Section 3. If bidder fails to comply by the above deadline, it shall be in default. The Director shall give the bidder notice of default and recommend award of the Contract to the next lowest bidder. The City Attorney is authorized to declare forfeit the bid bond of the bidder.

Section 4. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertakings referenced in the title of this Ordinance, in the event of changed circumstances.

Section 5. 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 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 29th day of July, 2020

APPROVED this _____ day of _____, 20__.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.

Est J. Manuel
City Secretary

CRC: CWC
Requested By: C.J. Messiah, Jr., Director, General Services Department
Contact: Leonard Jordan (832) 393-8201

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

Date: 7.20.2020

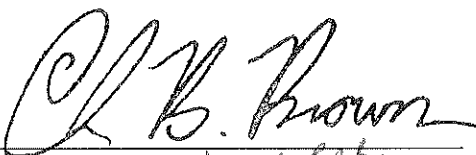
Yedoe Antonio Roiz
Legal Assistant

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: AUG - 4 2020

CERTIFICATE OF CITY CONTROLLER

I, Chris Brown, City Controller of the City of Houston, Texas, pursuant to Article II, Section 19a of the Charter of the City of Houston, with respect to the sum of \$71,949.59 required for the project referenced in the title of this ordinance, do hereby certify as follows:

To the extent that the \$71,949.59 will be paid by commercial paper proceeds, funds will be received into the treasury and available before the maturity of said obligation, and such anticipated funds have not already been appropriated for any other purpose. Such sum will be received as a cash draw(s) to the City of Houston pursuant to the General Obligation Commercial Paper Program, Series E, Ordinance No. 2002-1122.


City Controller *Jennal Beth*

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	



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ETJ

Item Creation Date:

PLN - Petition for the Consent to Creation of Sun Lake
Improvement District

Agenda Item#: 28.

Summary:

ORDINANCE consenting to the creation of **SUN LAKE IMPROVEMENT DISTRICT** within the extraterritorial jurisdiction of the City of Houston, Texas, and the inclusion of 139.104 acres of land into the district

Background:

Management districts are special districts created by the Texas Legislature. Generally, these districts are empowered to promote, develop, encourage and maintain employment, commerce, transportation, water and sewerage improvements, housing, tourism, recreation, arts, entertainment, economic development, safety and public welfare. Typically, management districts are given the power to finance their operations by issuing bonds or other obligations, payable in whole or in part as valorem taxes, assessments, impact fees or other funds of the district to provide improvements and services.

Sun Lake Improvement District (ID) has submitted a petition to the City for the consent to the creation of the 139.104-acre improvement district. Upon city consent, a petition for the creation of Sun Lake ID will be presented to the Texas Commission on Environmental Quality (TCEQ). This district will provide water supply, sewer services, drainage, road facilities, landscaping & pedestrian ways and any additional recreational development that may be needed for its overall well-being. They have formally requested the City to adopt an ordinance for the creation of the district.

The improvement district is to the east of the intersection of Morton Road and Westgreen Boulevard in the ETJ of Houston. The council district closest to the management district is District A. The proposal for the development is a mix of 33 acres of single-family units, 25 acres of multi-family units, 16 acres of condominiums, 16.2 acres of commercial and 7.9 acres of assisted living. The rest of the land will be a detention basin. According to Houston Public Works, the City will not be able to provide any water or wastewater services to the area proposed for creation.

A management district is intended to supplement, not supplant, existing public services. The creation of this district or the addition of land has not released the City of Houston from its obligations to provide services to the area, nor does it require additional services from the City. The City assumes no liability for the debts, obligations or liabilities of the district.

The Planning and Development Department recommends that City Council consent to the creation

of Sun Lake Improvement District.

Margaret Wallace Brown
Director
Planning and Development Department

Prior Council Action:

N.A.

Contact Information:

Rupesh Koshy
832-393-6552

ATTACHMENTS:

Description

RCA
2020-674 Executed Ordinance

Type

Signed Cover sheet
Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 5/19/2020

ETJ

Item Creation Date:

PLN - Petition for the Consent to Creation of Sun Lake Improvement District

Agenda Item#: 5.

Background:

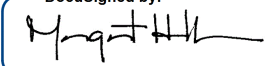
Management districts are special districts created by the Texas Legislature. Generally, these districts are empowered to promote, develop, encourage and maintain employment, commerce, transportation, water and sewerage improvements, housing, tourism, recreation, arts, entertainment, economic development, safety and public welfare. Typically, management districts are given the power to finance their operations by issuing bonds or other obligations, payable in whole or in part as valorem taxes, assessments, impact fees or other funds of the district to provide improvements and services.

Sun Lake Improvement District (ID) has submitted a petition to the City for the consent to the creation of the 139.104-acre improvement district. Upon city consent, a petition for the creation of Sun Lake ID will be presented to the Texas Commission on Environmental Quality (TCEQ). This district will provide water supply, sewer services, drainage, road facilities, landscaping & pedestrian ways and any additional recreational development that may be needed for its overall well-being. They have formally requested the City to adopt an ordinance for the creation of the district.

The improvement district is to the east of the intersection of Morton Road and Westgreen Boulevard in the ETJ of Houston. The council district closest to the management district is District A. The proposal for the development is a mix of 33 acres of single-family units, 25 acres of multi-family units, 16 acres of condominiums, 16.2 acres of commercial and 7.9 acres of assisted living. The rest of the land will be a detention basin. According to Houston Public Works, the City will not be able to provide any water or wastewater services to the area proposed for creation.

A management district is intended to supplement, not supplant, existing public services. The creation of this district or the addition of land has not released the City of Houston from its obligations to provide services to the area, nor does it require additional services from the City. The City assumes no liability for the debts, obligations or liabilities of the district.

The Planning and Development Department recommends that City Council consent to the creation of Sun Lake Improvement District.

Designed by:


2A61A07011A5494

Margaret Wallace Brown

Director

Planning and Development Department

Prior Council Action:

N.A.

Contact Information:

Rupesh Koshy

832-393-6552

ATTACHMENTS:

Description	Type
Petition for Creation	Backup Material
Map Identifying Parcels	Backup Material
Metes and Bounds Description	Backup Material
Certificate of Authority	Backup Material
Certificate of Consent Lienholder	Backup Material
Vicinity Map	Backup Material
Drainage and Flood Mitigation Memo	Backup Material
Flood Plain Map	Backup Material
Consent Conditions	Backup Material

City of Houston, Texas, Ordinance No. 2020 - 674

AN ORDINANCE CONSENTING TO THE CREATION OF SUN LAKE IMPROVEMENT DISTRICT WITHIN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF HOUSTON, TEXAS, AND THE INCLUSION OF 139.104 ACRES OF LAND INTO THE DISTRICT; MAKING FINDINGS AND CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, Sun Lake Improvement District (the "District"), was created and organized under the terms and provisions of Chapter 375, Local Government Code; Article III, Sections 52 and 52-a and Article XVI, Section 59 of the Texas Constitution; and

WHEREAS, Morton Lake Investments, LP, a Texas Limited Partnership, and Westgreen Venture, LP, a Texas limited Partnership, have petitioned the City of Houston, Texas ("City") to consent to the creation of the District and to include 139.104 acres of land into the District; **NOW, THEREFORE**,

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

Section 1. That the findings and recitals contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. That attached to this ordinance and made a part hereof is a petition ("Petition") requesting for the consent of the City to the creation of the District and the inclusion of 139.104 acres of land, consisting of five tracts, described in Exhibit A to the Petition and within the corporate limits of the City, into the District. The Petition is hereby granted, subject to the terms and conditions set forth in Exhibit B to the Petition.

Section 3. That a public emergency exists requiring that this ordinance be passed

finally on the date of its introduction as requested in writing by the Mayor; therefore, this ordinance shall take effect immediately upon its passage and approval by the Mayor; provided, however, that if 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 29th day of July, 2020.
APPROVED this _____ day of _____, 2020.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.


City Secretary

Prepared by Legal Department.

AH/sec 5/5/20

Requested by Margaret Wallace Brown, Director, Planning and Development Department

L.D. File No. 0612000114001


Senior Assistant City Attorney

z:\realestate\AH\Mud\Sun Lake Improvement District\Creation Ordinance_139.104a\lord.doc

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: AUG - 4 2020

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	

PETITION TO CREATE AN IMPROVEMENT DISTRICT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF HOUSTON:

The undersigned, hereinafter called "Petitioner," being the holder of title to a majority in value of the lands hereinafter described, as such values are indicated by the tax rolls of Harris County, Texas, acting pursuant to the provisions of Chapter 375, Local Government Code; Article III, Sections 52 and 52-a and Article XVI, Section 59 of the Texas Constitution, as amended, respectfully petitions for the creation of an improvement district, hereinafter called "District." In support of this petition for consent to include said lands within the District, Petitioner shows as follows:

I.

The name of the District will be Sun Lake Improvement District.

II.

The area of the land to be included in the District contains approximately 139.104 acres, more or less, and lies wholly within Harris County, Texas. All of said area is within the extraterritorial jurisdiction of the City of Houston and is not within the corporate limits or extraterritorial jurisdiction of any other city. Petitioner hereby certifies that the Petitioner holds fee simple to and full ownership of all the land described in Exhibit "A" attached hereto and incorporated herein for all purposes, as indicated by the tax rolls of Harris County, Texas. The lienholder on said land are Next Level Capital Group, LLC, NLCC Private Lending Fund, LLC, Alpha Invesco Corporation Profit Sharing Plan, NCC Financial, LLC, ETH of Texas, LP, and Beazer Homes Texas LP.

The land sought to be included within the area of the District, is described by metes and bounds in Exhibit "A."

III.

The District will be created and organized under the terms and provisions of Chapter 375, Local Government Code; Article III, Sections 52 and 52-a and Article XVI, Section 59 of the Texas Constitution, as amended. The creation of the district is in the public interest and is essential to further the public purpose of:

- (1) Development and diversifying the economy of the state;
- (2) Eliminating unemployment and underemployment; and
- (3) Developing or expanding transportation and commerce.

The District will:

- (1) Promote health, safety and general welfare of residents, employers, potential employees, employees, visitors, and consumers of the district, and of the public;
- (2) Provide needed funding for the district to preserve, maintain, and enhance the economic health and vitality of the district territory as a community and business center;
- (3) Promote the health, safety, welfare, enjoyment of the public by providing pedestrian ways and by landscaping and developing certain areas in the district, which are necessary for the restoration, preservation, and enhancement of the scenic beauty. [Pedestrian ways along or across a street, whether at grade or above or below the surface, and street lighting, street landscaping, parking, and street art objects are parts of and necessary components of a street and are considered to be a street or road improvement]; and
- (4) Provide for water, wastewater, drainage, road, and recreational facilities for the district.

IV.

There is a necessity for the improvements above described for the following reasons: The area of the District is urban in nature, is within the growing environs of the City of Houston, and is in close proximity to populous and developed sections of Harris County. The District's area will, within the immediate future, experience a substantial and sustained residential and commercial growth. Said area is not supplied with adequate water and sanitary sewer facilities and services or with adequate drainage facilities. The health and welfare of the future inhabitants of the area and of territories adjacent thereto require the installation and acquisition of an adequate water supply and sewage disposal system and an adequate drainage system for and within the area of the District.

A public necessity exists for the organization of such District to provide for the purchase, construction, extension, improvement, maintenance and operation of such waterworks and sanitary sewer system and such drainage facilities, in order to promote and protect the purity and sanitary condition of the State's waters and the public health and welfare of the community.

V.

Petitioner requests consent for the creation of an improvement district under the conditions set forth in Exhibit "B," attached hereto and incorporated herein for all purposes, and Petitioner covenants and agrees to abide by said conditions.

VI.

It is now estimated by those filing this petition, from such information as they have at this time, that the ultimate cost of the development contemplated will be approximately \$550,000,000.

WHEREFORE, Petitioner respectfully prays that this petition be granted in all respects and that the City of Houston give its written consent to the creation of the aforesaid land in said District.

(EXECUTION PAGE FOLLOWS)

EXECUTED this 24TH day of FEBRUARY, 2020.

"PETITIONER"

Morton Lake Investments, LP,
A Texas limited partnership

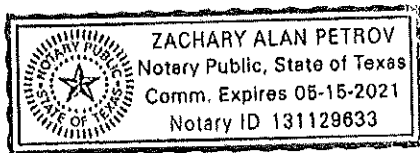
By: Morton Lake Company, Inc.,
Its Sole General Partner

By: A. Amcharla
Amar Amcharla, President

STATE OF Texas §

COUNTY OF Harris §

Before me on this day, personally appeared Amar Amcharla, President, who proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the instrument was the act of MORTON LAKE INVESTMENTS, L.P., and Morton Lake Company, Inc., its Sole General Partner, and that he executed the instrument as the act of said limited partnership for the purposes and consideration expressed therein, by proper authority, and in the capacity stated in the instrument.



[Signature]
Notary Public in and for the State of Texas

EXECUTED this 24th day of FEBRUARY, 2020.

"PETITIONER"

Westgreen Venture, LP,
A Texas limited partnership

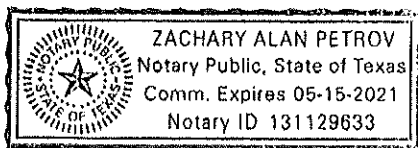
By: Morton Lake Company, Inc.,
Its Sole General Partner

By: A. A. Mancharla
Amar Amancharla, President

STATE OF Texas §

COUNTY OF Harris §

Before me on this day, personally appeared Amar Amancharla, President, who proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the instrument was the act of WESTGREEN VENTURE, L.P., and Morton Lake Company, Inc., its Sole General Partner, and that he executed the instrument as the act of said limited partnership for the purposes and consideration expressed therein, by proper authority, and in the capacity stated in the instrument.



[Signature]
Notary Public in and for the State of Texas

**DESCRIPTION OF AN 6.895-ACRE
(300,331 SQ. FT.) TRACT OF LAND
SITUATED IN THE H. & T.C.R.R.
SURVEY, A-987, HARRIS COUNTY, TEXAS**

Being a 6.895-acre (300,331 square foot) tract of land situated in the H. & T.C.R.R. Survey, A-987, Harris County, Texas. Said 6.895-acre tract being a portion of a called 148.3716-acre tract of land conveyed to Westgreen Point Venture, L.P. as recorded under Harris County Clerk's File Number X500195, Film Code Number 583-72-1892 of the Official Public Records of Real Property, Harris County, Texas, being more particularly described by metes and bounds as follows with the basis of bearings being the north line of said 148.3716-acre tract of land:

COMMENCING at a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set in the east right-of-way line of Westgreen Boulevard (based on a width of 50 feet as recorded under Harris County Clerk's File Number T840078, Film Code Number 526-78-3531 of the Official Public Records of Real Property, Harris County, Texas, for the southwest corner of the residue of a called 87.4332-acre tract of land conveyed to CET Limited as recorded under Harris County Clerk's File Number U840350, Film Code Number 536-88-2944 of the Official Public Records of Real Property, Harris County, Texas and for the northwest corner of said 148.3716-acre tract;

THENCE South 00° 00' 37" East, with the east right-of-way line of said Westgreen Boulevard and with the west line of said 148.3716-acre tract, a distance of 1118.80 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set for the northwest corner and **POINT OF BEGINNING** of said tract herein described;

THENCE North 89° 59' 06" East, over and across said 148.3716-acre tract and with the north line of said tract herein described, a distance of 470.00 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set for the northeast corner of said tract herein described;

THENCE South 00° 00' 37" East, over and across said 148.3716-acre tract and with an east line of said tract herein described, a distance of 675.30 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set in the north right-of-way line of Morton Road (right-of-way varies) by deeds recorded under Harris County Clerk's File No. 20090402464, Film Code No. 067-36-1837 and Harris County Clerk's File No. 20100103015, Film Code No. 070-87-2260 of the Official Public Records of Real Property Harris County, Texas, for southeast corner of said tract herein described;

THENCE with the north right-of-way line of said Morton Road, along said curve to the left, an arc length of 371.51 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set for the point of tangency, said curve to the left having a radius of 2075.00 feet, a central angle of 10° 15' 30", a chord bearing of North 83° 58' 39" West and a chord length of 371.01 feet.

THENCE North 44° 51' 00" West, with the northeast right-of-way line of said Morton Road and with a south line of said tract herein described, a distance of 72.38 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set for an interior corner of said tract herein described;

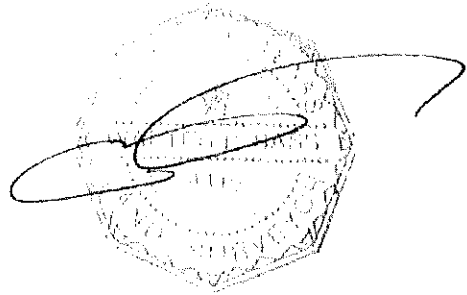
THENCE South 89° 48' 06" West, with the north right-of-way line of said Morton Road and with a south line of said tract herein described, a distance of 50.00 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set in the intersection corner of the east right-of-way line of said Westgreen Boulevard and the north right-of-way line of said Morton Road, for the southwest corner of said tract herein described;

THENCE North 00° 00' 37" West, with the east right-of-way line of said Westgreen Boulevard and with the west line of said tract herein described, a distance of 585.14 feet to the **POINT OF BEGINNING** and containing 6.895 acres (300,331 square feet) of land.

Compiled By:

WEISSER ENGINEERING COMPANY
19500 Park Row, Suite 100
Houston, Texas 77084

Job No.: IM038 (2220-001)
Date: 08/03/2006
Revised: 09/29/06
Revised: 10/20/06
Revised: 10/04/2011



**DESCRIPTION OF A 58.588-ACRE
(2,552,114 SQ. FT.) TRACT OF LAND
SITUATED IN THE H. & T.C.R.R.
SURVEY, A-987, HARRIS COUNTY, TEXAS**

Being a 58.588-acre (2,552,114 square foot) tract of land situated in the H. & T.C.R.R. Survey, A-987, Harris County, Texas. Said 58.588-acre tract being a portion of a called 148.3716-acre tract of land conveyed to Westgreen Point Venture, L.P. as recorded under Harris County Clerk's File Number X500195, Film Code Number 583-72-1892 of the Official Public Records of Real Property, Harris County, Texas, being more particularly described by metes and bounds as follows with the basis of bearings being the north line of said 148.3716-acre tract of land:

BEGINNING at a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set in the east right-of-way line of Westgreen Boulevard (based on a width of 50 feet as recorded under Harris County Clerk's File Number D976532, Film Code Number 167-35-2405 of the Official Public Records of Real Property, Harris County, Texas, in the southwest corner of a residue of a called 87.4332-acre tract of land conveyed to Cet Limited by deed recorded under Harris County Clerks File No. U840350, Film Code No. 536-88-2944 of the Official Public Records of Real Property Harris County, Texas, in the northwest corner of said called 148.3716-acre tract and for the northwest corner of said tract herein described;

THENCE South 89° 53' 22" East, with the south line of said residue of a called 87.4332-acre tract, at a distance of 350.00 feet pass the southwest corner of a called 70.601-acre tract of land conveyed to Obra Homes, Inc. as recorded under Harris County Clerk's File Number X281388, Film Code Number 579-95-0737 of the Official Public Records of Real Property, Harris County, Texas, at a distance of 1400.86 feet pass the southwest corner of a called 19.861-acre tract of land conveyed to W.C. Clements, Jr. and wife, Lisa Dale Clements as recorded under Harris County Clerk's File Number P085892 of the Official Public Records of Real Property, Harris County, Texas and with the north line of said tract herein described, and continuing for a total distance of 1782.33 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set, for the northwest corner of a 150-foot Drainage Right-of-Way Fee Strip conveyed to Harris County Flood Control District as recorded under Harris County Clerk's File Number K701984, Film Code Number 056-73-0417 of the Official Public Records of Real Property, Harris County, Texas and for the northeast corner of said tract herein described;

THENCE South 00° 09' 32" West, with the west line of said 150-foot Drainage Right-of-Way Fee Strip and with the an east line of said tract herein described, a distance of 1,225.83 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set for a southeast corner of said tract herein described;

THENCE North 89° 59' 06" West, with a north line of said Fee Strip and with a south line of said tract herein described, a distance of 693.89 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set for an interior corner of said tract herein described;

THENCE South 00° 06' 34" West, with a west line of said Fee Strip and with an east line of said tract herein described, a distance of 819.25 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set for a southeast corner of said tract herein described;

THENCE with the north right-of-way line of said Morton Road, along said curve to the left, an arc length of 457.91 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set for an anglepoint of said tract herein described, said curve to the left having a radius of 2050.00 feet, a central angle of 12° 47' 53", a chord bearing of North 66° 44' 41" West and a chord length of 456.96 feet;

THENCE North 16° 50' 31" East, with a west line of said tract herein described, a distance of 10.00 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set for a southwest corner of said 58.588-acre tract and for a southwest corner of said tract herein described;

THENCE with the north right-of-way line of said Morton Road, along said curve to the left, an arc length of 152.73 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set for an angle point of said tract herein described, said curve to the left having a radius of 2060.00 feet, a central angle of $04^{\circ} 14' 53''$, a chord bearing of North $75^{\circ} 16' 04''$ West and a chord length of 152.69 feet;

THENCE North $12^{\circ} 35' 39''$ East, with a west line of said tract herein described, a distance of 15.00 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set for a southwest corner of said 58.588-acre tract and for a southwest corner of said tract herein described;

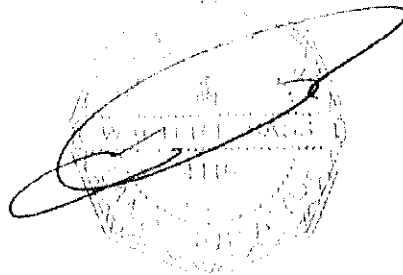
THENCE with the north right-of-way line of said Morton Road, along said curve to the left, an arc length of 52.95 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set for an angle point of said tract herein described, said curve to the left having a radius of 2075.00 feet, a central angle of $01^{\circ} 27' 43''$, a chord bearing of North $78^{\circ} 07' 23''$ West and a chord length of 52.95 feet;

THENCE North $00^{\circ} 00' 37''$ West, with a west line of said tract herein described, a distance of 675.30 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set for an interior corner of said tract herein described;

THENCE South $89^{\circ} 59' 06''$ West, with a south line of said tract herein described, a distance of 470.00 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set in the east right-of-way line of said Westgreen Boulevard and for a southwest corner of said tract herein described;

THENCE North $00^{\circ} 00' 37''$ West, with the east right-of-way line of said Westgreen Road and with a west line of said tract herein described, a distance of 1,118.80 feet to the **POINT OF BEGINNING** and containing 58.588 acres (2,552,114 square feet) of land.

Compiled By:
WEISSER ENGINEERING COMPANY
19500 Park Row, Suite 100
Houston, Texas 77084
Job No.: IM038 (2220-001)
Date: 08/03/2006
Revised: 10/04/2011regen



**DESCRIPTION OF A 7.459-ACRE
(324,915 SQ. FT.) TRACT OF LAND
SITUATED IN THE H. & T.C.R.R.
SURVEY, A-987, HARRIS COUNTY, TEXAS**

Being a 7.459-acre (324,915 square foot) tract of land situated in the H. & T.C.R.R. Survey, A-987, Harris County, Texas. Said 7.459-acre tract being a portion of a called 148.3716-acre tract of land conveyed to Westgreen Point Venture, L.P. as recorded under Harris County Clerk's File Number X500195, Film Code Number 583-72-1892 of the Official Public Records of Real Property, Harris County, Texas, being more particularly described by metes and bounds as follows with the basis of bearings being the north line of said 148.3716-acre tract of land:

BEGINNING at a 5/8-inch iron rod in the north line of South Mayde Creek, Harris County Flood Control District Unit No. U01-00-00 Drainage Easement by deed recorded under Harris County Clerk's File No. G656624, Film Code No. 165-88-0024 of the Official Public Records of Real Property Harris County, Texas, in the west line of a 150-foot Drainage Right-of-Way Fee Strip conveyed to Harris County Flood Control District as recorded under Harris County Clerk's File Number K701984, Film Code Number 056-73-0417 of the Official Public Records of Real Property, Harris County, Texas and in the southeast corner of said tract herein described;

THENCE North 50° 15' 55" West, with the northeast line of said South Mayde Creek and with a southwest line of said tract herein described, a distance of 265.39 feet to a 1-inch iron pipe found for an angle point of said tract herein described;

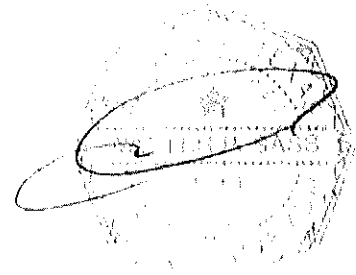
THENCE North 51° 09' 11" West, with the northeast line of said South Mayde Creek and with a southwest line of said tract herein described, a distance of 454.67 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") found in the northeast line of said South Mayde Creek and for the west corner of said tract herein described;

THENCE North 24° 41' 04" East, with the northwest line of said tract herein described, a distance of 552.47 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set in the south right-of-way line of Morton Road (right-of-way varies) by deeds recorded under Harris County Clerk's File No. 20090402464, Film Code No. 067-36-1837 and Harris County Clerk's File No. 20100103015, Film Code No. 070-87-2260 of the Official Public Records of Real Property Harris County, Texas and the beginning of a curve to the right;

THENCE with the south right-of-way line of said Morton Road and the northeast line of said tract herein described, along said curve to the right, an arc length of 366.42 feet to a 5/8-inch iron rod with cap stamped ("WEISSER ENG., HOUSTON, TX.") set for the east corner of said tract herein described, said curve to the right having a radius of 1950.00 feet, a central angle of 10° 45' 59", a chord bearing of South 64° 02' 58" East and a chord length of 365.89 feet;

THENCE South 00° 06' 34" West, with the west line of said 150-foot Drainage Right-of-Way Fee Strip and with the east line of said tract herein described, a distance of 296.71 feet to the **POINT OF BEGINNING** and containing 7.459 acres (324,915 square feet) of land.

Compiled By:
WEISSER ENGINEERING COMPANY
19500 Park Row, Suite 100
Houston, Texas 77084
Job No.: IM0038 (2220-001)
Date: 08/03/2006
Revised: 10/04/2011



**DESCRIPTION OF AN 18.920-ACRE
(824,170 SQ. FT.) TRACT OF LAND
SITUATED IN THE H. & T.C.R.R.
SURVEY, A-987, HARRIS COUNTY, TEXAS**

Being an 18.920-acre (824,170 square foot) tract of land situated in the H. & T.C.R.R. Survey, A-987, Harris County, Texas. Said 18.920-acre tract being a portion of a called 148.3716-acre tract of land conveyed to Westgreen Point Venture, L.P. as recorded under Harris County Clerk's File (H.C.C.F.) Number X500195, Film Code (F. C.) Number 583-72-1892 of the Official Public Records of Real Property, Harris County (O.P.R.R.P.H.C.), Texas, being all of a called 18.920-acre tract of land conveyed to Morton Lake Investments, L.P. by deed recorded under H.C.C.F. No. 20070165082, F.C. No. 041-36-0903 of the O.P.R.R.P.H.C., Texas and being more particularly described by metes and bounds as follows with the basis of bearings being the north line of said 148.3716-acre tract of land:

BEGINNING at a 1-inch iron pipe found bent in the north line of a 150-foot Drainage Right-of-way Fee Strip conveyed to Harris County Flood Control District as recorded under Harris County Clerk's File Number K701984, Film Code Number 056-73-0417 of the Official Public Records of Real Property, Harris County, Texas, for the southeast corner of Westgreen Boulevard (based on a width of 50 feet as recorded under Harris County Clerk's File Number K113875, Film Code Number 020-73-0309 of the Official Public Records of Real Property, Harris County, Texas and for the southwest corner of said tract herein described;

THENCE North 25° 43' 38" West, with the northeast right-of-way line of said Westgreen Boulevard and with a southwest line of said tract herein described, a distance of 312.47 feet to a 1-inch iron pipe found disturbed, for the beginning of a curve to the right;

THENCE with an east line of the residue of a called 163.2582-acre tract of land conveyed to Daria Lynn Grisbee as recorded under Harris County Clerk's File Number S801942, Film Code Number 516-37-0876 of the Official Public Records of Real Property, Harris County, Texas, along said curve to the right, an arc length of 1089.86 feet to a 5/8-inch iron rod found, for the northwest corner of said tract herein described, said curve to the right having a radius of 3000.00 feet, a central angle of 20° 48' 53", a chord bearing of North 15° 19' 12" West, a chord length of 1083.87 feet;

THENCE North 89° 55' 04" East, over and across said 148.3716-acre tract, with a north line of said tract herein described, a distance of 431.06 feet to a 5/8-inch iron rod found, for the northeast corner of said tract herein described;

THENCE South 00° 04' 56" East, over and across said 148.3716-acre tract, with the east line of said tract herein described, a distance of 412.60 feet to a 5/8-inch iron rod found, for an angle point of said tract herein described;

THENCE South 29° 27' 50" East, over and across said 148.3716-acre tract, with a northeast line of said tract herein described, a distance of 306.11 feet to a 5/8-inch iron rod found, for an angle point of said tract herein described;

THENCE South 53° 51' 17" East, over and across said 148.3716-acre tract, with a northeast line of said tract herein described, a distance of 312.33 feet to a 5/8-inch iron rod found, for an angle point of said tract herein described;

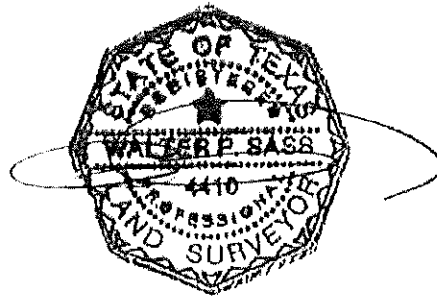
THENCE South 87° 15' 50" East, over and across said 148.3716-acre tract, with a north line of said tract herein described, a distance of 450.70 feet to a 5/8-inch iron rod found, in a west line of said Fee Strip and for the northeast corner of said tract herein described;

THENCE South 00° 06' 34" West, with a west line of said Fee Strip and with the east line of said tract herein described, a distance of 450.00 feet to a 5/8-inch iron rod found for the southeast corner of said tract herein described;

THENCE North 89° 30' 32" West, with a north line of said Fee Strip and with a south line of said tract herein described, a distance of 861.79 feet to the **POINT OF BEGINNING** and containing 18.920 acres (824,170 square feet) of land.

Compiled By:

WEISSER ENGINEERING COMPANY
19500 Park Row, Suite 100
Houston, Texas 77084
T.B.P.L.S. Reg. No.: 100518-00
T.B.P.E. Reg. No.: F-69
Job No.: IM045(2220-002)
Date: 09/12/2015



**DESCRIPTION OF AN 47.242-ACRE
(2,057,866 SQ. FT) TRACT OF LAND
SITUATED IN THE H. & T.C.R.R.
SURVEY, SECTION 42, BLOCK 2,
A-987, HARRIS COUNTY, TEXAS**

BEING a 47.242 acre tract of land situated in the H. & T.C.R.R. Survey, Section 42, Block 2, Abstract Number 987, Harris County, Texas and being out of a called 148.3716 acre tract of land being more particularly described by metes and bounds as follows:

COMMENCING at a 1-inch iron pipe with a cap found for the southwest corner of said 148.3716 acre tract, same being in the north line of a called 16.008 acre Harris County Flood Control District Fee tract (150-foot width) described in a deed filed for record under Harris County Clerk's File Number K701984, same also being the most easterly southeast corner of a 50-foot right-of-way dedication as shown on the plat of Katy I.S.D. Jr. High No. 9 and High School No. 5, a subdivision plat filed for record under Film Code 533249 of the Harris County Map Records;

THENCE N 25°43'38" W, a distance of 312.47 feet along the west line of said called 148.3716 acre tract and the east line of said 50-foot right-of-way dedication to a 1-inch iron pipe (disturbed) found for the beginning of a tangent curve to the right;

THENCE northerly, along said curve to the right, the west line of said called 148.3716 acre tract, the east line of said 50-foot right-of-way dedication and the east line of the remainder of a called 163.2582 acre tract of land described in a deed filed for record under Harris County Clerk's File Number S801942, at a distance of 226.51 feet pass the northeast corner of said 50-foot right-of-way dedication and continuing for a total distance of 1089.85 feet, having a radius of 3000.00 feet, a central angle of 20°48'53" and a chord which bears N 15°19'12" W, 1083.87 feet to a 5/8-inch iron rod with a cap stamped "WEISSER ENG. HOUSTON, TX" set for the **POINT OF BEGINNING** of the herein described 47.242 acre tract;

THENCE northerly, along a curve to the right, a distance of 1041.35 feet, having a radius of 3000.00 feet, a central angle of 19°53'18" and a chord which bears N 05°01'54" E, 1036.13 feet to a 5/8-inch iron rod with a cap stamped "WEISSER ENG. HOUSTON, TX" set for the point of tangency;

THENCE N 14°58'33" E, a distance of 183.11 feet along the west line of said called 148.3716 acre tract and the east line of the remainder of said called 163.2582 acre tract to a 5/8-inch iron rod with a cap stamped "WEISSER ENG. HOUSTON, TX" set for the beginning of a tangent curve to the left;

THENCE northerly, along said curve to the left, the west line of said called 148.3716 acre tract and the east line of said remainder of a called 163.2582 acre tract, a distance of 352.80 feet, having a radius of 2000.00 feet, a central angle of 10°06'25" and a chord which bears N 09°55'21" E, 352.34 feet to a 5/8-inch iron rod with a plastic cap found for corner and the beginning of a non-tangent curve to the left, same being in the north line of a variable width Drainage Easement to Harris County Municipal Utility District Number 71 described in a deed filed for record under Harris County Clerk's File Number C656624;

THENCE the following three (3) courses and distances over and across said 148.3716 acre tract and along the north line of said Drainage Easement:

to a southeasterly direction, along said curve to the left, a distance of 472.32 feet, having a radius of 3150.00 feet, a central angle of 08°03'49" and a chord which

bears S 47°07'17" E, 471.93 feet to a 5/8-inch iron rod with a cap stamped
"WEISSER ENG. HOUSTON, TX" set for the point of tangency;

S 51°09'11" E, a distance of 691.68 feet to a 1-inch iron pipe with a plastic cap
found for corner;

S 50°15'55" E, a distance of 265.39 feet to a 5/8-inch iron rod with a plastic cap
found for the northeast corner of the herein described 47.24 acre tract, same being
in a west line of said called 16.008 acre Harris County Flood Control District Fee
tract (150-foot width);

THENCE S 00°06'34" W, a distance of 1515.72 feet along a east line of said called
148.3716 acre tract and a west line of said 16.008 acre Harris County Flood Control
District Fee (150-foot width) to a 5/8 inch iron rod with a plastic cap found for corner;

THENCE the following five (5) courses and distances over and across said 148.3716 acre
tract;

N 87°15'50" W, a distance of 450.70 feet to a 5/8-inch iron rod with a plastic cap
found for corner;

N 53°51'17" W, a distance of 312.33 feet to a 5/8-inch iron rod with a plastic cap
found for corner;

N 29°27'50" W, a distance of 306.11 feet to a 5/8-inch iron rod with a plastic cap
found for corner;

N 00°04'56" W, a distance of 412.60 feet to a 5/8-inch iron rod with a plastic cap
found for corner;

N 89°55'04" W, a distance of 431.06 feet to the **POINT OF BEGINNING** and
containing 47.242 acres of land.

This description is herewith accompanied by a plat of even survey date.

Compiled By:

Weisser Engineering Company
19500 Park Row, Suite 100
Houston, Texas 77084

Job No.: GB001 (1859-001)
Date: 11/04/05

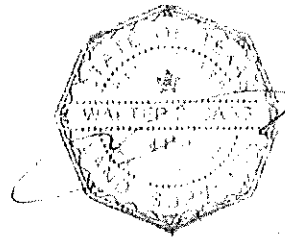




EXHIBIT "B"

(a) To the extent authorized by law, the District will issue bonds only for the purpose of purchasing and constructing, or purchasing, or constructing under contract with the City of Houston, or otherwise acquiring waterworks systems, sanitary sewer systems, storm sewer systems, drainage facilities, recreational facilities, road facilities, or facilities for fire-fighting services, or parts of such systems or facilities, and to make any and all necessary purchases, construction, improvements, extensions, additions, and repairs thereto, and to purchase or acquire all necessary land, right-of-way, easements, sites, equipment, buildings, plants, structures, and facilities therefor, and to operate and maintain same, and to sell water, sanitary sewer, and other services within or without the boundaries of the District. Such bonds will expressly provide that the District reserves the right to redeem the bonds on any interest payment date subsequent to the fifteenth (15th) anniversary of the date of issuance without premium and will be sold only after the taking of public bids therefor, and none of such bonds, other than refunding bonds, will be sold for less than 95% of par; provided that the net effective interest rate on bonds so sold, taking into account any discount or premium as well as the interest rate borne by such bonds, will not exceed two percent (2%) above the highest average interest rate reported by the Daily Bond Buyer in its weekly "20 Bond Index" during the one month period next preceding the date notice of the sale of such bonds is given, and that bids for the bonds will be received not more than forty-five (45) days after notice of sale of the bonds is given. The resolution authorizing the issuance of the District's bonds will contain a provision that any pledge of the revenues from the operation of the District's water and sewer and/or drainage system to the payment of the District's bonds will terminate when and if the City of Houston, Texas, annexes the District, takes over the assets of the District and assumes all of the obligations of the District. No land located within the extraterritorial jurisdiction of the City of Houston will be added or annexed to the District until the City of Houston has given its written consent by resolution or ordinance of the City Council to such addition or annexation.

(b) (1) Before the commencement of any construction within the District, its directors, officers, or developers and landowners will submit to the Director of the Department of Public Works and Engineering of the City of Houston, or to his designated representative, all plans and specifications for the construction of water, sanitary sewer, drainage, and road facilities and related improvements to serve the District and obtain the approval of such plans and specifications therefrom. All water wells, water meters, flushing valves, valves, pipes, and appurtenances thereto, installed or used within the District, will conform exactly to the specifications of the City of Houston. All water service lines and sewer service lines, lift stations, sewage treatment facilities, and road facilities, and appurtenances thereto, installed or used within the District will comply with the City of Houston's standard plans and specifications as amended from time to time. Prior to the construction of any water, sanitary sewer, drainage or road facilities within or by the District, the District or its engineer will give written notice by registered or certified mail to the Director of Public Works and Engineering, stating the date that such construction will be commenced. The construction of the District's water, sanitary sewer, drainage and road facilities will be in accordance with the approved plans and specifications, and with applicable standards and specifications of the City of Houston; and during the progress of the construction and installation of such facilities, the Director of Public Works and Engineering of the City of Houston, or an employee thereof, may make periodic on-the-ground inspections.

(2) Before the expenditure by the District of bond proceeds for the acquisition, construction or development of recreational facilities, the District shall obtain and maintain on file, from a registered landscape architect, registered professional engineer or a design professional allowed by law to engage in architecture, a certification that the recreational facilities, as constructed, conform to the applicable recreational facilities design standards and specifications of the City of Houston's Department of Parks and Recreation and shall submit a copy of the certification and the "as built" plans and specifications for such recreational facilities to the Director of the City of Houston Parks and Recreation Department.

(3) Before the expenditure by the District of bond proceeds for the acquisition, construction or development of facilities for fire-fighting services, the District shall obtain and maintain on file, from a registered architect, registered professional engineer or a design professional allowed by law to engage in facility design and construction, a certification that the facilities for fire-fighting services, as constructed, conform to the applicable fire-fighting facilities design standards and specifications of the City of Houston's Fire Department and shall submit a copy of the certification and the "as built" plans and specifications for such facilities for firefighting services to the Chief of the City of Houston Fire Department.

(c) The District will agree to engage a sewage plant operator holding a valid certificate of competency issued under the direction of the Texas Commission on Environmental Quality, or such successor agency as the legislature may establish ("TCEQ"), as required by Section 26.0301, Texas Water Code, as may be amended from time to time. The District will agree to make periodic analyses of its discharge pursuant to the provisions of Order No. 69-1219-1 of the Texas Water Quality Board (predecessor agency to the TCEQ) and further to send copies of all such effluent data to the Department of Public Works and Engineering, City of Houston, as well as to the TCEQ. The District will agree that representatives of the City of Houston may supervise the continued operations of the sewage treatment facility by making periodic inspections thereof.

(d) The District, its board of directors, officers, developers, and/or landowners will not permit the construction, or commit to any development within, the District that will result in a wastewater flow to the serving treatment facility which exceeds that facility's legally permitted average daily flow limitations or the District's allocated capacity therein.

(e) Prior to the sale of any lot or parcel of land, the owner or the developer of the land included within the limits of the District will obtain the approval of the Planning Commission of the City of Houston of a plat which will be duly recorded in the Real Property Records of Harris County, Texas, and otherwise comply with the rules and regulations of the Department of Planning and Development and the Department of Public Works and Engineering of the City of Houston.



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ETJ

Item Creation Date: 1/24/2020

HPW - 20WR180 – Petition Addit (856.27) Harris County
Municipal Utility District No. 165

Agenda Item#: 29.

Summary:

ORDINANCE consenting to the addition of 856.27 acres of land to **HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 165**, for inclusion in its district

Background:

SUBJECT: Petition for the City's consent to the addition of 856.27 acres to Harris County Municipal Utility District No. 165.

RECOMMENDATION: It is recommended City Council approve the petition for the City's consent to the addition of 856.27 acres to Harris County Municipal Utility District No. 165.

SPECIFIC EXPLANATION: Harris County Municipal Utility District No. 165 (the "District") was created through the TCEQ in 1978, and currently consists of 3,425.5421 acres within Harris County. The District is within the extraterritorial jurisdiction of the City of Houston (the "City") and has petitioned the City for consent to add 856.27 acres of vacant land, proposed to be developed as single family residential and commercial property, to the District. The proposed annexation tract is located in the vicinity of FM 529, HWY 99 (Grand Parkway), Langham Creek, and Fry Road. The addition of land to the District does not release it from the City's extraterritorial jurisdiction.

The Utility District Review Committee has evaluated the application with respect to wastewater collection and treatment, potable water distribution, storm water conveyance, and other public services.

The District has a wastewater collection system and treatment facility. The annexation tract will be provided with wastewater treatment by the Harris County Municipal Utility District No. 165 Wastewater Treatment Facility. Potable water is provided by the District.

The nearest major drainage facility for the Harris County Municipal Utility District No. 165 is Dinner Creek, which flows to Langham Creek, then to Bear Creek, then to South Mayde Creek, then to Buffalo Bayou, and finally into Houston Ship Channel. The proposed annexation tract is not within the 100 or 500 year floodplain.

By executing the Petition for Consent, the District has acknowledged that all plans for the construction of water conveyance, wastewater collection, and storm water collection systems within the District must be approved by the City prior to their construction.

The Utility District Review Committee recommends that the subject petition be approved.

Carol Ellinger Haddock, P. E.
Director
Houston Public Works

Contact Information:

Sharon Citino, J.D.
Planning Director
Houston Water
Phone: (832) 395-2712

ATTACHMENTS:

Description

Signed Coversheet
Maps
2020-665 Executed Ordinance

Type

Signed Cover sheet
Backup Material
Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date:

ETJ

Item Creation Date: 1/24/2020

HPW - 20WR180 – Petition Addit (856.27) Harris County Municipal Utility District No. 165

Agenda Item#:

Background:

SUBJECT: Petition for the City's consent to the addition of 856.27 acres to Harris County Municipal Utility District No. 165.

RECOMMENDATION: It is recommended City Council approve the petition for the City's consent to the addition of 856.27 acres to Harris County Municipal Utility District No. 165.

SPECIFIC EXPLANATION: Harris County Municipal Utility District No. 165 (the "District") was created through the TCEQ in 1978, and currently consists of 3,425.5421 acres within Harris County. The District is within the extraterritorial jurisdiction of the City of Houston (the "City") and has petitioned the City for consent to add 856.27 acres of vacant land, proposed to be developed as single family residential and commercial property, to the District. The proposed annexation tract is located in the vicinity of FM 529, HWY 99 (Grand Parkway), Langham Creek, and Fry Road. The addition of land to the District does not release it from the City's extraterritorial jurisdiction.

The Utility District Review Committee has evaluated the application with respect to wastewater collection and treatment, potable water distribution, storm water conveyance, and other public services.

The District has a wastewater collection system and treatment facility. The annexation tract will be provided with wastewater treatment by the Harris County Municipal Utility District No. 165 Wastewater Treatment Facility. Potable water is provided by the District.

The nearest major drainage facility for the Harris County Municipal Utility District No. 165 is Dinner Creek, which flows to Langham Creek, then to Bear Creek, then to South Mayde Creek, then to Buffalo Bayou, and finally into the Houston Ship Channel. The proposed annexation tract is not within the 100 or 500 year floodplain.

By executing the Petition for Consent, the District has acknowledged that all plans for the construction of water conveyance, wastewater collection, and storm water collection systems within the District must be approved by the City prior to their construction.

The Utility District Review Committee recommends that the subject petition be approved.

DocuSigned by:

A blue ink signature of Carol Ellinger Haddock.

6/9/2020

A93C410B72B3453...
Carol Ellinger Haddock, P. E.
Director
Houston Public Works

Contact Information:

Sharon Citino, J.D.
Planning Director
Houston Water
Phone: (832) 395-2712

ATTACHMENTS:

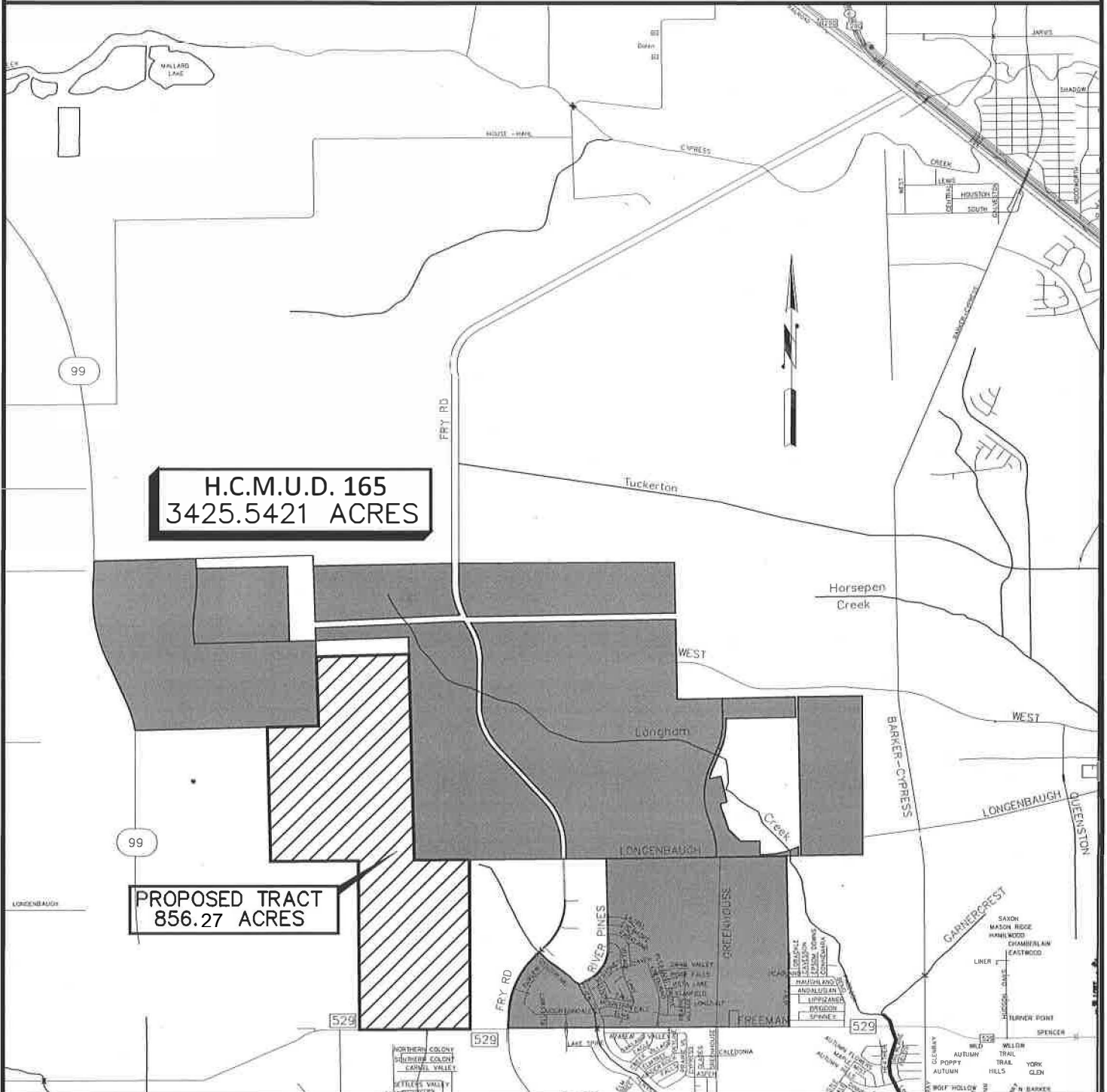
Description

Maps
Application
Petition
Backup Material
Fact Sheet

Type

Backup Material
Backup Material
Backup Material
Backup Material
Backup Material

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 165
(856 ACRES TO BE ANNEXED , KEY MAP PAGE NO. 405 D, 406 A&B)

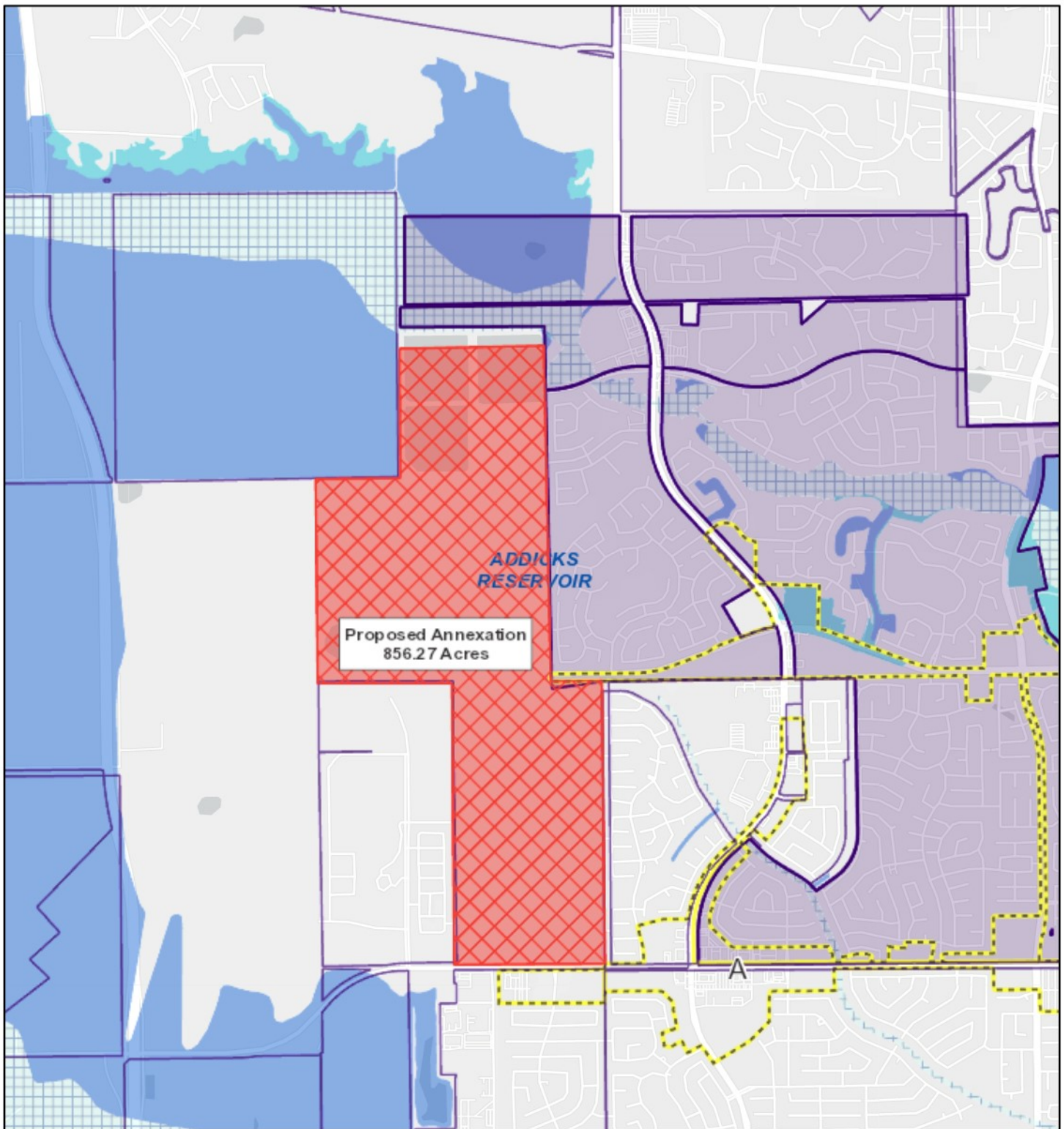


VICINITY MAP
N.T.S.

D A C
ENGINEERING

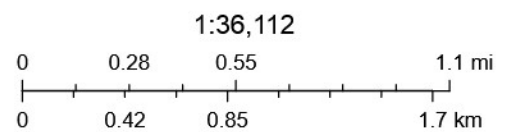
17725 Katy Freeway, Suite 103 • Houston, TX 77094 • Phone: 281.506.7119
Firm TBPE Registration No. F-12959 www.dacengineers.com

Harris County MUD 165 (856.27 acres)



5/13/2020, 1:48:13 PM

- | | |
|---------------------------|------------------------------|
| Flood Hazard Zones | Council Districts |
| 100 Year Floodplain | Existing Acreage of District |
| 500 Year Floodplain | Proposed Annexation |
| Floodway | COH Wastewater Line |
| City Limits | COH Water Line |



HCFC and HCED,

City of Houston, Texas, Ordinance No. 2020 - 665

AN ORDINANCE CONSENTING TO THE ADDITION OF 856.27 ACRES OF LAND TO HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 165, FOR INCLUSION IN ITS DISTRICT; CONTAINING FINDINGS AND OTHER PROVISIONS RELATED TO THE FOREGOING SUBJECT; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, the City of Houston, Texas (the "City") consented to the creation of Harris County Municipal Utility District (the "District") No. 165 by Ordinance No. 78-956, passed and adopted by the City Council on May 10, 1978, and the District is operating pursuant to Chapters 49 and 54 of the Texas Water Code, as amended; and

WHEREAS, the District was also created by order of the Texas Water Commission, on July 06, 1978; and

WHEREAS, Cypress 856, LTD, Trustee and owner of the land hereunder described, has petitioned the City to add 856.27 acres of land for inclusion into the District; **NOW, THEREFORE**,

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

Section 1. That the findings and recitals contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. That attached to this ordinance and made a part hereof is a petition ("Petition") requesting for the consent of the City to the annexation of 856.27 acres of land, described in Exhibit A to the Petition and within the extraterritorial jurisdiction of the City, into the District. The Petition is hereby granted, subject to the terms and conditions set forth in Exhibit B to the Petition.

Section 3. That the City Council further hereby notifies the referenced District, its residents and property owners of the provisions of applicable law allowing the City to annex any portion of the district located within the City's extraterritorial jurisdiction, including without limitation, the land authorized to be included in the District hereby. The City requires that the District include a statement in its form required under Section 49.455, Texas Water Code, reflecting the possibility of such annexation by the City.

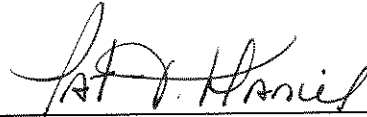
Section 4. That a public emergency exists requiring that this ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this ordinance shall take effect immediately upon its passage and approval by the Mayor; provided, however, that if the Mayor fails 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 29th day of July, 2020.

APPROVED this _____ day of _____, 2020.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.


City Secretary

Prepared by Legal Dept.

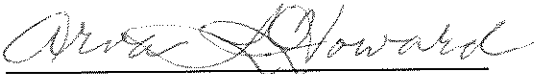
AH/sec 1/27/20

Requested by Carol Ellinger Haddock, P.E.

Director – Houston Public Works Department

(L.D. File No. 0910000008013)

Z:\REALESTATE\ARVA\MUDSI\HARRIS COUNTY MUD NO.165\ORD_856.27AC.DOC



Senior Assistant City Attorney

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	

PETITION FOR CONSENT TO ANNEX LAND INTO
HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 165

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF HOUSTON,
TEXAS:

The undersigned, Harris County Municipal Utility District No. 165 (the "District"), and CYPRESS 856, LTD., a Texas limited partnership (the "Petitioner"), acting pursuant to the provisions of Chapter 49, Texas Water Code, particularly Section 49.301 of that Code, together with all amendments and additions thereto, respectfully petition the City Council of the City of Houston, Texas (the "City"), for its written consent to the annexation by the District of the land described by metes and bounds in **Exhibit A** (the "Land"), which is attached hereto and incorporated herein for all purposes. In support of this petition, the undersigned would show the following:

I.

The District is a municipal utility district duly created under the laws of the State of Texas on July 6, 1978. The District was created and organized under the terms and provisions of Article XVI, Section 59, of the Constitution of Texas, and is governed by the provisions of Chapters 49 and 54, Texas Water Code.

II.

The Petitioner holds fee simple title to the Land, as indicated by the certificate of ownership provided by the Harris County Appraisal District. The Petitioner represents that there are no lienholders on the Land except McGill Legacy, Ltd., a Texas limited partnership and Trez Capital (2015) Corporation, a corporation formed under the laws of British Columbia.

III.

The Land is situated wholly within Harris County, Texas. No part of the Land is within the limits of any incorporated city, town or village, and no part of the Land is within the extraterritorial jurisdiction (as such term is defined in Local Government Code Section 42.001 et seq., as amended) of any city, town or village except the City. All of the Land may properly be annexed into the District.

IV.

The general nature of the work to be done within the Land is the construction, acquisition, maintenance and operation of a waterworks and sanitary sewer system, and a drainage and storm sewer system, road facilities, and parks and recreational facilities.

V.

There is, for the following reasons, a necessity for the above-described work. The Land, which will be developed for commercial and/or residential purposes, is urban in nature, is within the growing environs of the City, is in close proximity to populous and developed sections of Harris County, and within the immediate future will experience a substantial and sustained residential and commercial growth. There is not now available within the Land an adequate waterworks and sanitary sewer system nor an adequate drainage system, nor road facilities, nor parks or recreational facilities, and it is not presently economically feasible for the Land to provide for such systems and facilities itself. Because the health and welfare of the present and future inhabitants of the Land and of lands adjacent thereto require the construction, acquisition, maintenance and operation of an adequate waterworks and sanitary sewer system and a drainage and storm sewer system, road facilities, and parks and recreational facilities, a public necessity exists for the annexation of the Land into the District, to provide for the purchase, construction, extension, improvement, maintenance and operation of such waterworks and sanitary sewer system and such drainage and storm sewer system, such road facilities, and such parks and recreational facilities, so as to promote the purity and sanitary condition of the State's waters and the public health and welfare of the community.

VI.

The undersigned estimate, from such information as they have at this time, that the cost of extending the District's facilities to serve the Land is \$210,689,000.

VII.

The Petitioner and the District agree and hereby covenant that if the requested consent to the annexation of the Land to the District is given, the Petitioner and the District will adopt and abide by the conditions set forth in **Exhibit B**, attached hereto and incorporated herein for all purposes.

WHEREFORE, the undersigned respectfully pray that this petition be heard and granted in all respects and that the City give its written consent to the annexation of the Land into the District.

[EXECUTION PAGES FOLLOW]

RESPECTFULLY SUBMITTED on October 31, 2019.

**HARRIS COUNTY MUNICIPAL
UTILITY DISTRICT NO. 165**

By: [Signature]

Name: Alan Barton

Title: President

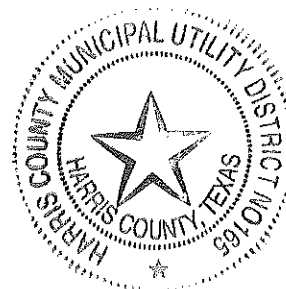
ATTEST:

By: [Signature]

Name: Wayne Green

Title: Secretary

(SEAL)

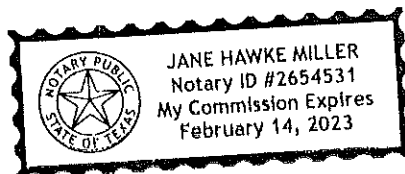


THE STATE OF TEXAS §
 §
COUNTY OF Harris §

This instrument was acknowledged before me on October 31, 2019, by Alan Barton, as President, and Wayne Green, as Secretary, of the Board of Directors of HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 165, a political subdivision of the State of Texas, on behalf of said political subdivision.

[Signature]
Notary Public, State of Texas

(NOTARY SEAL)



CYPRESS 856, LTD.

a Texas limited partnership

By: L.T. Management, Inc., a Nevada corporation, as general partner

By: 
Al P. Brende Jr., President

THE STATE OF TEXAS

§

§

COUNTY OF

Harris

§

This instrument was acknowledged before me on October 15, 2019, by Al P. Brende Jr., President of L.T. MANAGEMENT, INC., a Nevada corporation, on behalf of said corporation.


Notary Public, State of Texas

(NOTARY SEAL)

Attachments:

Exhibit A: Description of the Land

Exhibit B: Conditions of the City

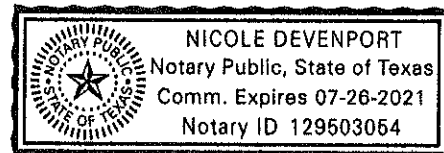


EXHIBIT A

Don McGill Tract
856.27 Acres

William B. Reeves Survey, Abstract No. 673
Houston & Texas Central Railway Company
Block 2, Section 21, Abstract No. 424

STATE OF TEXAS §

COUNTY OF HARRIS §

A **METES & BOUNDS** description of a certain 856.27 acre tract of land situated in the William B Reeves Survey, Abstract No. 673, and the Houston & Texas Central Railway Company (H&TC RR Co.), Block 2, Section 21, Abstract No. 424 in Harris County, Texas, being all of a called 261.5445 acre tract conveyed by Special Warranty Deed to Donald R. McGill recorded in Clerk's File No. R048171 of the Official Public Records of Real Property in Harris County (OPRRPHC) and the remainder of a called 616.037 acre tract conveyed by Warranty Deed to McGill Legacy recorded in Clerk's File No. S326025 OPRRPHC; said 856.27 acre tract being more particularly described as follows with all bearings based on the Texas Coordinate System of 1983, South Central Zone;

BEGINNING at a found 1-inch iron rod marking the southeast corner of the herein described subject tract being, common with the southeast corner of said 261.5445 acre tract, the southwest corner of Canyon Village at Cypress Springs, Section 6, recorded in Film Code No. 579038 of the Map Records of Harris County (MRHC), and being in the north right-of-way line of FM 529 (100' ROW);

THENCE South 88°02'21" West, along the common line of the herein described subject tract and said FM 529, passing a found 5/8-inch iron rod (with cap stamped "BASELINE SURVEYING") at 1396.16 feet marking the southwest corner of said 261.5445 acre tract, being common with the southeast corner of said 616.037 acre tract, continuing in all a total distance of 2792.23 feet to a found 5/8-inch iron rod marking the southwest corner of the herein described subject tract, being common with the southeast corner of the remainder of Unrestricted Reserve "A" of Five Twenty Nine Development LTD recorded in Film Code No. 634229 MRHC;

THENCE North 02°04'03" West, along the common line of the herein described subject tract and various adjoining tracts, passing a found 5/8-inch iron rod (with cap stamped "WINDROSE LAND SERVICES") at 438.28 feet marking the northeast corner of said Unrestricted Reserve "A", being common with the southeast corner of Cypress Oaks, Section 2 recorded in Film Code No. 677013 MRHC, passing a found 5/8-inch iron rod (with cap stamped "WINDROSE LAND SERVICES") at 1476.71 feet marking the northeast corner of said Cypress Oaks, Section 2, being common with the southeast corner of Cypress Oaks, Section 1 recorded in Film Code No. 671056 MRHC, passing a found 5/8-inch iron rod (with cap stamped "WINDROSE LAND SERVICES") at 2586.32 feet marking the northeast corner of said Cypress Oaks, Section 1, being common with the southeast corner of West Campus Drive (60' ROW) recorded in Film Code Nos. 653063 & 634229 MRHC, passing a found 5/8-inch iron rod (with cap stamped "WINDROSE LAND SERVICES") at 2856.25 feet marking the northeast corner of Restricted Reserve "D" of Cypress Fairbanks ISD Westgreen Boulevard Multi School Site recorded in Film Code No. 653063 MRHC, being common with the southeast corner of Restricted Reserve "C" of said Cypress Fairbanks ISD Westgreen Boulevard Multi School Site, passing a found 5/8-inch iron rod at 3917.35 feet (0.49 feet right) marking the northeast corner of said Restricted Reserve "C", being common with the southeast

Don McGill Tract
856.27 Acres

William B. Reeves Survey, Abstract No. 673
Houston & Texas Central Railway Company
Block 2, Section 21, Abstract No. 424

corner of a called 74.474 acre tract conveyed by Special Warranty Deed to JNC Development, Inc. recorded in Clerk's File No. RP-2018-378508 OPRRPHC, continuing in all a total distance of 5216.14 feet to a set 3/4-inch iron rod (with cap stamped "JONES|CARTER PROPERTY CORNER") marking a southwesterly interior corner of the herein described subject tract, being common with the northeast corner of said 74.474 acre tract;

THENCE South 88°01'05" West, along the common line of the herein described subject tract and said 74.747 acre tract, 2496.77 feet to a found 5/8-inch iron rod marking the southwest corner of the herein described subject tract, being common with the northwest corner of said 74.747 acre tract and being in the east line of a called 375.7 acre tract conveyed by Warranty Deed to Landmark Industries recorded in Clerk's File No. 20150498976 OPRRPHC;

THENCE North 02°04'51" West, along the common line of the herein described subject tract and said 375.7 acre tract, 3775.47 feet to a found 1-inch iron pipe marking a northwesterly corner of the herein described subject tract, being common with the northeast corner of said 375.7 acre tract, and being in the south line of a called 569.63 acre tract conveyed by Special Warranty Deed to 99 West 570 Partners, LLC, Terra Prima, Ltd., Blossom Development, Inc., and Silvestri Investments of Florida, Inc. recorded in Clerk's File No. RP-2016-277038 OPRRPHC;

THENCE along the common of the herein described subject tract and said 569.63 acre tract the following two (2) courses and distances:

1. North 87°52'21" East, 1570.34 feet to a set 3/4-inch iron rod (with cap stamped "JONES|CARTER PROPERTY CORNER");
2. North 01°54'08" West, 2390.73 feet to a set 3/4-inch iron rod (with cap stamped "JONES|CARTER PROPERTY CORNER") marking the northwest corner of the herein described subject tract being common with the southwest corner of a called 21.34 acre tract conveyed by General Warranty Deed to Harris County Flood District recorded in Clerk's File No. 20150292793 OPRRPHC;

THENCE North 87°24'02" East, along the common line of the herein described subject tract and said 21.34 acre tract, 2672.96 feet to a found 5/8-inch iron rod (with cap stamped "BROWN & GAY ENGINEERING") marking the northeast corner of the herein described subject tract, being common with the southeast corner of said 21.34 acre tract, and being in the west line of a called 52.09 acre tract conveyed by Special Warranty Deed to Harris County Municipal Utility District No. 165 recorded in Clerk's File No. 20150134654 OPRRPHC;

THENCE South 02°48'35" East, along the common line of the herein described subject tract and various adjoining tracts, passing a found 3/4-inch iron rod at 1038.40 feet marking the southwest corner of West Road Extension and Reserve recorded in Film Code No. 677674 MRHC, being common with the northwest corner of Canyon Lakes West, Section 3, recorded in Film Code No. 613272 MRHC, passing a found 3/4-inch iron rod (with cap stamped "HUITT-ZOLLARS") at 3075.79 feet marking the southwest

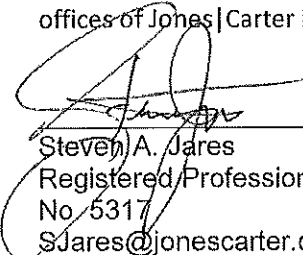
Don McGill Tract
856.27 Acres

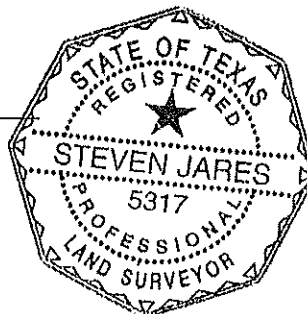
William B. Reeves Survey, Abstract No. 673
Houston & Texas Central Railway Company
Block 2, Section 21, Abstract No. 424

corner of said Canyon Lakes West, Section 3, being common with a northwest corner of the remainder of a called 84.93 acre tract conveyed by Special Warranty Deed with Vendor's Lien to Canyon Lakes West Section 3, Ltd. recorded in Clerk's File No. Z366788 OPRRPHC, passing a found 5/8-inch iron rod (with cap stamped "AGS") at 5212.75 feet marking an exterior southwest corner of Pine Creek at Canyon Lakes West, Section 13, recorded in Film Code No. 674510 MRHC, being common with the northwest corner of Pine Creek at Canyon Lakes West, Section 12, recorded in Film Code No. 674508 MRHC, passing a found 5/8-inch iron rod (with cap stamped "AGS") at 6009.24 feet marking the southwest corner of said Pine Creek at Canyon Lakes West Section 12, being common with an exterior northwest corner of Pine Creek at Canyon Lakes West, Section 9, recorded in Film Code No. 665070 MRHC, passing a found 5/8-inch iron rod (with cap stamped "AGS") at 6109.24 feet marking the southwest corner of said Pine Creek at Canyon Lakes West, Section 9, being common with the northwest corner of a called 30.777 acre tract conveyed by Special Warranty Deed to GIRO Realty Investments recorded in Clerk's File No. 20080619527 OPRRPHC, continuing in all a total distance of 6199.09 feet to a found 5/8-inch iron rod marking an interior northeasterly corner of the herein described subject tract, being common with the southwest corner said 30.777 acre tract;

THENCE North 87°59'39" East, along the common line of the herein described subject tract and said 30.777 acre tract, 955.03 feet to a found 5/8-inch iron rod marking an exterior northeasterly corner of the herein described subject tract, being common with the northwest corner of a called 15.7984 acre tract conveyed by Deed to Harris County Flood Control District recorded in Clerk's File No. M056597 OPRRPHC;

THENCE South 02°07'00" East, along the common line of the herein described subject tract and various adjoining tracts, passing a found 3/4-inch iron rod at 632.24 feet marking the southwest corner of Canyon Village at Cypress Springs, Section 10 recorded in Film Code No. 619079 MRHC, being common with the northwest corner of Canyon Village at Cypress Springs, Section 9 recorded in Film Code No. 595068 MRHC, continuing in all a total distance of 5218.14 feet to the **POINT OF BEGINNING**, **CONTAINING** 856.27 acres of land in Harris County, Texas, as shown on Dwg No. 13520 filed in the offices of Jones|Carter in Bellaire, Texas.


Steven A. Jares
Registered Professional Land Surveyor
No. 5317
SJares@jonescarter.com



Jones|Carter
6330 West South Loop, Suite 150
Bellaire, TX 77401
(713) 777-5337
Texas Board of Professional Land Surveying
Registration No. 10046100



EXHIBIT "B"

(a) To the extent authorized by law, the District will issue bonds only for the purpose of purchasing and constructing, or purchasing, or constructing under contract with the City of Houston, or otherwise acquiring waterworks systems, sanitary sewer systems, storm sewer systems, drainage facilities, recreational facilities, road facilities, or facilities for fire-fighting services, or parts of such systems or facilities, and to make any and all necessary purchases, construction, improvements, extensions, additions, and repairs thereto, and to purchase or acquire all necessary land, right-of-way, easements, sites, equipment, buildings, plants, structures, and facilities therefor, and to operate and maintain same, and to sell water, sanitary sewer, and other services within or without the boundaries of the District. Such bonds will expressly provide that the District reserves the right to redeem the bonds on any interest-payment date subsequent to the fifteenth (15th) anniversary of the date of issuance without premium and will be sold only after the taking of public bids therefor, and none of such bonds, other than refunding bonds, will be sold for less than 95% of par; provided that the net effective interest rate on bonds so sold, taking into account any discount or premium as well as the interest rate borne by such bonds, will not exceed two percent (2%) above the highest average interest rate reported by the Daily Bond Buyer in its weekly "20 Bond Index" during the one-month period next preceding the date notice of the sale of such bonds is given, and that bids for the bonds will be received not more than forty-five (45) days after notice of sale of the bonds is given. The resolution authorizing the issuance of the District's bonds will contain a provision that any pledge of the revenues from the operation of the District's water and sewer and/or drainage system to the payment of the District's bonds will terminate when and if the City of Houston, Texas, annexes the District, takes over the assets of the District and assumes all of the obligations of the District. No land located within the extraterritorial jurisdiction of the City of Houston will be added or annexed to the District until the City of Houston has given its written consent by resolution or ordinance of the City Council to such addition or annexation.

(b) (1) Before the commencement of any construction within the District, its directors, officers, or developers and landowners will submit to the Director of the Department of Public Works and Engineering of the City of Houston, or to his designated representative, all plans and specifications for the construction of water, sanitary sewer, drainage, and road facilities and related improvements to serve the District and obtain the approval of such plans and specifications therefrom. All water wells, water meters, flushing valves, valves, pipes, and appurtenances thereto, installed or used within the District, will conform exactly to the specifications of the City of Houston. All water service lines and sewer service lines, lift stations, sewage treatment facilities, and road facilities, and appurtenances thereto, installed or used within the District will comply with the City of Houston's standard plans and specifications as amended from time to time. Prior to the construction of any water, sanitary sewer, drainage or road facilities within or by the District, the District or its engineer will give written notice by registered or certified mail to the Director of Public Works and Engineering, stating the date that such construction will be commenced. The construction of the District's water, sanitary sewer, drainage and road facilities will be in accordance with the approved plans and specifications, and with applicable standards and specifications of the City of Houston; and during the progress of the construction and installation of such facilities, the Director of Public Works and

Engineering of the City of Houston, or an employee thereof, may make periodic on-the-ground inspections.

(2) Before the expenditure by the District of bond proceeds for the acquisition, construction or development of recreational facilities, the District shall obtain and maintain on file, from a registered landscape architect, registered professional engineer or a design professional allowed by law to engage in architecture, a certification that the recreational facilities, as constructed, conform to the applicable recreational facilities design standards and specifications of the City of Houston's Department of Parks and Recreation and shall submit a copy of the certification and the "as built" plans and specifications for such recreational facilities to the Director of the City of Houston Parks and Recreation Department.

(3) Before the expenditure by the District of bond proceeds for the acquisition, construction or development of facilities for fire-fighting services, the District shall obtain and maintain on file, from a registered architect, registered professional engineer or a design professional allowed by law to engage in facility design and construction, a certification that the facilities for fire-fighting services, as constructed, conform to the applicable fire-fighting facilities design standards and specifications of the City of Houston's Fire Department and shall submit a copy of the certification and the "as built" plans and specifications for such facilities for fire-fighting services to the Chief of the City of Houston Fire Department.

(c) The District will agree to engage a sewage plant operator holding a valid certificate of competency issued under the direction of the Texas Commission on Environmental Quality, or such successor agency as the legislature may establish ("TCEQ"), as required by Section 26.0301, Texas Water Code, as may be amended from time to time. The District will agree to make periodic analyses of its discharge pursuant to the provisions of Order No. 69-1219-1 of the Texas Water Quality Board (predecessor agency to the TCEQ) and further to send copies of all such effluent data to the Department of Public Works and Engineering, City of Houston, as well as to the TCEQ. The District will agree that representatives of the City of Houston may supervise the continued operations of the sewage treatment facility by making periodic inspections thereof.

(d) The District, its board of directors, officers, developers, and/or landowners will not permit the construction, or commit to any development within, the District that will result in a wastewater flow to the serving treatment facility which exceeds that facility's legally permitted average daily flow limitations or the District's allocated capacity therein.

(e) Prior to the sale of any lot or parcel of land, the owner or the developer of the land included within the limits of the District will obtain the approval of the Planning Commission of the City of Houston of a plat which will be duly recorded in the Real Property Records of Harris County, Texas, and otherwise comply with the rules and regulations of the Department of Planning and Development and the Department of Public Works and Engineering of the City of Houston.

CERTIFICATE

THE STATE OF TEXAS

§

§

COUNTY OF Harris

§

I, the undersigned Secretary of the Board of Directors of Harris County Municipal Utility District No. 165, do hereby certify that the attached and foregoing is a true and correct copy of the Petition For Consent To Annex Land Into Harris County Municipal Utility District No. 165 that was filed with the Board of Directors of the District on October 31, 2019.

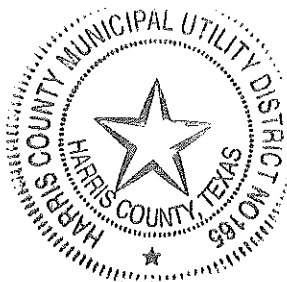
WITNESS MY HAND AND SEAL OF SAID DISTRICT on October 31, 2019.

**HARRIS COUNTY MUNICIPAL UTILITY
DISTRICT NO. 165**

By: 

Secretary, Board of Directors

(SEAL)



CERTIFICATE OF CORPORATE AUTHORITY

I, the undersigned officer of L.T. Management, Inc., a Nevada corporation (the "Corporation") hereby certify that:

1. The Corporation is the General Partner of CYPRESS 856, LTD., a Texas limited partnership (the "Partnership");
2. Al P. Brende Jr. is the President of the Corporation;
3. In such capacity he is authorized to execute any and all documents in connection with the annexation of land into HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 165 (the "District"), including specifically, but not limited to, the Petition for Addition of Certain Land into the District, the Petition for Consent to Annex Land into the District and any other documents needed by the City of Houston, Texas, the Texas Commission on Environmental Quality, and the Attorney General of Texas (the "Annexation Documents") on behalf of the Partnership; and
4. Such execution by Al P. Brende Jr. of the Annexation Documents is duly authorized in accordance with the Corporation's articles of incorporation and the Partnership's limited partnership agreement.

WITNESS MY HAND, on the 18th day of October, 2019.

L.T. MANAGEMENT, INC., a Nevada corporation

By: Melanie Mangel
(Signature of officer OTHER THAN Al P. Brende Jr.)

Name: Melanie Mangel

Title: CFO

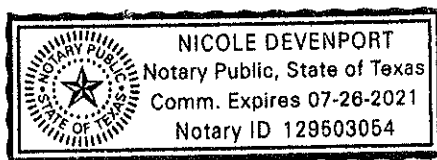
THE STATE OF TEXAS §
 §
COUNTY OF Harris §

This instrument was acknowledged before me on the 18th day of October, 2019, by Melanie Mangel CFO of L.T. MANAGEMENT, INC., a Nevada corporation, on behalf of said corporation.

(NOTARY SEAL)

[Signature]
Notary Public, State of Texas

811498



CERTIFICATE OF LIENHOLDER'S CONSENT

MCGILL LEGACY, LTD., a Texas limited partnership being a lienholder on all or part of the land proposed to be annexed into Harris County Municipal Utility District No. 165, the boundaries of which land are more particularly described in **Exhibit A** attached hereto, hereby consents to the annexation of said land by Harris County Municipal Utility District No. 165.

WITNESS MY HAND on October 25, 2019.

MCGILL LEGACY, LTD.
a Texas limited partnership

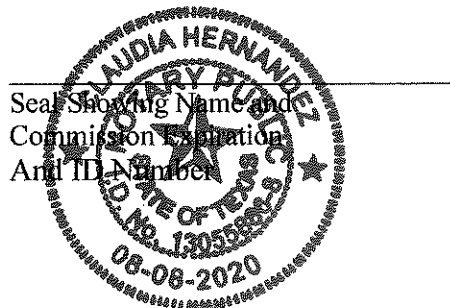
By: RMA, Inc.,
a Texas corporation,
as its General Partner

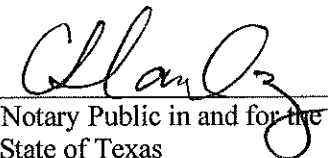
By: 
John O. McGill, President

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me, the undersigned authority on this the 25 day of September, 2019 by John O. McGill, President of RMA, Inc., a Texas corporation, as General Partner of **McGILL LEGACY, LTD.**, a Texas limited partnership on behalf of such entities.




Notary Public in and for the
State of Texas

Attachment: Exhibit A - Description of Land to be Annexed

CERTIFICATE OF AUTHORITY OF LIENHOLDER

I, JOHN O. MCGILL, hereby certify that:

1. I am the sole Manager of RMA, INC., a Texas corporation (the "Corporation");
2. The Corporation is the General Partner of MCGILL LEGACY, LTD., a Texas limited partnership (the "Company");
3. In such capacity, I am authorized to execute the Certificate of Lienholder's Consent (the "Certificate") and to execute any and all such documents in connection with the annexation of land into Harris County Municipal Utility District No. 165, including, but not limited to, the Certificate; and
4. Such execution of the Annexation Documents is duly authorized in accordance with the articles of organization and regulations of the Company.

WITNESS MY HAND, this 25th day of October, 2019.

RMA, INC., a Texas corporation


By: 
John O. McGill, President

THE STATE OF TEXAS §
 §
COUNTY OF Harris §

This instrument was acknowledged before me on the 25 day of October, 2019, by John O. McGill, Sole Manager of RMA, INC., a Texas corporation, general partner of MCGILL LEGACY, LTD, a Texas limited partnership, on behalf of said limited partnership.

(NOTARY SEAL)




Notary Public, State of Texas

CERTIFICATE OF LIENHOLDER'S CONSENT

TREZ CAPITAL (2015) CORPORATION, a corporation formed under the laws of British Columbia being a lienholder on all or part of the land proposed to be annexed into Harris County Municipal Utility District No. 165, the boundaries of which land are more particularly described in **Exhibit A** attached hereto, hereby consents to the annexation of said land by Harris County Municipal Utility District No. 165.

WITNESS MY HAND on October 18, 2019.

TREZ CAPITAL (2015) CORPORATION,
a British Columbia corporation

By: Trez Capital Funding II, LLC,
a Delaware limited liability company,
as Administrative Agent

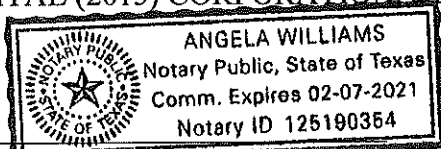
By: 
John D. Hutchinson, President

STATE OF TEXAS

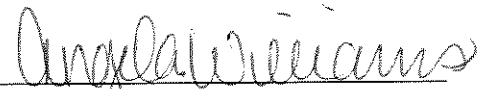
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COUNTY OF DALLAS

The foregoing instrument was ACKNOWLEDGED before me this 18th day of October, 2019, by JOHN D. HUTCHINSON, the President of Trez Capital Funding II, LLC, a Delaware limited liability company, in its capacity as Administrative Agent for TREZ CAPITAL (2015) CORPORATION, a British Columbia corporation, on behalf of said entities.



Seal Showing Name and
Commission Expiration
And ID Number


Notary Public in and for the
State of Texas

Attachment: Exhibit A - Description of Land to be Annexed

CERTIFICATE OF AUTHORITY OF LIENHOLDER

I, the undersigned officer of **TREZ CAPITAL FUNDING II, LLC** (the "Company"), hereby certify that:

1. The Company is the Administrative Agent for TREZ CAPITAL (2015) CORPORATION, a British Columbia Corporation (the "Lienholder");
2. John D. Hutchison is President of the Company
3. in such capacity, he executed the Certificate of Lienholder's Consent (the "Consent") to the annexation of certain land into HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 165; and
4. such execution of said certificate was duly authorized in accordance with the Company's and the Lienholders' organization documents and such authorization remained valid as of the date on which the Consent was executed.

WITNESS MY HAND, effective as of the 25 day of October, 2019.

TREZ CAPITAL FUNDING II, LLC,
a Delaware limited liability company,
as Administrative Agent

By: _____

Tim Litinas, Vice President

STATE OF TEXAS

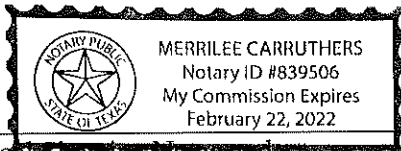
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§

COUNTY OF DALLAS

§

The foregoing instrument was ACKNOWLEDGED before me this 25 day of October, 2019, by Tim Litinas, as Vice President of and on behalf of Trez Capital Funding II, LLC, a Delaware limited liability company, in its capacity as Administrative Agent for TREZ CAPITAL (2015) CORPORATION, a British Columbia corporation, on behalf of said entities.



Seal Showing Name and
Commission Expiration
And ID Number

Merrilee Carruthers
Notary Public in and for the
State of Texas



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ETJ

Item Creation Date: 4/15/2020

HPW - 20WR202 – Petition Creation (1,039.679) Harris-Waller Counties Municipal Utility District No. 4

Agenda Item#: 30.

Summary:

ORDINANCE consenting to the creation of **HARRIS-WALLER COUNTIES MUNICIPAL UTILITY DISTRICT NO. 4**, containing approximately 1,039.679 acres of land within the extraterritorial jurisdiction of the City of Houston, Texas; authorizing the district to exercise road powers and to issue bonds for road facilities, subject to certain conditions

Background:

SUBJECT: Petition for the City's consent to the creation of two (2) tracts of land totaling 1,039.679 acres as Harris-Waller Counties Municipal Utility District No. 4.

RECOMMENDATION: Petition for the City's consent to the creation of two (2) tracts of land totaling 1,039.679 acres as Harris-Waller Counties Municipal Utility District No. 4 be approved.

SPECIFIC EXPLANATION: The owners of two (2) tracts of land totaling 1,039.679 acres, located within Harris and Waller Counties, and in the extraterritorial jurisdiction of the City of Houston (the "City") have petitioned the City for consent to create a district. All of the land is vacant and proposed to be developed as single family residential, commercial, and institutional property. The proposed district is located in the vicinity of Clay Road, Schlipf Road, Stockdick School Road, and Pitts Road. The creation of the district does not release it from the City's extraterritorial jurisdiction.

The Utility District Review Committee has evaluated the application with respect to wastewater collection and treatment, potable water distribution, storm water conveyance, and other public services.

The District will have a wastewater collection system and will be provided with wastewater treatment by the Quadvest, Lake House Wastewater Treatment Facility. This regional plant also provides wastewater treatment to Lakehouse/TrendMaker Development. Potable water will be provided by the District.

The nearest major drainage facility for Harris-Waller Counties Municipal Utility District No. 4 is Cane Island Branch, which flows into Buffalo Bayou, then into the Houston Ship Channel. The proposed tracts are within the 100 year floodplain (86%), but not within the 500 year floodplain.

By executing the Petition for Consent, the District has acknowledged that all plans for the construction of water conveyance, wastewater collection, and storm water collection systems within the District must

be approved by the City prior to their construction.

The Utility District Review Committee recommends that the subject petition be approved.

Carol Ellinger Haddock, P. E.
Director
Houston Public Works

Contact Information:

Sharon Citino, J.D.
Planning Director
Houston Water
Phone: (832) 395-2712

ATTACHMENTS:

Description

Signed Coversheet
Maps
2020-666

Type

Signed Cover sheet
Backup Material
Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date:

ETJ

Item Creation Date: 4/15/2020

HPW - 20WR202 – Petition Creation (1,039.679) Harris-Waller Counties Municipal Utility District No. 4

Agenda Item#:

Background:

SUBJECT: Petition for the City's consent to the creation of two (2) tracts of land totaling 1,039.679 acres as Harris-Waller Counties Municipal Utility District No. 4.

RECOMMENDATION: Petition for the City's consent to the creation of two (2) tracts of land totaling 1,039.679 acres as Harris-Waller Counties Municipal Utility District No. 4 be approved.

SPECIFIC EXPLANATION: The owners of two (2) tracts of land totaling 1,039.679 acres, located within Harris and Waller Counties, and in the extraterritorial jurisdiction of the City of Houston (the "City") have petitioned the City for consent to create a district. All of the land is vacant and proposed to be developed as single family residential, commercial, and institutional property. The proposed district is located in the vicinity of Clay Road, Schlupf Road, Stockdick School Road, and Pitts Road. The creation of the district does not release it from the City's extraterritorial jurisdiction.

The Utility District Review Committee has evaluated the application with respect to wastewater collection and treatment, potable water distribution, storm water conveyance, and other public services.

The District will have a wastewater collection system and will be provided with wastewater treatment by the Quadvest, Lake House Wastewater Treatment Facility. This regional plant also provides wastewater treatment to Lakehouse/TrendMaker Development. Potable water will be provided by the District.

The nearest major drainage facility for Harris-Waller Counties Municipal Utility District No. 4 is Cane Island Branch, which flows into Buffalo Bayou, then into the Houston Ship Channel. The proposed tracts are within the 100 year floodplain (86%), but not within the 500 year floodplain.

By executing the Petition for Consent, the District has acknowledged that all plans for the construction of water conveyance, wastewater collection, and storm water collection systems within the District must be approved by the City prior to their construction.

The Utility District Review Committee recommends that the subject petition be approved.

DocuSigned by:

5/27/2020

A93C410B72B3453...

Carol Ellinger Haddock, P. E.
Director
Houston Public Works

Contact Information:

Sharon Citino, J.D.
Planning Director
Houston Water
Phone: (832) 395-2712

ATTACHMENTS:

Description

Maps
Application
Petition
Backup Material
Fact Sheet

Type

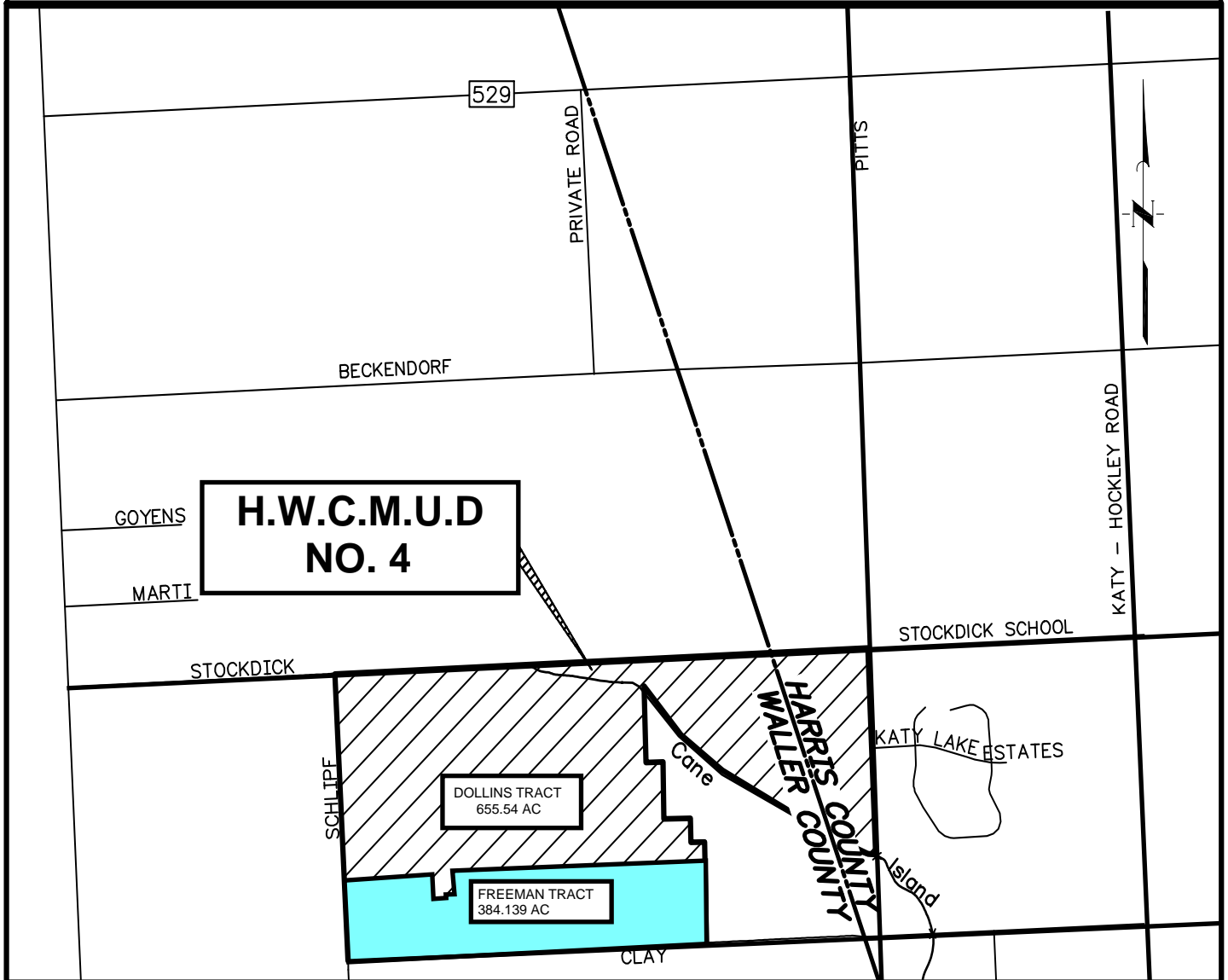
Backup Material
Backup Material
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HARRIS WALLER COUNTIES MUNICIPAL UTILITY DISTRICT NO. 4

Dollins: 655.54; Freeman: 384.14; Total AC: 1,039.679

(Key Map: Waller County 403 U, V, X, Y; 443 C, D, G, H)

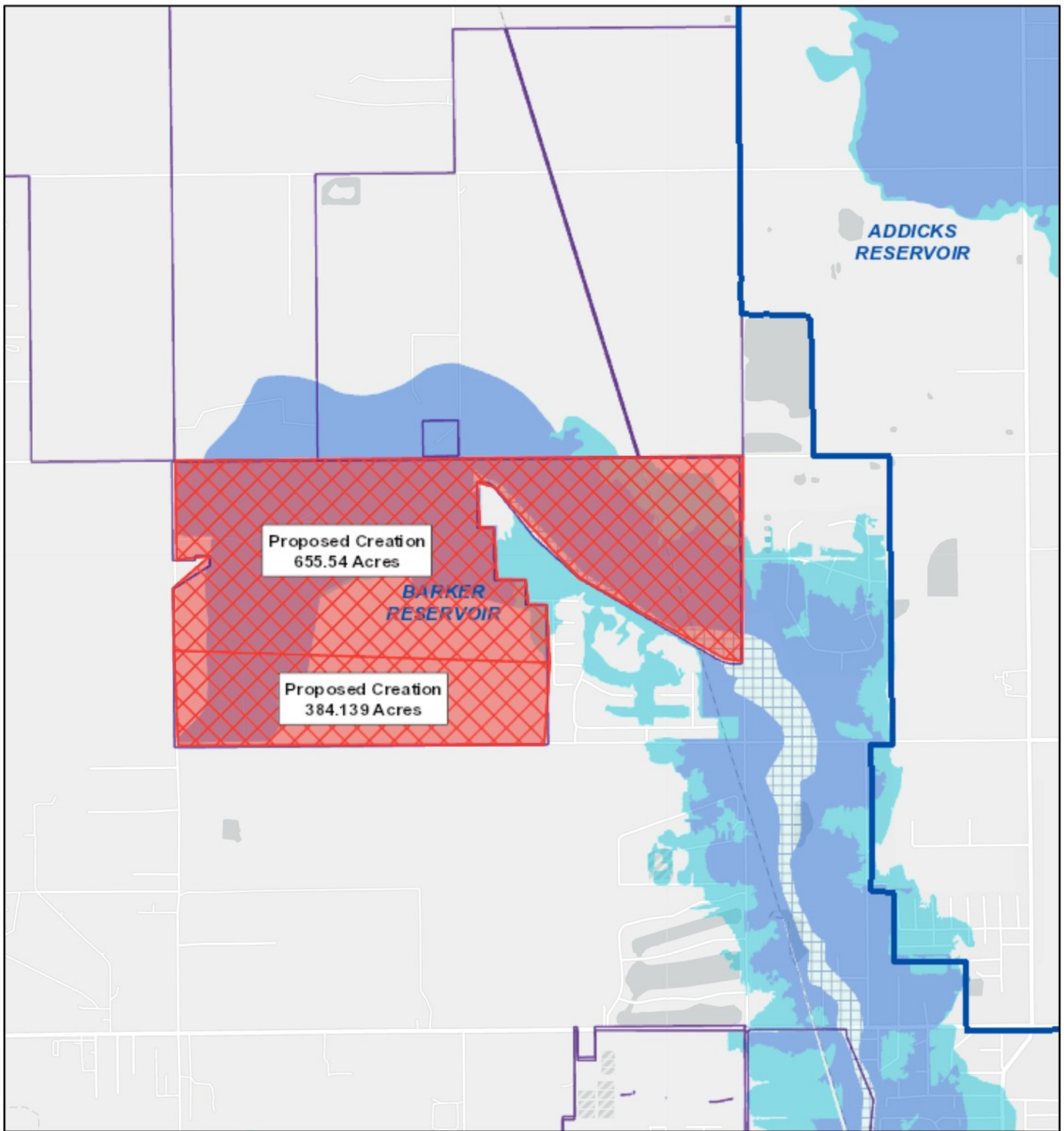
(Key Map: Harris County 404 S, W; 444 A, E)



VICINITY MAP

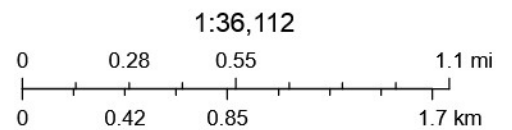
SCALE: NTS

HARRIS CO - WALLER CO MUD 4 (1039.679 acres)



5/19/2020, 8:05:58 AM

- Flood Hazard Zones
- 100 Year Floodplain
 - 500 Year Floodplain
 - Floodway
 - City Limits
- Council Districts
- Existing Acreage of District
 - Proposed Annexation
 - COH Wastewater Line
 - COH Water Line



HCFC and HCED,

City of Houston, Texas, Ordinance No. 2020 - 666

AN ORDINANCE CONSENTING TO THE CREATION OF HARRIS-WALLER COUNTIES MUNICIPAL UTILITY DISTRICT NO. 4, CONTAINING APPROXIMATELY 1,039.679 ACRES OF LAND WITHIN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF HOUSTON, TEXAS; AUTHORIZING THE DISTRICT TO EXERCISE ROAD POWERS AND TO ISSUE BONDS FOR ROAD FACILITIES, SUBJECT TO CERTAIN CONDITIONS; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, Katy 1039, LTD, a State of Texas limited liability partnership, by L.T. Management, Inc., a Nevada Corporation, its General Partner, submitted a petition ("Petition"), attached hereto, to the City of Houston, Texas ("City"), requesting consent by the City to the creation of Harris-Waller Counties Municipal Utility District No. 4 ("District"), containing approximately 1,039.679 acres of land, consisting of two tracts, and within the City's extraterritorial jurisdiction; and

WHEREAS, the City is authorized by Ordinance No. 2006-160, passed and adopted by the City Council on February 21, 2006, to give consent for, among others, the creation of a conservation and reclamation district in the extraterritorial jurisdiction of the City, subject to certain conditions, and permitting such district to issue bonds for certain recreational, road, and fire-fighting facilities; **NOW, THEREFORE**,

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

Section 1. That the findings and recitals contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. That the Petition is hereby granted, subject to the terms and conditions set forth in Exhibit B attached to the Petition.

Section 3. That the City Council further hereby notifies the District, its residents

and property owners of the provisions of applicable law allowing the City to create a district and annex land of the district located within the City's extraterritorial jurisdiction including, without limitation, the creation of this District and annexation of the land authorized to be included in this District. The City requests that the District include a statement in its form required under Section 49.455, Texas Water Code, reflecting such creation and annexation by the City.

Section 4. That a public emergency exists requiring that this ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this ordinance shall take effect immediately upon its passage and approval by the Mayor; provided, however, that if 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 29th day of July, 2020.

APPROVED this _____ day of _____, 2020.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.


City Secretary

Prepared by Legal Dept.

AH/sec 4/21/20

Requested by Carol Ellinger Haddock, P.E.

Director – Houston Public Works Department

(L.D. File No.0912000009001)


Senior Assistant City Attorney

Z:\REALESTATE\AHMUDS\HARRIS-WALLERCO\NO.4_1096.1039.679ac.DOC

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	

PETITION FOR CONSENT TO THE CREATION
OF A MUNICIPAL UTILITY DISTRICT

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF HOUSTON,
TEXAS:

The undersigned (herein the "Petitioner"), acting pursuant to the provisions of Chapters 49 and 54, Texas Water Code, respectfully petition the City Council of the City of Houston, Texas, for its written consent to the creation of a municipal utility district and would show the following:

I.

The name of the District is HARRIS-WALLER COUNTIES MUNICIPAL UTILITY DISTRICT NO. 4 (the "District").

II.

The District was created by special act of the Texas Legislature, 2019 Regular Session, pursuant to House Bill 4520, under the terms and provisions of Article XVI, Section 59 and Article III, Section 52, of the Constitution of Texas and Chapters 49 and 54, Texas Water Code, together with all amendments and additions thereto.

III.

The District contains an area of 1,039.679 acres of land, more or less, situated in Harris County, Texas and Waller County, Texas. All of the land included in the District is within the extraterritorial jurisdiction of the City of Houston, Texas (the "City"). All of the land included may properly be included in the District. The land proposed to be included within the District consists of two tracts described by metes and bounds in Exhibit "A," which is attached hereto and incorporated herein for all purposes (the "Land").

IV.

The Petitioner holds fee simple title to a majority in value of the Land which is proposed to be included in the District.

V.

The Petitioner represents that there are no lienholders on the Land except David Wayne Freeman and Diana Lynn Ballard, Co-Trustees of the Freeman Family Trust, David Wayne Freeman, Trustee of the Kenneth Lee Freeman GST Trust, Barbara Lynn Steele Freeman, Trustee of the Randy and Lynn Freeman Family Trust, David Wayne

Freeman and Diana Lynn Ballard, Co-Trustees of the David Wayne Freeman Trust, David Wayne Freeman and Diana Lynn Ballard, Co-Trustees of the Diana Lynn Ballard Trust, David Wayne Freeman and Diana Lynn Ballard, Co-Trustees of the Shawn Lee Freeman Trust, David Wayne Freeman and Diana Lynn Ballard, Co-Trustees of the Carla Kaye Freeman Trust, David Wayne Freeman and Diana Lynn Ballard, Co-Trustees of the Christopher Kent Freeman Trust, David Wayne Freeman and Diana Lynn Ballard, Co-Trustees of the David Scott Freeman Trust, David Wayne Freeman and Diana Lynn Ballard, Co-Trustees of the Stephanie Renee Ballard Trust, and David Wayne Freeman and Diana Lynn Ballard, Co-Trustees of the Rebecca Anne Ballard Trust ,Trez Capital (2015) Corporation, Joseph Raymond Dollins, Elizabeth E. Dollins, and J. Raymond Dollins, III and that there are no residents on the Land.

VI.

The general nature of the work to be done by the District at the present time is the design, construction, acquisition, maintenance and operation of a waterworks and sanitary sewer system for domestic and commercial purposes, the construction, acquisition, improvement, extension, maintenance and operation of works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate and amend local storm waters or other harmful excesses of waters, and such other construction, acquisition, improvement, maintenance and operation of such additional facilities, systems, plants and enterprises, as shall be consistent with all of the purposes for which the District is created, including roads and park and recreational facilities.

VII.

There is, for the following reasons, a necessity for the above-described work. The Land is urban in nature, is within the growing environs of the City, and is in close proximity to populous and developed sections of Harris County, Texas. There is not now available within the area, which will be developed for single family residential and commercial uses, an adequate waterworks system, sanitary sewer system, or drainage and storm sewer system or adequate roads or park and recreational facilities. The health and welfare of the present and future inhabitants of the area and of the territories adjacent thereto require the purchase, design, construction, acquisition, ownership, operation, repair, improvement and extension of an adequate waterworks system, sanitary sewer system, drainage and storm sewer systems, roads and park and recreational facilities. A public necessity, therefore, exists for the creation of the District, to provide for the purchase, design, construction, acquisition, ownership, operation, repair, improvement and extension of such waterworks system, sanitary sewer system, drainage and storm sewer systems, roads and park and recreational facilities to promote the purity and sanitary condition of the State's waters and the public health and welfare of the community.

The Petitioner, by submission of this Petition, requests the City's consent to the creation of the District containing the Land under the same conditions as set forth in Exhibit "B," which is attached hereto and incorporated herein for all purposes. The Petitioner hereby covenants that if the requested consent to the creation of the District is given, the Petitioner will adopt and abide by said conditions.

VIII.

A preliminary investigation has been made to determine the cost of the proposed District's waterworks system, sanitary sewer system, and drainage and storm sewer system projects, and it is now estimated by the Petitioner, from such information as it has at this time, that such cost will be approximately \$75,000,000.

IX.

A preliminary investigation has been made to determine the cost of the proposed District's road projects, and it is now estimated by the Petitioner, from such information as it has at this time, that such cost will be approximately \$45,950,000.

X.

A preliminary investigation has been made to determine the cost of the proposed District's park and recreational facilities, and it is now estimated by the Petitioner, from such information as it has at this time, that such cost will be approximately \$9,800,000.

XI.

The total cost of the proposed District's projects is estimated by the Petitioner to be approximately \$130,750,000.

WHEREFORE, the Petitioner prays that this petition be heard and that the City Council duly pass and approve an ordinance or resolution granting the consent to the creation of the District and authorizing the inclusion of the land described herein within the District.

[EXECUTION PAGES FOLLOW]

RESPECTFULLY SUBMITTED this 12th day of December, 2019.

KATY 1039, LTD.,
a Texas limited liability partnership

By: L. T. Management, Inc.,
a Nevada corporation
its General Partner

By: [Signature]
Al P. Brende, President

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

12th This instrument was acknowledged before me, the undersigned authority, this day of December, 2019, by Al P. Brende, President of L. T. Management, Inc., a Nevada Corporation, and general partner of KATY 1039, LTD., a Texas limited liability partnership, on behalf of said Nevada corporation and Texas limited partnership.

[Signature]
Notary Public, State of Texas

(NOTARY PUBLIC)

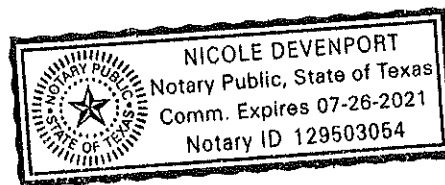


EXHIBIT A

Exhibit ____ Page 1 of 2 Pages

County: Waller
Project: Waller 383
Job No. 177301
MBS No. 17-145

FIELD NOTES FOR 384.139 ACRES

Being a tract of land containing 384.139 acres located in the H.&T.C.R.R. Co. Survey, Section 121, Abstract 201 (A-201), and the J.W. McCutcheon Survey, Section 130, A-308, both in Waller County, Texas. Said 384.139 acres being those certain call 383.1710 acre and 1.00 acre tracts of land (styled "Tract 1" and "Tract 2", respectively) recorded in the name of Kenneth Lee Freeman, Charles Randall Freeman, David Wayne Freeman and Diana Lynn Ballard, Trustees in Volume 471, Page 468 of the Waller County Deed Records (W.C.D.R.). Said 384.139 acres being more particularly described by metes and bounds as follows (bearings are referenced to the Texas Coordinate System of 1983, South Central Zone, based on GPS observations):

COMMENCING at a 1/2 inch iron rod found at the northwest corner of said A-201, the northeast corner of the F. Eule Survey, Section 112, A-373, the southeast corner of the H.&T.C.R.R. Co. Survey, Section 111, A-172, and the F. Eule Survey, Section 120, A-375, all in Waller County, Texas, being at the intersection of Schlipf Road and Stockdick Road, and from which a 1/2 inch iron pipe found at the northeast corner of said A-201 and northwest corner of said A-308 bears North 87 degrees 59 minutes 16 seconds East, a distance of 5,297.10 feet;

THENCE, with said Schlipf Road and the common line between said A-201 and A-373, South 02 degrees 05 minutes 03 seconds East, a distance of 2,779.90 feet to a Nail set in asphalt at the **POINT OF BEGINNING** and northwest corner of aforesaid 383.1710 acre tract, same being the southwest corner of the Dollins 281.50 acre tract;

THENCE, with the common line between said 383.1710 acre tract and said Dollins 281.50 acre tract, North 87 degrees 54 minutes 31 seconds East, passing a 1/2 inch iron pipe found at 25.67 feet for reference, and continuing for a total distance of 2,314.64 feet (call 2,315.22 feet) to a 5/8 inch capped iron rod stamped "GBI Partners" set at the northwest corner of the Dollins 10 acre tract;

THENCE, with the common lines between said 383.1710 acre tract and said Dollins 10 acre tract, the following two (2) courses:

- 1.) South 02 degrees 05 minutes 59 seconds East, a distance of 684.50 feet to a 5/8 inch capped iron rod stamped "GBI Partners" set at the southwest corner of said Dollins 10 acre tract;
- 2.) North 87 degrees 54 minutes 31 seconds East, a distance of 405.00 feet to a 5/8 inch capped iron rod stamped "GBI Partners" set at the most southerly southeast corner of said Dollins 10 acre tract, same being the southwest corner of the aforesaid 1.00 acre tract;

THENCE, with the common lines between said 1.00 acre tract and said Dollins 10 acre tract, the following two (2) courses:

1.) North 02 degrees 05 minutes 59 seconds West, a distance of 159.00 feet to a 5/8 inch capped iron rod stamped "GBI Partners" set at the northwest corner of said 1.00 acre tract;

2.) South 87 degrees 41 minutes 42 seconds East, a distance of 295.87 feet to a 5/8 inch capped iron rod stamped "GBI Partners" set at the most easterly southeast corner of said Dollins 10 acre tract, the northeast corner of said 1.00 acre tract and being on the most easterly west line of aforesaid 383.1710 acre tract;

THENCE, with a common line between said 383.1710 acre tract and said Dollins 10 acre tract, North 02 degrees 05 minutes 59 seconds West, a distance of 548.18 feet to a 5/8 inch capped iron rod stamped "GBI Partners" set at the northeast corner of said Dollins 10 acre tract and being on the south line of the aforesaid Dollins 281.50 acre tract;

THENCE, with the north line of said 383.1710 acre tract and the south line of said Dollins 281.50 acre tract and the Dollins 88.30 acre and 499.65 acre tracts, North 87 degrees 54 minutes 31 seconds East, passing the common line between aforesaid A-201 and A-308 at 2,284.28 feet, and continuing for a total distance of 3,846.71 feet to a 5/8 inch capped iron rod found at the northeast corner of said 383.1710 acre tract;

THENCE, with the east line of said 383.1710 acre tract and west line of said Dollins 499.65 acre tract, South 02 degrees 07 minutes 54 seconds East, passing a 3/4 inch capped iron rod found at 2,469.93 feet for reference, and continuing for a total distance of 2,508.30 feet to the southeast corner of said 383.1710 acre tract, being in Clay Road (call 60 feet wide as described in Volume 106, Page 492 of the W.C.D.R.) and on the common line between aforesaid A-308 and the H.&T.C.R.R. Co. Survey, Section 127, A-205, in Waller County, Texas, and from which point a found nail in asphalt bears North 88 degrees 00 minutes 59 seconds East, a distance of 0.78 feet;

THENCE, with said common line, the common line between aforesaid A-201 and the T. Reese Survey, Section 122, A-333, in Waller County, Texas, the south line of said 383.1710 acre tract and said Clay Road, South 88 degrees 00 minutes 59 seconds West, passing a 1/2 inch iron pipe found at 1,562.87 feet for reference and being at the southwest corner of said A-308, the southeast corner of said A-201, the northeast corner of said A-333 and the northwest corner of said A-205, and continuing for a total distance of 6,863.43 feet to a 1/2 inch iron rod found under asphalt at the southwest corner of said 383.1710 acre tract and said A-201, same being the northwest corner of said A-333, the southeast corner of aforesaid A-373 and the northeast corner of the H.&T.C.R.R. Co. Survey, Section 109, A-171, in Waller County, Texas, and being at the intersection of aforesaid Schlipf Road and Clay Road;

THENCE, with the west line of said 383.1710 acre tract, the common line between said A-201 and A-373, and said Schlipf Road, North 02 degrees 05 minutes 03 seconds West, a distance of 2,495.42 feet (call 2,495.62 feet) to the **POINT OF BEGINNING** and containing 384.139 acres of land.

EXHIBIT A

655.54 Acres

H. & T. C. Railroad Company Survey Section 121, Abstract 201
J. W. McCutcheon Survey, Section 130
Abstract 308, Waller County, Abstract 1713, Harris County

STATE OF TEXAS

§

COUNTIES OF WALLER AND HARRIS

§

A **METES & BOUNDS** description of a 655.54 acre tract of land in the H. & T. C. Railroad Company Survey Section 121, Abstract 201, and the J. W. McCutcheon Survey, Section 130, Abstract 308, Waller County, Texas, and the J. W. McCutcheon Survey, Abstract 1713, Harris County, Texas, being the residue of that certain called 1,277.0358 acre tract recorded in Volume 313, Page 416, Deed Records, Waller County, Texas, with all bearings based upon the Texas Coordinate System of 1983, South Central Zone, based upon GPS observations.

Beginning at a Mag nail set with shiner at the intersection of Schlipf Road and Stockdick School Road for the northwest corner of said called 1,277.0358 acre tract, for the northwest corner and **Place of Beginning** of the herein described tract, said point being the northwest corner of said Section 121, same being the northeast corner of the adjoining Fred Eule Survey, Abstract 373, the southeast corner of the adjoining H. & T. C. Railroad Company Survey, Section 111, Abstract 172, and the southwest corner of the adjoining Fred Eule Survey, Abstract 375, and the southwest corner of an adjoining called 162.614 acre tract recorded under County Clerk's File Number 1700518, Official Records, Waller County, Texas;

Thence North 87 degrees 59 minutes 38 seconds East (called South 89 degrees 56 minutes 36 seconds East) along the north line of the herein described tract, the north line of said called 1,277.0358 acre tract, and the north line of said Section 121, same being the south line of said adjoining Fred Eule Survey, Abstract 375, and the south line of said adjoining called 162.614 acre tract, at 2,669.63 feet pass a ½ inch iron pipe found on said line for the southeast corner of said adjoining called 162.614 acre tract, same being the southwest corner of an adjoining called 1,263.584 acre tract recorded in Volume 449, Page 312, Deed Records, Waller County, Texas, at 3,117.89 feet pass a ½ inch iron pipe found on said line, and continuing for a total distance of 5,297.06 feet (called 5,297.44 feet) to a ½ inch iron pipe found for angle point, said point being the northeast corner of said Section 121, same being the northwest corner of the aforementioned Section 130, same being the southeast corner of said adjoining Fred Eule Survey, Abstract 375, same being the southwest corner of the adjoining H. & T. C. Railroad Company Survey, Section 129, Abstract 204;

Thence North 87 degrees 58 minutes 20 seconds East (called South 89 degrees 56 minutes 36 seconds East) along the north line of the herein described tract, the north line of said called 1,277.0358 acre tract, and the north line of said Section 130, same being the south line of said adjoining called 1,263.584 acre tract, and the south line of said adjoining Section 129, 5,242.80 feet (called 5,242.24 feet) to a Mag nail set with shiner in the intersection of Stockdick School Road and Pitts Road for the northeast corner of the herein described tract, the northeast corner of said called 1,277.0358 acre tract, and the northeast corner of said Section 130, same being the southeast corner of said adjoining called 1,263.584 acre tract, and the southeast corner of said adjoining Section 129, the southwest corner of the adjoining George Spencer Survey, Abstract 1366, and the northwest corner of the adjoining H. & T. C. Railroad Company Survey, Section 79, Abstract 464;

655.54 Acres

H. & T. C. Railroad Company Survey Section 121, Abstract 201
J. W. McCutcheon Survey, Section 130
Abstract 308, Waller County, Abstract 1713, Harris County

Thence South 02 degrees 04 minutes 22 seconds East (called South) along the east line of the herein described tract, the east line of said called 1,277.0358 acre tract, and the east line of said Section 130, same being the west line of said adjoining Section 79, as located in Pitts Road, 3,821.34 feet to a Mag nail set with shiner for the upper southeast corner of the herein described tract, being in the centerline of Cane Island Branch;

Thence along the centerline of Cane Island Branch, being the common line of the herein described tract and an adjoining called 219.6424 acre tract recorded under County Clerk's File Number 1606411, Official Records, Waller County, Texas, with the following courses and distances:

South 87 degrees 57 minutes 57 seconds West, 99.09 feet (adjoiner called South 87 degrees 58 minutes 32 seconds West) to beginning of a curve to the right;

Thence along said curve to the right having a central angle of 30 degrees 51 minutes 03 seconds (adjoiner called 30 degrees 51 minutes 02 seconds), a radius of 724.84 feet (adjoiner called 724.84 feet), an arc length of 390.29 feet (adjoiner called 390.29 feet), and a chord bearing North 76 degrees 36 minutes 32 seconds West, 385.59 feet (adjoiner called North 76 degrees 35 minutes 51 seconds West, 385.59 feet) to the end of said curve;

North 61 degrees 11 minutes 00 seconds West, 2,960.39 feet (adjoiner called North 61 degrees 10 minutes 25 seconds West, 2,960.39 feet);

North 49 degrees 39 minutes 44 seconds West, 1,105.19 feet (adjoiner called North 49 degrees 39 minutes 09 seconds West, 1,105.19 feet);

North 40 degrees 00 minutes 50 seconds West, 1,195.05 feet (adjoiner called North 40 degrees 20 minutes 25 seconds West and North 42 degrees 36 minutes 30 seconds West);

North 56 degrees 39 minutes 14 seconds West, 96.20 feet;

North 67 degrees 38 minutes 55 seconds West, 56.40 feet;

North 89 degrees 09 minutes 58 seconds West, 187.42 feet to a point in the centerline of Cane Island Branch for a reentry corner to the herein described tract, said point being the northwest corner of an adjoining called 5.7438 acre tract (Tract II) recorded under County Clerk's File Number 1606411, Official Records, Waller County, Texas;

Thence along the common line of the herein described tract and said adjoining called 5.7438 acre tract, and the aforementioned adjoining called 219.6424 acre tract, with the following courses and distances:

South 02 degrees 06 minutes 10 seconds East, 836.00 feet (adjoiner called South 02 degrees 06 minutes 10 seconds East, 836.50 feet) to a found 5/8 inch iron rod with cap marked "EIC";

655.54 Acres

H. & T. C. Railroad Company Survey Section 121, Abstract 201
J. W. McCutcheon Survey, Section 130
Abstract 308, Waller County, Abstract 1713, Harris County

North 88 degrees 01 minute 59 seconds East, 305.32 feet (adjoiner called North 87 degrees 53 minutes 50 seconds East, 306.00 feet) to a found 5/8 inch iron rod with cap marked "EIC";

South 02 degrees 09 minutes 36 seconds East, 971.68 feet (adjoiner called South 02 degrees 06 minutes 10 seconds East) to a found 5/8 inch iron rod with cap marked "EIC";

North 87 degrees 55 minutes 45 seconds East, 577.92 feet (adjoiner called North 87 degrees 53 minutes 35 seconds East, 578.24 feet) to a found 1/2 inch iron pipe with cap marked "Kalkomey Surveying";

South 02 degrees 22 minutes 45 seconds East, 466.63 feet (adjoiner called South 02 degrees 21 minutes 12 seconds East, 466.69 feet) to a found 5/8 inch iron rod with cap marked "EIC";

North 87 degrees 52 minutes 27 seconds East, 383.91 feet (adjoiner called North 87 degrees 53 minutes 35 seconds East, 383.89 feet) to a found 5/8 inch iron rod with cap marked "EIC";

South 02 degrees 08 minutes 09 seconds East (adjoiner called South 02 degrees 08 minutes 28 seconds East) at 2,541.19 feet pass a 1/2 inch iron pipe found on said line at its intersection with the apparent occupied north right-of-way line of Clay Road, and continuing for a total distance of 2,579.28 feet to a Mag nail found with shiner for the most southerly southeast corner of the herein described tract, said point being in the south line of said called 1,277.0358 acre tract and the south line of said Section 130, same being the north line of the adjoining H. & T. C. Railroad Company Survey, Section 127, Abstract 205, from which point a found PK nail bears North 05 degrees 22 minutes 33 seconds West, 0.44 feet;

Thence South 88 degrees 00 minutes 42 seconds West (called North 89 degrees 54 minutes 46 seconds West) along the southernmost line of the herein described tract, the south line of said called 1,277.0358 acre tract, and the south line of said Section 130, same being the north line of said adjoining Section 127, as located in Clay Road, 70.00 feet to a Mag nail found with shiner for the most southerly southwest corner of the herein described tract, same being the southeast corner of an adjoining called 383.1710 acre tract (Tract 1) recorded under County Clerk's File Number 1803887, Official Records, Waller County, Texas, from which point a found PK nail bears North 04 degrees 29 minutes 12 seconds West, 0.57 feet;

Thence North 02 degrees 09 minutes 18 seconds West (adjoiner called North 00 degrees 03 minutes 10 seconds West) along the common line of the herein described tract and said adjoining called 383.1710 acre tract, at 37.93 feet pass a 1/2 inch iron pipe with cap marked "Kalkomey Surveying" found on said line at its intersection with the apparent occupied north right-of-way line of Clay Road, and continuing for a total distance of 2,508.22 feet (adjoiner called 2,508.29 feet) to a 1/2 inch iron pipe with cap marked "Kalkomey Surveying" found for a reentry corner to the herein described tract, same being the northeast corner of said adjoining called 383.1710 acre tract;

655.54 Acres

H. & T. C. Railroad Company Survey Section 121, Abstract 201
J. W. McCutcheon Survey, Section 130
Abstract 308, Waller County, Abstract 1713, Harris County

Thence South 87 degrees 54 minutes 31 seconds West (adjoiner called South 89 degrees 58 minutes 53 seconds West) continuing along said common line, 3,846.70 feet (adjoiner called 3,846.70 feet) to a 5/8 inch iron rod with cap marked "Jones | Carter" set for corner;

Thence South 02 degrees 06 minutes 27 seconds East (adjoiner called South 00 degrees 01 minute 37 seconds East) continuing along said common line, 548.18 feet to a 5/8 inch iron rod with cap marked "Kalkomey Surveying" set for corner, said point being the northeast corner of an adjoining called 1.00 acre tract (Tract 2) recorded under County Clerk's File Number 1803887, Official Records, Waller County, Texas, from which point a 3/4 inch iron rod found for the southeast corner of said adjoining called 1.00 acre tract, same being a reentry corner to said adjoining called 383.1710 acre tract, bears South 02 degrees 06 minutes 27 seconds East, 136.61 feet;

Thence North 87 degrees 42 minutes 05 seconds West (adjoiner called North 85 degrees 37 minutes 20 seconds West) along the common line of the herein described tract and said adjoining called 1.00 acre tract, 295.87 feet (adjoiner called 295.87 feet) to a 5/8 inch iron rod with cap marked "Kalkomey Surveying" set for a reentry corner to the herein described tract, same being the northwest corner of said adjoining called 1.00 acre tract;

Thence South 01 degree 31 minutes 04 seconds East (adjoiner called South 00 degrees 01 minute 37 seconds East) continuing along said common line, 159.00 feet (adjoiner called 159.00 feet) to a 5/8 inch iron rod with cap marked "Kalkomey Surveying" set for corner, said point being the southwest corner of said adjoining called 1.00 acre tract, and being an interior line of the aforementioned adjoining called 383.1710 acre tract;

Thence South 87 degrees 57 minutes 59 seconds West (adjoiner called South 89 degrees 58 minutes 53 seconds West) along the common line of the herein described tract and said adjoining called 383.1710 acre tract, 405.00 feet (adjoiner called 405.00 feet) to a 3/4 inch iron rod found for corner, said point being a reentry corner to said adjoining called 383.1710 acre tract;

Thence North 01 degree 58 minutes 15 seconds West (adjoiner called North 00 degrees 01 minute 37 seconds West) continuing along said common line, 684.12 feet (adjoiner called 684.51 feet) to a point in an 8-inch fence corner post for a reentry corner to the herein described tract;

Thence South 87 degrees 54 minutes 31 seconds West (adjoiner called South 89 degrees 58 minutes 53 seconds West) continuing along said common line, at 2,288.94 feet pass a 1/2 inch iron pipe found on said line at its intersection with the apparent occupied east right-of-way line of Schlipf Road, and continuing for a total distance of 2,314.47 feet (adjoiner called 2,315.22 feet) to a Mag nail set with shiner for a southwest corner of the herein described tract, same being the northwest corner of said adjoining called 383.1710 acre tract, said point being in the west line of said called 1,277.0358 acre tract and the west line of the aforementioned Section 121, same being the east line of the aforementioned adjoining Fred Eule Survey, Abstract 373, from which point a bolt spike found for the southwest corner of said adjoining called 383.1710 acre tract bears South 02 degrees 05 minutes 05 seconds East, 2,495.34 feet (adjoiner called South 00 degrees 01 minute 07 seconds East, 2,495.62 feet);

655.54 Acres

H. & T. C. Railroad Company Survey Section 121, Abstract 201
J. W. McCutcheon Survey, Section 130
Abstract 308, Waller County, Abstract 1713, Harris County

Thence North 02 degrees 05 minutes 05 seconds West (called North 00 degrees 01 minute 07 seconds West) along the west line of the herein described tract, the west line of said called 1,277.0358 acre tract, and the west line of said Section 121, same being the east line of said adjoining Fred Eule Survey, Abstract 373, as located in Schlipf Road, 445.91 feet to a Mag nail set with shiner for corner;

Thence North 87 degrees 53 minutes 06 seconds East, 25.00 feet to a 6-inch steel post found for corner, said point being the southwest corner of an adjoining called 3.329 acre tract recorded in Volume 1168, Page 008, Official Records, Waller County, Texas;

Thence North 56 degrees 14 minutes 23 seconds East (adjoiner called North 58 degrees 15 minutes 22 seconds East) along the common line of the herein described tract and said adjoining called 3.329 acre tract, 778.87 feet (adjoiner called 778.87 feet) to a 5/8 inch iron rod with cap marked "Kalkomey Surveying" set for a reentry corner to the herein described tract, same being the southeast corner of said adjoining called 3.329 acre tract;

Thence North 02 degrees 45 minutes 16 seconds West (adjoiner called North 00 degrees 10 minutes 26 seconds West) continuing along said common line, 180.00 feet (adjoiner called 180.00 feet) to a 1/2 inch iron pipe with cap marked "Kalkomey Surveying" found for a reentry corner to the herein described tract, same being the northeast corner of said adjoining called 3.329 acre tract;

Thence South 88 degrees 00 minutes 41 seconds West (adjoiner called South 89 degrees 58 minutes 37 seconds West) continuing along said common line, 271.83 feet (adjoiner called 273.00 feet) to a 1/2 inch iron pipe found for a reentry corner to the herein described tract, same being the upper northwest corner of said adjoining called 3.329 acre tract;

Thence South 02 degrees 18 minutes 47 seconds East (adjoiner called South 00 degrees 10 minutes 26 seconds East) continuing along said common line, 78.92 feet to a 1/2 inch iron pipe found for corner, said point being the northeast corner of an adjoining called 2.000 acre tract recorded under County Clerk's File Number 1505672, Official Records, Waller County, Texas;

Thence South 87 degrees 54 minutes 49 seconds West (adjoiner called West) along an interior line of the herein described tract, same being the north line of said adjoining called 2.000 acre tract, at 389.97 feet pass a 1/2 inch iron pipe with cap marked "Kalkomey Surveying" found on said line at its intersection with the apparent occupied east right-of-way line of Schlipf Road, and continuing for a total distance of 414.22 feet (adjoiner called 414.05 feet) to a Mag nail set with shiner for the upper southwest corner of the herein described tract, same being the northwest corner of said adjoining called 2.000 acre tract, said point being in the west line of the aforementioned called 1,277.0358 acre tract and the west line of the aforementioned Section 121, same being the east line of the aforementioned adjoining Fred Eule Survey, Abstract 373;

655.54 Acres

H. & T. C. Railroad Company Survey Section 121, Abstract 201
J. W. McCutcheon Survey, Section 130
Abstract 308, Waller County, Abstract 1713, Harris County

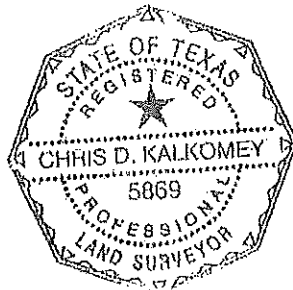
Thence North 02 degrees 05 minutes 05 seconds West (called North 00 degrees 01 minute 07 seconds West) along the west line of the herein described tract, the west line of said called 1,277.0358 acre tract, and the west line of said Section 121, same being the east line of said adjoining Fred Eule Survey, Abstract 373, as located in Schlipf Road, 1,823.78 feet to the **Place of Beginning** and containing 655.54 acres of land, more or less.

For reference and further description see Drawing No. 12652 prepared by the undersigned on same date.

September 10, 2018

Job Number R8006-065-07

Jones | Carter
6415 Reading Road
Rosenberg, TX 77471-5655
(281) 342-2033
Texas Board of Professional Land
Surveying Registration No. 10046104



A handwritten signature in black ink, appearing to read "Chris D. Kalkomey", written over a horizontal line.

Acting By/Through Chris D. Kalkomey
Registered Professional Land Surveyor
No. 5869
CDKalkomey@jonescarter.com



EXHIBIT "B"

(a) To the extent authorized by law, the District will issue bonds only for the purpose of purchasing and constructing, or purchasing, or constructing under contract with the City of Houston, or otherwise acquiring waterworks systems, sanitary sewer systems, storm sewer systems, drainage facilities, recreational facilities, road facilities, or facilities for fire-fighting services, or parts of such systems or facilities, and to make any and all necessary purchases, construction, improvements, extensions, additions, and repairs thereto, and to purchase or acquire all necessary land, right-of-way, easements, sites, equipment, buildings, plants, structures, and facilities therefor, and to operate and maintain same, and to sell water, sanitary sewer, and other services within or without the boundaries of the District. Such bonds will expressly provide that the District reserves the right to redeem the bonds on any interest-payment date subsequent to the fifteenth (15th) anniversary of the date of issuance without premium and will be sold only after the taking of public bids therefor, and none of such bonds, other than refunding bonds, will be sold for less than 95% of par; provided that the net effective interest rate on bonds so sold, taking into account any discount or premium as well as the interest rate borne by such bonds, will not exceed two percent (2%) above the highest average interest rate reported by the Daily Bond Buyer in its weekly "20 Bond Index" during the one-month period next preceding the date notice of the sale of such bonds is given, and that bids for the bonds will be received not more than forty-five (45) days after notice of sale of the bonds is given. The resolution authorizing the issuance of the District's bonds will contain a provision that any pledge of the revenues from the operation of the District's water and sewer and/or drainage system to the payment of the District's bonds will terminate when and if the City of Houston, Texas, annexes the District, takes over the assets of the District and assumes all of the obligations of the District. No land located within the extraterritorial jurisdiction of the City of Houston will be added or annexed to the District until the City of Houston has given its written consent by resolution or ordinance of the City Council to such addition or annexation.

(b) (1) Before the commencement of any construction within the District, its directors, officers, or developers and landowners will submit to the Director of the Department of Public Works and Engineering of the City of Houston, or to his designated representative, all plans and specifications for the construction of water, sanitary sewer, drainage, and road facilities and related improvements to serve the District and obtain the approval of such plans and specifications therefrom. All water wells, water meters, flushing valves, valves, pipes, and appurtenances thereto, installed or used within the District, will conform exactly to the specifications of the City of Houston. All water service lines and sewer service lines, lift stations, sewage treatment facilities, and road facilities, and appurtenances thereto, installed or used within the District will comply with the City of Houston's standard plans and specifications as amended from time to time. Prior to the construction of any water, sanitary sewer, drainage or road facilities within or by the District, the District or its engineer will give written notice by registered or certified mail to the Director of Public Works and Engineering, stating the date that such construction will be commenced. The construction of the District's water, sanitary sewer, drainage and road facilities will be in accordance with the approved plans and specifications, and with applicable standards and specifications of the City of Houston; and during the progress of the construction and installation of such facilities, the Director of Public Works and

Engineering of the City of Houston, or an employee thereof, may make periodic on-the-ground inspections.

(2) Before the expenditure by the District of bond proceeds for the acquisition, construction or development of recreational facilities, the District shall obtain and maintain on file, from a registered landscape architect, registered professional engineer or a design professional allowed by law to engage in architecture, a certification that the recreational facilities, as constructed, conform to the applicable recreational facilities design standards and specifications of the City of Houston's Department of Parks and Recreation and shall submit a copy of the certification and the "as built" plans and specifications for such recreational facilities to the Director of the City of Houston Parks and Recreation Department.

(3) Before the expenditure by the District of bond proceeds for the acquisition, construction or development of facilities for fire-fighting services, the District shall obtain and maintain on file, from a registered architect, registered professional engineer or a design professional allowed by law to engage in facility design and construction, a certification that the facilities for fire-fighting services, as constructed, conform to the applicable fire-fighting facilities design standards and specifications of the City of Houston's Fire Department and shall submit a copy of the certification and the "as built" plans and specifications for such facilities for fire-fighting services to the Chief of the City of Houston Fire Department.

(c) The District will agree to engage a sewage plant operator holding a valid certificate of competency issued under the direction of the Texas Commission on Environmental Quality, or such successor agency as the legislature may establish ("TCEQ"), as required by Section 26.0301, Texas Water Code, as may be amended from time to time. The District will agree to make periodic analyses of its discharge pursuant to the provisions of Order No. 69-1219-1 of the Texas Water Quality Board (predecessor agency to the TCEQ) and further to send copies of all such effluent data to the Department of Public Works and Engineering, City of Houston, as well as to the TCEQ. The District will agree that representatives of the City of Houston may supervise the continued operations of the sewage treatment facility by making periodic inspections thereof.

(d) The District, its board of directors, officers, developers, and/or landowners will not permit the construction, or commit to any development within, the District that will result in a wastewater flow to the serving treatment facility which exceeds that facility's legally permitted average daily flow limitations or the District's allocated capacity therein.

(e) Prior to the sale of any lot or parcel of land, the owner or the developer of the land included within the limits of the District will obtain the approval of the Planning Commission of the City of Houston of a plat which will be duly recorded in the Real Property Records of Harris County, Texas, and otherwise comply with the rules and regulations of the Department of Planning and Development and the Department of Public Works and Engineering of the City of Houston.



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

District D

Item Creation Date: 3/16/2020

HPW - 20WR215 – Petition Addition (36.9543) Harris
County Municipal Utility District No. 460

Agenda Item#: 31.

Summary:

ORDINANCE consenting to the addition of 36.9543 acres of land to **HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 460**, for inclusion in its district; granting consent to exercise road powers and authorizing the district to issue bonds for road facilities within the City of Houston, Texas, subject to certain conditions - **DISTRICT D - EVANS-SHABAZZ**

Background:

SUBJECT: Petition for the City's consent to the addition of three (3) tracts of land totaling 36.9543 acres to Harris County Municipal Utility District No. 460.

RECOMMENDATION: Petition for the City's consent to the addition of three (3) tracts of land totaling 36.9543 acres to Harris County Municipal Utility District No. 460 be approved.

SPECIFIC EXPLANATION: Harris County Municipal Utility District No. 460 (the "District") was created through an act of Texas Legislature in 2005, and currently consists of 591.321 acres within Harris County. The District is within the corporate limits of the City of Houston (the "City") and has petitioned the City for consent to add three (3) tracts of vacant land, totaling 36.9543 acres, to the District. The tracts are proposed to be developed as single family residential property. The proposed annexation tracts are located in the vicinity of Sam Houston Parkway E., Cullen Boulevard, Airport Boulevard, and Mykawa Road.

The Utility District Review Committee has evaluated the application with respect to wastewater collection and treatment, potable water distribution, storm water conveyance, and other public services.

The District is provided with wastewater treatment by the City's Chocolate Bayou Wastewater Treatment Plant. Potable water is provided by the City.

The nearest major drainage facility for the annexation tracts is Sims Bayou, which flows to Buffalo Bayou and finally into the Houston Ship Channel. The proposed annexation tracts are not within the 100 or 500 year floodplain.

By executing the Petition for Consent, the District has acknowledged that all plans for the construction of water conveyance, wastewater collection, and storm water collection systems within the District must be approved by the City prior to their construction.

The Utility District Review Committee recommends that the subject petition be approved.

Carol Ellinger Haddock, P. E.
Director
Houston Public Works

Contact Information:

Sharon Citino, J.D.
Planning Director
Houston Water
Phone: (832) 395-2712

ATTACHMENTS:

Description

Signed Coversheet
Maps
2020-667 Executed Ordinance

Type

Signed Cover sheet
Backup Material
Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date:

District D

Item Creation Date: 3/16/2020

HPW - 20WR215 – Petition Addition (36.9543) Harris County Municipal Utility District No. 460

Agenda Item#:

Background:

SUBJECT: Petition for the City's consent to the addition of three (3) tracts of land totaling 36.9543 acres to Harris County Municipal Utility District No. 460.

RECOMMENDATION: Petition for the City's consent to the addition of three (3) tracts of land totaling 36.9543 acres to Harris County Municipal Utility District No. 460 be approved.

SPECIFIC EXPLANATION: Harris County Municipal Utility District No. 460 (the "District") was created through an act of Texas Legislature in 2005, and currently consists of 591.321 acres within Harris County. The District is within the corporate limits of the City of Houston (the "City") and has petitioned the City for consent to add three (3) tracts of vacant land, totaling 36.9543 acres, to the District. The tracts are proposed to be developed as single family residential property. The proposed annexation tracts are located in the vicinity of Sam Houston Parkway E., Cullen Boulevard, Airport Boulevard, and Mykawa Road.

The Utility District Review Committee has evaluated the application with respect to wastewater collection and treatment, potable water distribution, storm water conveyance, and other public services.

The District is provided with wastewater treatment by the City's Chocolate Bayou Wastewater Treatment Plant. Potable water is provided by the City.

The nearest major drainage facility for the annexation tracts is Sims Bayou, which flows to Buffalo Bayou and finally into the Houston Ship Channel. The proposed annexation tracts are not within the 100 or 500 year floodplain.

By executing the Petition for Consent, the District has acknowledged that all plans for the construction of water conveyance, wastewater collection, and storm water collection systems within the District must be approved by the City prior to their construction.

The Utility District Review Committee recommends that the subject petition be approved.

DocuSigned by:

A blue ink signature of Carol Ellinger Haddock, written in a cursive style.

7/13/2020

A93C410B72B3453

Carol Ellinger Haddock, P. E.

Director

Houston Public Works

Contact Information:

Sharon Citino, J.D.

Planning Director

Houston Water

Phone: (832) 395-2712

ATTACHMENTS:

Description

Maps

Application

Petition

Backup Material

Fact Sheet

Type

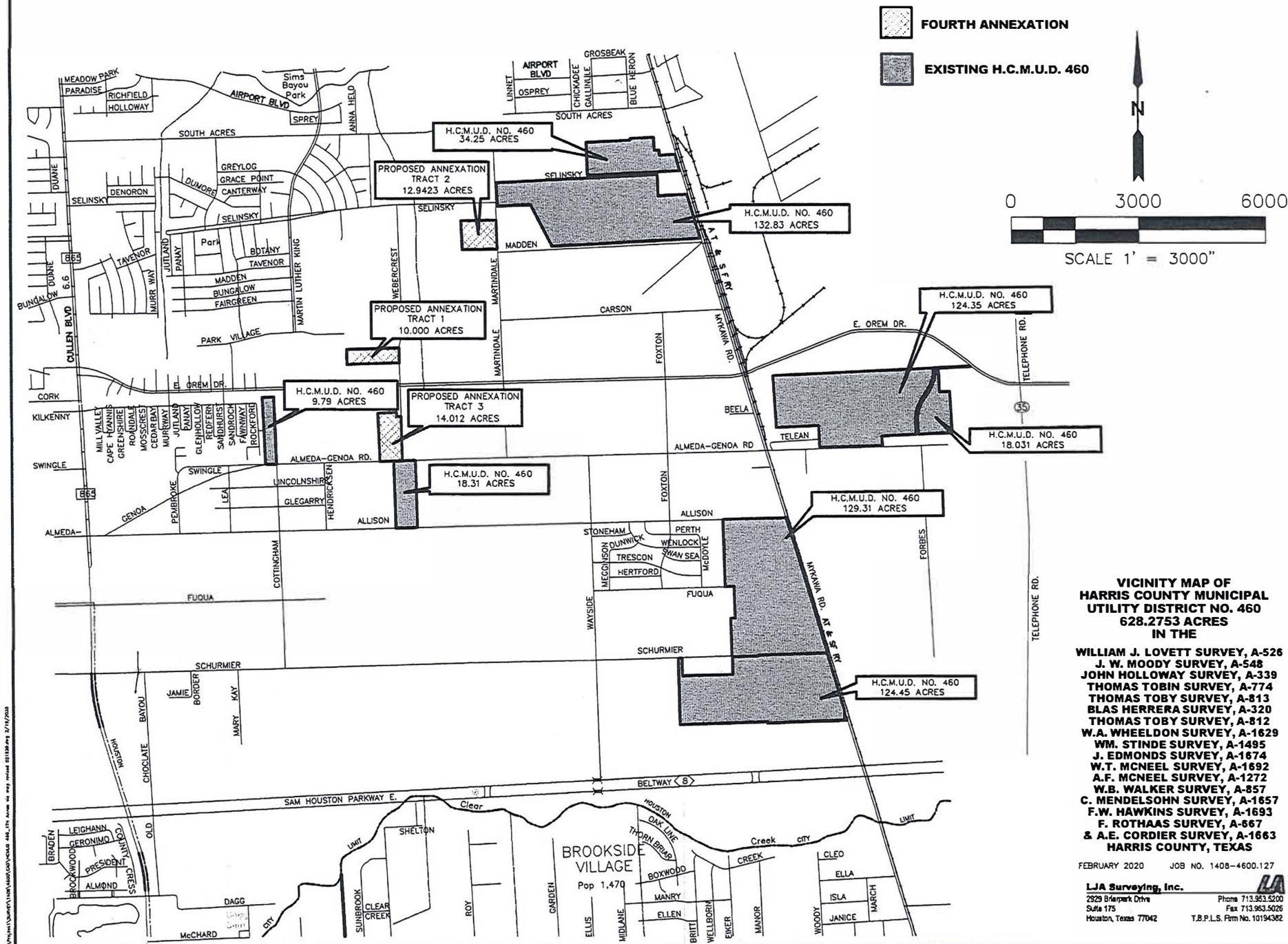
Backup Material

Backup Material

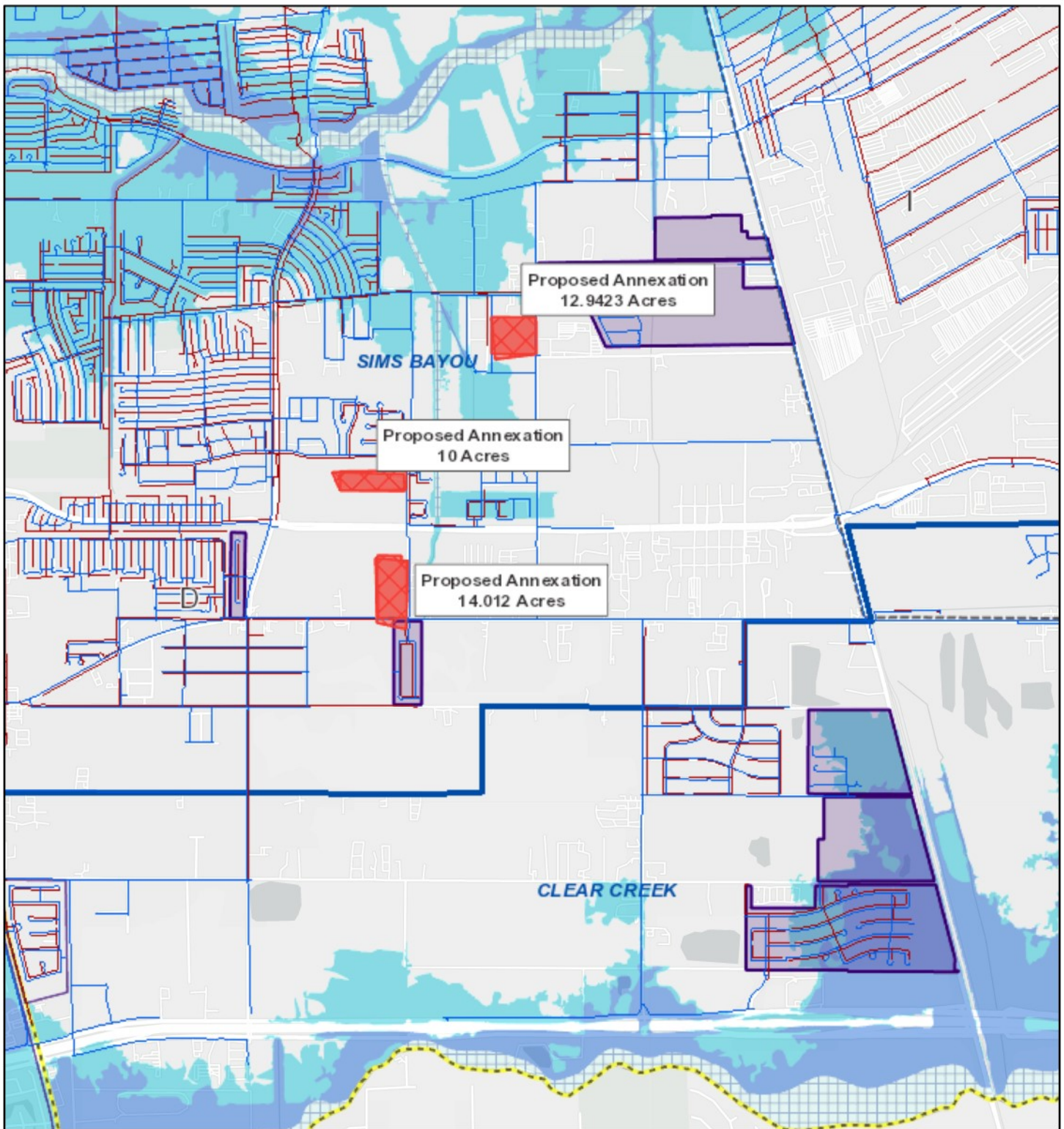
Backup Material

Backup Material

Backup Material



Harris County MUD 460 (36.9543 acres)



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1:36,112

Flood Hazard Zones

100 Year Floodplain

500 Year Floodplain

Floodway

City Limits

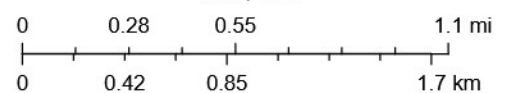
Council Districts

Existing Acreage of District

Proposed Annexation

COH Wastewater Line

COH Water Line



HCFC and HCED,

City of Houston, Texas, Ordinance No. 2020-667

AN ORDINANCE CONSENTING TO THE ADDITION OF 36.9543 ACRES OF LAND TO HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 460, FOR INCLUSION IN ITS DISTRICT; GRANTING CONSENT TO EXERCISE ROAD POWERS AND AUTHORIZING THE DISTRICT TO ISSUE BONDS FOR ROAD FACILITIES WITHIN THE CITY OF HOUSTON, TEXAS, SUBJECT TO CERTAIN CONDITIONS; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, Harris County Municipal Utility District No. 460 (the "District") was created by Act of May 24, 2005, 79th Legislature, Regular Session, by Senate Bill 1884, which authorized the District road powers; and

WHEREAS, the City of Houston, Texas ("City") consented to the creation of the District on August 8, 2006, by Ordinance No. 2006-800, which sets forth certain consent conditions and authorized the District to issue bonds on certain conditions; and

WHEREAS, the City consented to the exercise of road powers by the District on August 5, 2015, by Ordinance No. 2015-738, for the land area then included in its jurisdiction; and

WHEREAS, the District has petitioned the City to add 36.9543 acres of land for inclusion into the District and to authorize the exercise of road powers for this additional area; **NOW, THEREFORE**,

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

Section 1. That attached to this ordinance and made a part hereof is a petition ("Petition") requesting for the consent of the City to the annexation of 36.9543 acres of land within the corporate boundaries of the City into the District, for the City to grant the District road powers within this annexed area, and for the City to consent to the issuance

by the District of bonds for the purpose of purchasing, constructing, or otherwise acquiring certain road facilities. The 36.9543 acres of land to be added to the District is described by metes and bounds in Exhibit "A" attached to the Petition. The Petition is hereby granted, subject to the terms and conditions set forth in Exhibit "B" attached to the Petition and further set out below:

- A. The District shall not levy a municipal utility district ("MUD") tax where the combined MUD tax rate and the City tax rate would exceed \$1.50 per \$100.00 valuation. The combined MUD tax rate shall include the tax components for all MUD indebtedness, including maintenance, road construction and acquisition, and any other component that may apply.
- B. The District shall notify all property owners within the District of any proposed increase in the MUD tax rate prior to the required public hearing, to ensure that all property owners have an opportunity to speak in favor of or in opposition to the proposed increase.
- C. The District shall provide the notice required in Paragraph B above by both mailing the notice to all property owners and posting the notice at one or more locations that are highly visible and accessible to the property owners.
- D. The District shall notify the City's Chief Development Officer or his designee (the "CDO") of the public hearing at least seven (7) days prior to the public hearing date.
- E. The District shall provide the CDO and the City's Houston Public Works Department with updated analyses prepared by the District's financial advisors and engineers, demonstrating the feasibility of the road bonds, prior to the

issuance of the road bonds. The report shall be substantially similar to the documents provided to the Texas Commission on Environmental Quality under Chapter 293, Subchapter P, Rule §293.202 (8) and (9).

Section 2. That a public emergency exists requiring that this ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this ordinance shall take effect immediately upon its passage and approval by the Mayor; provided, however, that if 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 29th day of July, 2020.
APPROVED this _____ day of _____, 2020.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.

At J. Hanif
City Secretary

Prepared by Legal Dept.

AH/sec 7/17/20

Requested by Carol Ellinger Haddock, P.E.

Director – Houston Public Works Department
(L.D. File No. 0910500029009)

DocuSigned by:
Arwa L. Howard
31F08C7F7E49423...

Senior Assistant City Attorney

Z:\REALESTATE\KMMUDS\HARRISCO\NO.460_36.9543.DOC

CAPTION PUBLISHED IN DAILY COURT

REVIEW

DATE:

AUG - 4 2020

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	

**PETITION FOR CONSENT TO
ANNEX LAND INTO A MUNICIPAL UTILITY DISTRICT**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

TO THE HONORABLE MAYOR AND CITY
COUNCIL OF THE CITY OF HOUSTON, TEXAS:

The undersigned, HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 460 (the "District") and ALMEDA-GENOA HOUSTON DEVELOPMENT, LLC, a Texas limited liability company (the "Property Owner"), respectfully petition the City of Houston, Texas, for its consent to the addition of land to the District. In support of this Petition, the District and Property Owner would show the following:

I.

The 14.012 acre tract of land sought to be added to the District (the "Tract") is described in Exhibit "A," attached hereto and made a part hereof for all purposes.

II.

The Tract lies wholly within Harris County, Texas, and wholly within the corporate limits of the City of Houston, Texas.

III.

Property Owner is the holder of title to the Tract as shown by the Harris County Tax Rolls and conveyances of record. No one currently resides upon the Tract. No person or entity holds a lien on the Tract, except for Cadence Bank, N.A., as lender to Property Owner, pursuant to that certain Deed of Trust and Security Agreement dated October 29, 2018, recorded as Film Code No. RP-2018-494980 in the Official Public Records of Harris County, Texas

IV.

The District was duly created by Act of May 24, 2005, 79th Legislature, Regular Session, Senate Bill 1884 (codified at Texas Special District Local Laws Code Ann. §8124), in accordance with Article XVI, Section 59 and Article III, Section 52 of the Constitution of the State of Texas and operates pursuant to Chapters 49 and 54, Texas Water Code, as amended, to provide for:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;

- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state;
- (8) the preservation of all natural resources of the state;
- (9) the collection, transportation, processing, disposal, and control of all domestic, industrial, or communal wastes, whether fluids, solids, or composites;
- (10) to gather, divert, and control local storm water or other local harmful excesses of water;
- (11) to provide a water supply for municipal uses, domestic uses and commercial purposes;
- (12) the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads or turnpikes, or improvements, including storm drainage, in aid of those roads or turnpikes, to the extent authorized by Article III, Section 52, of the Texas Constitution; and
- (13) the construction, acquisition, improvement, operation, repair, extension, or maintenance of park and recreational facilities to the extent authorized by Article XVI, Section 59, of the Texas Constitution

The District is empowered and authorized to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any and all works, easements, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of its creation.

V.

The general nature of the work to be done by and within the Tract at the present time is the construction, maintenance and operation of a waterworks system for domestic purposes; the construction, maintenance and operation of a sanitary sewer collection system; the control, abatement and amendment of the harmful excess of waters and the reclamation and drainage of overflowed lands within the lands to be included within the District; the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads; the construction, installation, maintenance, purchase and operation of park and recreational facilities; and the construction, installation, maintenance, purchase and operation of such additional facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is organized.

VI.

There is a necessity for the improvements above described because the Tract is located within an area that is experiencing substantial and sustained residential and commercial growth, is urban in nature, and is not supplied with adequate water, sanitary sewer, drainage, roads, and recreational

facilities and services. The health and welfare of the future inhabitants of the Tract require the acquisition, construction, installation, extension, improvement, maintenance, and operation of an adequate waterworks, sanitary sewer, and storm drainage system, a road system, and park and recreational facilities.

The purchase, construction, installation, extension, improvement, maintenance, and operation of such waterworks system, storm and sanitary sewer collection and disposal systems, road system, and park and recreational facilities will conserve and preserve the natural resources of this State by promoting and protecting the purity and sanitary condition of the State's waters and will promote and protect the public health and welfare of the community; therefore, a public necessity exists for the inclusion of the Tract within the District.

VII.

Said proposed improvements are practicable and feasible in that the terrain of the Tract is of such a nature that a waterworks system, sanitary and storm sewer systems, road system, and park and recreational facilities can be constructed at a reasonable cost; and said land will be rapidly developed for residential purposes.

VIII.

A preliminary investigation has been instituted to determine the cost of the project attributable to the Tract, and it is now estimated by those filing this Petition, from such information as they have at this time, that the ultimate cost of the development contemplated will be approximately \$1,592,100.

IX.

The undersigned agree and hereby covenant that if the requested consent to the annexation of the Tract to the District is granted, the District and Property Owner will adopt and abide by the conditions set forth in Exhibit "B" attached hereto and incorporated herein for all purposes.

X.

The Property Owner and the District also request the City's consent to allow the District, to the extent authorized by Section 52, Article III, Texas Constitution, to construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the District and to the issuance of road bonds by the District under and in accordance with the terms and conditions which are set forth in City of Houston Ordinance No. 2015-738 as it relates to the Tract.

WHEREFORE, the undersigned respectfully pray that this Petition be granted in all respects and that the City Council of the City of Houston, Texas, adopt a resolution giving its written consent to the addition of the Tract to the District and to allow the District, to the extent authorized by Section 52, Article III, Texas Constitution, to construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the District and to the issuance of road bonds by the District under and in accordance with the terms and conditions which are set forth in City of Houston Ordinance No. 2015-738 as it relates to the Tract.

RESPECTFULLY SUBMITTED THIS July 17, 2019.

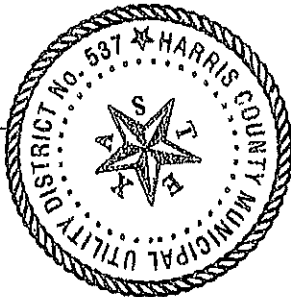
"DISTRICT"

HARRIS COUNTY MUNICIPAL
UTILITY DISTRICT NO. 460

By: Donald W. Middleton
Title: President, Board of Directors
ADDRESS:
c/o Sanford Kuhl Hagan Kugle Parker Kahn LLP
1980 Post Oak Boulevard, Suite 1380
Houston, Texas 77056

ATTEST:

Erin C. Huns
Secretary, Board of Directors



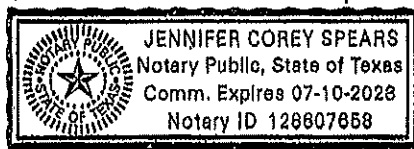
(DISTRICT SEAL)

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on July 17th, 2019,
by Donald W. Middleton, President of the Board of Directors of HARRIS COUNTY MUNICIPAL
UTILITY DISTRICT NO. 460, a political subdivision, on behalf of said political subdivision.

Jennifer Corey Spears
NOTARY PUBLIC, STATE OF TEXAS

(SEAL)



[signatures and acknowledgements continued on following page]

"PROPERTY OWNER"

ALMEDA-GENOA HOUSTON DEVELOPMENT, LLC,
a Texas limited liability company

By: CITYR Multifund 1 GP LLC,
a Delaware limited liability company,
its Manager

By: CITYR Group Properties, LLC,
a Delaware limited liability company,
its Manager

By: 
Michael Sabo, Manager

THE STATE OF ~~TEXAS~~ New York §
§
COUNTY OF New York §

This instrument was acknowledged before me on 6/11, 2019,
by Michael Sabo, Manager of CITYR Group Properties, LLC, a Delaware limited liability company,
Manager of CITYR Multifund 1 GP LLC, a Delaware limited liability company, Manager of Almeda-
Genoa Houston Development, LLC, a Texas limited liability company, on behalf of said limited
liability company.

DORON NATAN GREENBERG
Notary Public, State of New York
Registration #02GR6350269
Qualified in New York County
Commission Expires Nov. 7, 2020

NOTARY PUBLIC, STATE OF ~~TEXAS~~ New York

(SEAL)

EXHIBIT "A"

COMPANY RESOLUTION

WHEREAS, CITYR Multifund 1 GP LLC, a Delaware limited liability company, is the Manager of Almeda-Genoa Houston Development, LLC, a Texas limited liability company (the "Company");

WHEREAS, the Company desires to annex into Harris County Municipal Utility District No. 460 (the "District") 14.012 acres of land, more particularly described on Schedule I attached hereto and made a part hereof for all purposes;

NOW THEREFORE, BE IT RESOLVED: That CITYR Multifund 1 GP LLC, acting in its capacity as Manager of the Company, executes the Petition for Addition of Certain Land to the District and Petition for Consent to Annex Land into a Municipal Utility District.

FURTHER RESOLVED: That CITYR Multifund 1 GP LLC, acting in its capacity as Manager of the Company may execute all instruments and take such other action associated with the annexation of the 14.012 acres of land or on additional portions of land to be annexed into such District.

EXHIBIT __, PAGE 1 OF 2 PAGES

County: Harris
Project: Maple Village
M&B No: 19-155
CS Job No: 19001

METES AND BOUNDS DESCRIPTION OF 14.012 ACRES

Being a tract of land containing 14.012 acres, located in the Thomas Tobin Survey, Abstract Number 774, in Harris County, Texas; Said 14.012 acres being all of Maple Village, a subdivision of record in Film Code Number (F.C. No.) 685672 of the Harris County Map Records (H.C.M.R.), same being recorded in the name of Alameda-Genoa Houston Development, LLC, in Harris County Clerk's File (H.C.C.F.) No. RP-2018-200979; Said 14.012 acre tract being more particularly described by metes and bounds as follows (all bearings are referenced to the recorded subdivision plat of said Maple Village):

BEGINNING, at a 5/8-inch capped iron rod found at the southeast corner of said Maple Village, same being the northwest intersection of Webercrest Road (sixty feet wide per Volume 1028, Page 187, of the Harris County Deed Records) and Alameda Genoa Road (width varies per Volume 2, Page 75, of the H.C.M.R.);

THENCE, South 88° 28' 56" West, with the south line of said Maple Village and the north Right-of-Way (R.O.W.) line of said Alameda-Genoa Road, a distance of 532.56 feet to a 5/8-inch capped iron rod found at the southwest corner of said Maple Village and the southeast corner of Unrestricted Reserve "A" of Alameda Sports Complex, a subdivision of record in F.C. No. 685503 of the H.C.M.R.;

THENCE, North 02° 10' 13" West, with the line common to said Maple Village and said Unrestricted Reserve "A", a distance of 1,156.64 feet to a 5/8-inch capped iron rod found at the northwest corner of said Maple Village and the northeast corner of said Unrestricted Reserve "A", on the south line of a called 9.9586 acre tract of land recorded in the name of Dovan Muslo Inc. in H.C.C.F. No. U792076;

THENCE, North 88° 28' 56" East, with the line common to said Maple Village and said 9.9586 acre tract, a distance of 440.20 feet to a 5/8-inch capped iron rod found at the northerly northeast corner of said Maple Village and the northwest corner of Unrestricted Reserve "B", Block 1, of Almeda Genoa Tower, a subdivision of record in F.C. No. 675876 of the H.C.M.R.;

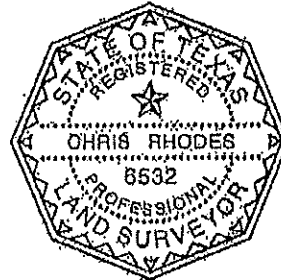
THENCE, with the lines common to said Maple Village and said Unrestricted Reserve "B", the following two (2) courses:

1. South 01° 47' 30" East, a distance of 100.00 feet to a 5/8-inch capped iron rod found at the southwest corner of said Unrestricted Reserve "B";
2. North 88° 28' 56" East, a distance of 100.00 feet to a 5/8-inch capped iron rod found at the easterly northeast corner of said Maple Village and the southeast corner of said Unrestricted Reserve "B", on the west R.O.W. line of said Webercrest Road;

THENCE, South 01° 47' 30" East, with the east line of said Maple Village and the west R.O.W. line of said Webercrest Road, a distance of 1,056.58 feet to the **POINT OF BEGINNING** and containing 14.012 acres of land.



Chris Rhodes, R.P.L.S.
Texas Registration Number 6532



CIVIL-SURV LAND SURVEYING, LC
PH: (713) 839-9181
June 12, 2019

**PETITION FOR CONSENT TO
ANNEX LAND INTO A MUNICIPAL UTILITY DISTRICT**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

TO THE HONORABLE MAYOR AND CITY
COUNCIL OF THE CITY OF HOUSTON, TEXAS:

The undersigned, HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 460 (the "District") and MARTINDALE DREAMS, LLC, a Texas limited liability company (the "Property Owner"), respectfully petition the City of Houston, Texas, for its consent to the addition of land to the District. In support of this Petition, the District and Property Order would show the following:

I.

The 12.9423 acre tract of land sought to be added to the District (the "Tract") is described by metes and bounds in Exhibit "A", attached hereto and made a part hereof for all purposes.

II.

The Tract lies wholly within Harris County, Texas, and wholly within the corporate limits of the City of Houston, Texas.

III.

Property Owner is the holder of title to the Tract as shown by the Harris County Tax Rolls and conveyances of record. There are no liens on the Tract.

IV.

The District was duly created by Act of May 24, 2005, 79th Legislature, Regular Session, Senate Bill 1884 (codified at Texas Special District Local Laws Code Ann. §8124), in accordance with Article XVI, Section 59 and Article III, Section 52 of the Constitution of the State of Texas and operates pursuant to Chapters 49 and 54, Texas Water Code, as amended, to provide for:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;

- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state;
- (8) the preservation of all natural resources of the state;
- (9) the collection, transportation, processing, disposal, and control of all domestic, industrial, or communal wastes, whether fluids, solids, or composites;
- (10) to gather, divert, and control local storm water or other local harmful excesses of water;
- (11) the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads, to the extent authorized by Article III, Section 52, of the Texas Constitution; and
- (12) the construction, acquisition, improvement, operation, or maintenance of park and recreational facilities to the extent authorized by Article XVI, Section 59, of the Texas Constitution

The District is empowered and authorized to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of its creation.

V.

The general nature of the work to be done by and within the Tract at the present time is the construction, maintenance and operation of a waterworks system for domestic purposes; the construction, maintenance and operation of a sanitary sewer collection system; the control, abatement and amendment of the harmful excess of waters and the reclamation and drainage of overflowed lands within the lands to be included within the District; the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads; the construction, installation, maintenance, purchase and operation of park and recreational facilities, and the construction, installation, maintenance, purchase and operation of such additional facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is organized.

VI.

There is a necessity for the improvements above described because the Tract is located within an area that is experiencing substantial and sustained residential and commercial growth, is urban in nature and is not supplied with adequate water, sanitary sewer, drainage, roads, and recreational facilities and services. The health and welfare of the future inhabitants of the Tract require the acquisition and installation of an adequate waterworks, sanitary sewer and storm drainage system, a road system, and park and recreational facilities.

The purchase, construction, extension, improvement, maintenance and operation of such waterworks system and storm and sanitary sewer collection and disposal systems, road system, and park and recreational facilities will conserve and preserve the natural resources of this State by promoting and protecting the purity and sanitary condition of the State's waters and will promote and protect the public health and welfare of the community; therefore, a public necessity exists for the inclusion of the Tract within the District.

VII.

Said proposed improvements are practicable and feasible in that the terrain of the Tract is of such a nature that a waterworks system and sanitary and storm sewer systems, and recreational facilities can be constructed at a reasonable cost; and said land will be rapidly developed for residential purposes.

VIII.

A preliminary investigation has been instituted to determine the cost of the project attributable to the Tract, and it is now estimated by those filing this Petition, from such information as they have at this time, that the ultimate cost of the development contemplated will be approximately \$1,468,471.00.

IX.

The undersigned agree and hereby covenant that if the requested consent to the annexation of the Tract to the District is granted, the District and Property Owner will adopt and abide by the conditions set forth in Exhibit "B" attached hereto and incorporated herein for all purposes.

X.

The Property Owner and the District also request the City's consent to allow the District, to the extent authorized by Section 52, Article III, Texas Constitution, to construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the District and to the issuance of road bonds by the District under and in accordance with the terms and conditions which are set forth in City of Houston Ordinance No. 2015-738 as it relates to the Tract.

WHEREFORE, the undersigned respectfully pray that this Petition be granted in all respects and that the City Council of the City of Houston, Texas, adopt a resolution giving its written consent to the addition of the Tract to the District and to allow the District, to the extent authorized by Section 52, Article III, Texas Constitution, to construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the District and to the issuance of road bonds by the District under and in accordance with the terms and conditions which are set forth in City of Houston Ordinance No. 2015-738 as it relates to the Tract.

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RESPECTFULLY SUBMITTED THIS April 23, 2019.

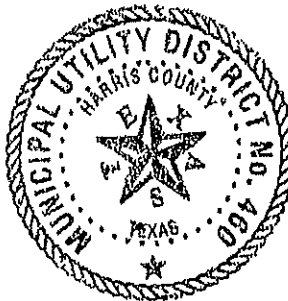
"DISTRICT"

HARRIS COUNTY MUNICIPAL
UTILITY DISTRICT NO. 460

By: Donald W. Middleton
Title: President, Board of Directors
ADDRESS:
c/o Sanford Kuhl Hagan Kugle Parker Kahn LLP
1980 Post Oak Boulevard, Suite 1380
Houston, Texas 77056

ATTEST:

Erin C. Huns
Secretary, Board of Directors



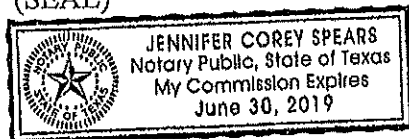
(DISTRICT SEAL)

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on April 23, 2019, Donald W. Middleton, President of the Board of Directors of HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 460, a political subdivision, on behalf of said political subdivision.

Jennifer Corey Spears
NOTARY PUBLIC, STATE OF TEXAS

(SEAL)



[signatures and acknowledgements continued on following page]

"PROPERTY OWNER"

MARTINDALE DREAMS, LLC,
a Texas limited liability company

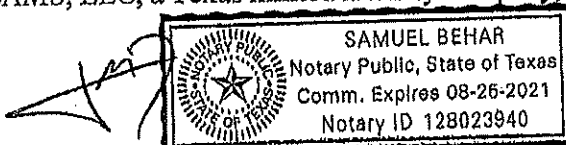
By: A. Sivan
Avishai Sivan, Managing Member

THE STATE OF TEXAS

§
§
§

COUNTY OF HARRIS

This instrument was acknowledged before me on April 22, 2019, by Avishai Sivan, Managing Member of MARTINDALE DREAMS, LLC, a Texas limited liability company, on behalf of said limited liability company.



NOTARY PUBLIC, STATE OF TEXAS

(SEAL)

ACTION OF THE MANAGERS OF
WEBERCREST VILLAGE, LLC
BY UNANIMOUS WRITTEN CONSENT IN LIEU OF MEETING

April 22, 2019

The undersigned, Avishai Sivan, constituting all of the current Managers of WEBERCREST VILLAGE, LLC, a Texas limited liability company (the "Company"), does, by this writing, consent to take the following action, to adopt the following and to transact the following business of the Company, all in lieu of a Meeting of the Managers of the Company:

RESOLVED, that the Manager of this Company is authorized, acting for and on behalf of this company which is WEBERCREST VILLAGE, LLC, a Texas limited liability company, to execute and deliver, for and on behalf of this Company, such instruments necessary to effectuate the annexation of approximately 10.00 acres of land, described by metes and bounds in Exhibit "A" attached hereto and made part hereof for all purposes into Harris County Municipal Utility District No. 460 (the "District"), including execution of (1) Petition for Addition of Land; (2) Petition for Consent to Annex Land Into Municipal Utility District; and any other documents related thereto.

It is directed that his consent be filed with the minutes of the meetings of the Board of Directors of the Company.

WEBERCREST VILLAGE, LLC
A Texas limited liability company

By: A. Sivan
Avishai Sivan, Manager

LEGAL DESCRIPTION
12.9423 ACRES (563,769 SQUARE FEET) OF LAND

BEING A TRACT OR PARCEL CONTAINING 12.9423 ACRES (563,769 SQUARE FEET) OUT OF A 21.8473 ACRE TRACT BEING CALLED 27.047 ACRE TRACT RECORDED IN CLERK'S FILE NO.(S) R563822 THROUGH R563826 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY RECORDS OF HARRIS COUNTY, TEXAS SITUATED IN THE THOMAS TOBIN SURVEY, ABSTRACT NO. 774 IN HARRIS COUNTY, TEXAS, AND ALSO BEING THAT SAME CERTAIN CALLED TRACT 1 AND TRACT 2, CONTAINING A CALLED 6.471 ACRE EACH DESCRIBED AND SURVEYED BY CHARLES A MCKINLEY AS SHOWN ON THE PLAT THEREOF DATED AUGUST 3, 2017. SAID 12.9423 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

(BEARINGS BASED ON GPS OBSERVATION AND ROTATED TO THE TEXAS STATE PLAN COORDINATE SYSTEM (NAD83) HORIZONTAL DATUM PROJECTION ZONE, TEXAS SOUTH CENTRAL 4204)

COMMENCING FOR REFERENCE AT A FOUND 5/8 INCH IRON ROD MARKING THE NORTHERLY CORNER OF A CUT-BACK AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF SESAME STREET (60 FEET WIDE) WITH THE SOUTH RIGHT-OF-WAY LINE OF SELINSKY ROAD (60 FEET WIDE);

THENCE, SOUTH 43°31'36" WEST, WITH THE CUT-BACK CORNER AT THIS SAID INTERSECTION, A DISTANCE OF 14.31 FEET TO A POINT FOR THE SOUTHERLY CORNER AT THE END OF SAID CUT-BACK;

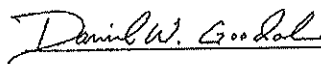
THENCE, SOUTH 02°04'08" EAST, WITH THE EAST RIGHT-OF-WAY LINE OF SESAME STREET (60' R.O.W.), A DISTANCE OF 386.24 FEET TO A FOUND 5/8 INCH IRON ROD WITH CAP FOR THE NORTHWEST CORNER AND POINT OF BEGINNING OF THE HEREIN DESCRIBED 12.9423 ACRE TRACT;

THENCE, NORTH 88°46'58" EAST, WITH THE NORTH LINE OF THIS DESCRIBED TRACT, PASSING A FOUND 1/2 INCH IRON ROD WITH CAP AT A DISTANCE OF 264.51 FEET FOR THE SOUTHWEST CORNER OF A CALLED 6.13 ACRE TRACT OF LAND CONVEYED TO THE BOYS AND GIRLS CLUB OF GREATER HOUSTON RECORDED UNDER HARRIS COUNTY CLERK'S FILE (H.C.C.F.) NO.(S) R563822 THROUGH R563826, A TOTAL DISTANCE OF 830.79 FEET TO A FOUND 3/8 INCH IRON ROD WITH CAP FOR THE NORTHEAST CORNER;

THENCE, SOUTH 02°04'08" EAST, WITH THE EAST LINE OF THE HEREIN DESCRIBED 12.9423 ACRE TRACT, SAME BEING THE WEST RIGHT-OF-WAY LINE OF MARTINDALE ROAD (60 FEET WIDE), PASSING A FOUND 3/8 INCH IRON ROD WITH CAP AT A DISTANCE OF 339.20 FEET, AND CONTINUING A TOTAL DISTANCE OF 678.55 FEET TO A FOUND 3/8 INCH IRON ROD WITH CAP FOR THE SOUTHEAST CORNER;

THENCE, SOUTH 88°46'01" WEST, WITH THE SOUTH LINE OF THIS DESCRIBED TRACT, A DISTANCE OF 830.79 FEET TO A FOUND 3/8 INCH IRON ROD WITH CAP FOR THE SOUTHWEST CORNER;

THENCE, NORTH 02°04'08" WEST, WITH THE WEST LINE OF THE HEREIN DESCRIBED TRACT, SAME BEING THE EAST RIGHT-OF-WAY LINE OF SESAME STREET (60' R.O.W.), A DISTANCE OF 678.78 FEET TO THE POINT OF BEGINNING AND CONTAINING 12.9423 ACRES (563,769 SQUARE FEET) OF LAND.


DANIEL W. GOODALE, RPLS# 4919



GREENLEAF LAND SURVEYS, LLC
10900 NORTHWEST FWY, SUITE 129
HOUSTON, TX 77092

**PETITION FOR CONSENT TO
ANNEX LAND INTO A MUNICIPAL UTILITY DISTRICT**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

TO THE HONORABLE MAYOR AND CITY
COUNCIL OF THE CITY OF HOUSTON, TEXAS:

The undersigned, HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 460 (the "District") and WEBERCREST VILLAGE, LLC, a Texas limited liability company (the "Property Owner"), respectfully petition the City of Houston, Texas, for its consent to the addition of land to the District. In support of this Petition, the District and Property Order would show the following:

I.

The 10.00 acre tract of land sought to be added to the District (the "Tract") is described by metes and bounds in Exhibit "A," attached hereto and made a part hereof for all purposes.

II.

The Tract lies wholly within Harris County, Texas, and wholly within the corporate limits of the City of Houston, Texas.

III.

Property Owner is the holder of title to the Tract as shown by the Harris County Tax Rolls and conveyances of record. There are no liens on the Tract.

IV.

The District was duly created by Act of May 24, 2005, 79th Legislature, Regular Session, Senate Bill 1884 (codified at Texas Special District Local Laws Code Ann. §8124), in accordance with Article XVI, Section 59 and Article III, Section 52 of the Constitution of the State of Texas and operates pursuant to Chapters 49 and 54, Texas Water Code, as amended, to provide for:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;

- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state;
- (8) the preservation of all natural resources of the state;
- (9) the collection, transportation, processing, disposal, and control of all domestic, industrial, or communal wastes, whether fluids, solids, or composites;
- (10) to gather, divert, and control local storm water or other local harmful excesses of water;
- (11) the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads, to the extent authorized by Article III, Section 52, of the Texas Constitution; and
- (12) the construction, acquisition, improvement, operation, or maintenance of park and recreational facilities to the extent authorized by Article XVI, Section 59, of the Texas Constitution

The District is empowered and authorized to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of its creation.

V.

The general nature of the work to be done by and within the Tract at the present time is the construction, maintenance and operation of a waterworks system for domestic purposes; the construction, maintenance and operation of a sanitary sewer collection system; the control, abatement and amendment of the harmful excess of waters and the reclamation and drainage of overflowed lands within the lands to be included within the District; the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads; the construction, installation, maintenance, purchase and operation of park and recreational facilities, and the construction, installation, maintenance, purchase and operation of such additional facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is organized.

VI.

There is a necessity for the improvements above described because the Tract is located within an area that is experiencing substantial and sustained residential and commercial growth, is urban in nature and is not supplied with adequate water, sanitary sewer, drainage, roads, and recreational facilities and services. The health and welfare of the future inhabitants of the Tract require the acquisition and installation of an adequate waterworks, sanitary sewer and storm drainage system, a road system, and park and recreational facilities.

The purchase, construction, extension, improvement, maintenance and operation of such waterworks system and storm and sanitary sewer collection and disposal systems, road system, and park and recreational facilities will conserve and preserve the natural resources of this State by promoting and protecting the purity and sanitary condition of the State's waters and will promote and protect the public health and welfare of the community; therefore, a public necessity exists for the inclusion of the Tract within the District.

VII.

Said proposed improvements are practicable and feasible in that the terrain of the Tract is of such a nature that a waterworks system and sanitary and storm sewer systems, and recreational facilities can be constructed at a reasonable cost; and said land will be rapidly developed for residential purposes.

VIII.

A preliminary investigation has been instituted to determine the cost of the project attributable to the Tract, and it is now estimated by those filing this Petition, from such information as they have at this time, that the ultimate cost of the development contemplated will be approximately \$1,134,629.00.

IX.

The undersigned agree and hereby covenant that if the requested consent to the annexation of the Tract to the District is granted, the District and Property Owner will adopt and abide by the conditions set forth in Exhibit "B" attached hereto and incorporated herein for all purposes.

X.

The Property Owner and the District also request the City's consent to allow the District, to the extent authorized by Section 52, Article III, Texas Constitution, to construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the District and to the issuance of road bonds by the District under and in accordance with the terms and conditions which are set forth in City of Houston Ordinance No. 2015-738 as it relates to the Tract.

WHEREFORE, the undersigned respectfully pray that this Petition be granted in all respects and that the City Council of the City of Houston, Texas, adopt a resolution giving its written consent to the addition of the Tract to the District and to allow the District, to the extent authorized by Section 52, Article III, Texas Constitution, to construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the District and to the issuance of road bonds by the District under and in accordance with the terms and conditions which are set forth in City of Houston Ordinance No. 2015-738 as it relates to the Tract.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

RESPECTFULLY SUBMITTED THIS April 23, 2019.

"DISTRICT"

HARRIS COUNTY MUNICIPAL
UTILITY DISTRICT NO. 460

By: Donald W. Middleton
Title: President, Board of Directors
ADDRESS:
c/o Sanford Kuhl Hagan Kugle Parker Kahn LLP
1980 Post Oak Boulevard, Suite 1380
Houston, Texas 77056

ATTEST:

Evan C. Kuhn
Secretary, Board of Directors

(DISTRICT SEAL)

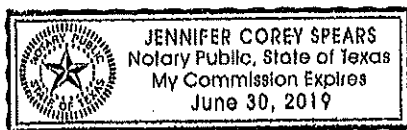


THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on April 23, 2019, Donald W. Middleton, President of the Board of Directors of HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 460, a political subdivision, on behalf of said political subdivision.

Jennifer Core Spears
NOTARY PUBLIC, STATE OF TEXAS

(SEAL)



[signatures and acknowledgements continued on following page]

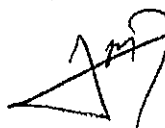
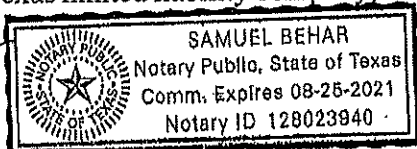
"PROPERTY OWNER"

WEBERCREST VILLAGE, LLC,
a Texas limited liability company

By: A. Sivan
Avishai Sivan, Managing Member

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on April 22, 2019, by Avishai Sivan, Managing Member of WEBERCREST VILLAGE, LLC, a Texas limited liability company, on behalf of said limited liability company.

 
NOTARY PUBLIC, STATE OF TEXAS

(SEAL)



WINDROSE

LAND SURVEYING | PLATTING

DESCRIPTION OF 10,000 ACRES OR 435,602 SQUARE FEET

A TRACT OR PARCEL CONTAINING 10,000 ACRES, OR 435,602 SQUARE FEET OF LAND SITUATED IN THE T. TOBIN SURVEY, ABSTRACT NO. 774, HARRIS COUNTY, TEXAS, BEING ALL OF A CALLED 10,000 ACRE TRACT OF LAND CONVEYED TO JOHN W. MARSHALL JR. AND CARROL A. MARSHALL AS RECORDED UNDER HARRIS COUNTY CLERK'S FILE (H.C.C.F.) NO. S813039 AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUND AS FOLLOWS, WITH ALL BEARINGS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE (NAD83):

BEGINNING AT A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET ON THE WEST RIGHT-OF-WAY (R.O.W.) LINE OF WEBERCREST STREET, 160 FEET WIDE, AS RECORDED UNDER VOL. 1025, PG. 786-787, OF THE HARRIS COUNTY MAP RECORDS (H.C.M.R.) MARKING THE SOUTHEAST CORNER OF RESTRICTED RESERVE "C" CONVEYED TO KINGDOM COME PLACE, SECTION ONE (1) AS RECORDED UNDER FILM CODE NO. 665219 H.C.M.R. AND THE NORTHEAST CORNER OF THE HEREIN DESCRIBED TRACT FROM WHICH A FOUND CAPPED 1/2 INCH IRON ROD BEARS FOR REFERENCE NORTH 81 DEG. 56 MIN. EAST, 0.8 FEET;

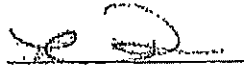
THENCE, SOUTH 02 DEG. 05, MIN. 22 SEC. EAST, ALONG WEST R.O.W. LINE OF SAID WEBERCREST STREET, A DISTANCE OF 352.88 FEET TO A CAPPED 5/8 INCH IRON ROD FOUND ON THE WEST R.O.W. LINE OF SAID WEBERCREST STREET, MARKING THE NORTHEAST CORNER OF H.L.P. CO. 50 FEET FEE STRIP, AS RECORDED UNDER VOL. 644, PG. 525, VOL. 847, PG. 374, AND FILE NO. G908222 OF THE HARRIS COUNTY DEED RECORDS (H.C.D.R.) AND THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, SOUTH 87 DEG. 37 MIN. 38 SEC. WEST, LEAVING THE WEST R.O.W. LINE OF SAID WEBERCREST STREET ALONG THE NORTH LINE OF SAID H.L.P. CO. 50 FEET FEE STRIP, A DISTANCE OF 1,234.29 FEET TO A CAPPED 5/8 INCH IRON ROD FOUND MARKING THE SOUTHEAST CORNER OF A CALLED 46.60 ACRE TRACT OF LAND CONVEYED TO MOHAMAD JAVADI AND BAHAM INTERESTS LIMITED PARTNERSHIP, AS RECORDED UNDER H.C.C.F. NO. 20150398614 AND THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, NORTH 02 DEG. 08 MIN. 07 SEC. WEST, ALONG THE EAST LINE OF SAID 46.60 ACRE TRACT OF LAND, A DISTANCE OF 352.88 FEET TO A CAPPED 5/8 INCH IRON ROD FOUND ON THE EAST LINE OF SAID 46.60 ACRE TRACT OF LAND, MARKING THE SOUTHWEST CORNER OF RESTRICTED RESERVE "D" CONVEYED TO KINGDOM COME PLACE, SECTION ONE (1) AS RECORDED UNDER FILM CODE NO. 665219 H.C.M.R. AND THE NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, NORTH 87 DEG. 37 MIN. 38 SEC. EAST, ALONG THE SOUTH LINE OF SAID RESTRICTED RESERVE "D" AND SAID RESTRICTED RESERVE "C", A DISTANCE OF 1234.57 FEET TO THE POINT OF BEGINNING AND CONTAINING 10,000 ACRES OR 435,602 SQUARE FEET OF LAND, AS SHOWN ON JOB NO. 64964, PREPARED BY WINDROSE LAND SERVICE




LISA DOBROWSKI
R.P.L.S. NO. 6544
STATE OF TEXAS
FIRM REGISTRATION NO. 10108800

03/18/2019
DATE



**STANDARD CONDITIONS APPLICABLE TO
CREATION OF CONSERVATION AND RECLAMATION
DISTRICTS WITHIN THE CORPORATE LIMITS OF
THE CITY OF HOUSTON, TEXAS**

(a) **DEFINITIONS.** As used in this document, the following terms and phrases shall have the following meanings:

(1) "BONDS" means bonds, notes, warrants or any other forms or types of indebtedness payable from or secured by any funds to be raised through the taxing power of the District or the operation of the District's utility facilities.

(2) "BUILDING OFFICIAL" means the Director of the Department of Public Works and Engineering of the City of Houston, Texas, or his designee.

(3) "CITY" means the City of Houston, Texas.

(4) "CITY ATTORNEY" means the City Attorney of the City of Houston, Texas.

(5) "CONDITIONS" means this document which is entitled "Standard Conditions Applicable to Creation of Conservation and Reclamation Districts within the Corporate Limits of the City of Houston, Texas."

(6) "DAILY BOND BUYER" means the publication entitled the Daily Bond Buyer or, should it cease to be published, such other publication as is determined by the City to have an index substantially equivalent to the Daily Bond Buyer's weekly "20 Bond Index."

(7) "DISTRICT" means the conservation and reclamation district which has been created subject to and which has adopted the Conditions.



(8) "FIRE SUPPRESSION FACILITIES" means facilities, equipment and water supply designed or utilized for performing fire fighting services which, under the provisions of state law, may be financed through the issuance of the District's Bonds, and includes, without limitation, buildings, trucks, equipment and water supply facilities.

(9) "PARKS LAND" means real property, and interests therein, which, because of location, character or other reason is suited for use as a public park.

(10) "ROAD PROJECTS" means the construction, acquisition, improvement, maintenance, and operation of macadamized, graveled or paved roads or turnpikes, or any improvements in aid of such roads or turnpikes, inside the boundaries of the District.

(11) "STORM WATER DRAINAGE FACILITIES" means facilities designed or utilized for the primary purpose of collecting, storing, detaining, pumping, transporting or disposing of storm water, and includes, without limitation, storm sewers, detention ponds and drainage ditches.

(12) "WASTEWATER FACILITIES" means facilities designed or utilized for the purpose of collecting, conveying, pumping, treating or disposing of wastewater and by-products of wastewater treatment and includes, without limitation, sewer lines, sewer mains, wastewater pumping stations, wastewater lift stations, wastewater treatment plants, and sludge handling facilities.

(13) "WATER WORKS FACILITIES" means facilities designed or utilized for producing, storing, conveying, metering, pumping, or treating fresh water, and includes, without limitation, water lines, water mains, pipes, meters, wells, chlorinators, canals, pumps, and treatment plants.

(b) BONDS

(1) Before the District or any person acting for or on behalf of the District sells or offers to sell any Bonds of the District, the undersigned proponents will cause a duplicate of the Conditions to be approved, ratified, and executed by the governing body and officers of the District, and will deliver or cause to be delivered to the office of the City Attorney at least one executed copy of the document by which such approval and ratification is evidenced.

(2) The District shall not issue any Bonds unless the purpose for which the proceeds of such Bonds may be used is limited to one or more of the following and no others:

A. purchasing or constructing or otherwise acquiring;

- (i) Water Works Facilities,
- (ii) Wastewater Facilities,
- (iii) Storm Water Drainage Facilities,
- (iv) Fire Suppression Facilities,
- (v) Park Land, or
- (vi) Road Projects.

B. purchasing or constructing or otherwise acquiring interests in real property, equipment, buildings, plants or structures necessary or incidental to the operation of Water Works Facilities, Wastewater Facilities, Storm Water Drainage Facilities, Fire Suppression Facilities or Road Projects.

(3) The District shall not sell or issue any Bonds unless:

A. the terms of such Bonds expressly provide that the District reserves and shall have the right to redeem the Bonds on any interest payment date subsequent to the 15th anniversary of the date of issuance, without premium;

B. the Bonds are sold after the taking of public bids therefor;

C. none of such Bonds, other than refunding Bonds, are sold for less than 95% of par;

D. the net effective interest rate on Bonds so sold, taking into account any discount or premium as well as the interest rate borne by such Bonds, does not exceed two percent above the highest average interest rate reported by the Daily Bond Buyer in its weekly "20 Bond Index" during the one-month period next preceding the date notice of the sale of such Bonds is given and bids for the Bonds will be received not more than forty-five days after notice of sale of the Bonds is given;

E. the resolution or order authorizing the issuance of the District's Bonds contains a provision that any pledge of the revenues from the operation of the District's utility facilities to the payment of debt service on the Bonds will terminate when and if the City takes over the assets of and assumes all of the obligations of the District;

F. the terms of sale or issuance of the Bonds have been submitted to and approved, in writing, by the Building Official, provided, however, that if the Building Official fails to approve or disapprove the terms of the sale or issuance of

any Bonds within 45 days after receipt by the City of a written application for approval, the sale or issuance of the Bonds shall be deemed to be approved and the conditions contained herein with respect to the approval shall be deemed to have been complied with;

G. if the proceeds of the Bonds or a portion of the proceeds of the Bonds are intended to finance Fire Suppression Facilities or Parks Land, the District has submitted a detailed capital plan for such facilities to the City and in the case of Fire Suppression Facilities; the plan has been approved in writing by the City's Fire Chief, or in the case of Park Land, the plan has been approved in writing by the Director of the City's Department of Parks and Recreation; provided, however, that if the City's Fire Chief or the Director of the City's Department of Parks and Recreation, to whom a detailed capital plan has been submitted for approval, fails to approve or disapprove the terms of the plan within 45 days after receipt by the City of a written application for approval, the plan shall be deemed to be approved and the conditions contained herein with respect to the approval shall be deemed to have been complied with.

(c) APPROVAL OF PLANS AND SPECIFICATIONS

(1) Prior to the commencement of any construction within the District, the District or any affected landowners or developers shall submit to the Building Official complete and accurate copies of all plans and specifications for the construction of any Water Works Facilities, Wastewater Facilities, Storm Water Drainage Facilities, Fire Suppression Facilities or Road Projects.

(2) The District shall not commence or permit the commencement of any construction within the District until such plans and specifications have been approved in writing by the Building Official.

(3) The District shall not install, cause to be installed, allow to be installed, or cause or allow the use of any water wells, water meters, fire hydrants, valves, pipes, water service lines, sewer service lines, wastewater lift stations or pump stations, wastewater treatment facilities or other physical utility facilities or appurtenance thereto unless such facilities comply in all particulars with the standard plans and specifications used and maintained by the City, at the time approval is requested, for specifying the design and construction of its own utility facilities.

(4) At least 20 days prior to the construction or installation of any Water Works Facilities, Wastewater Facilities, Storm Water Drainage Facilities, Fire Suppression Facilities or Road Projects which are or will be owned or operated by or on behalf of the District or which will be in any way connected to or operated with any of the District's utility facilities the District or its agent shall give written notice, by registered or certified mail, to the Building Official stating the date that such construction is to be commenced.

(5) The District shall permit the Building Official to make such reasonable on-site inspections as he deems necessary during the construction and installation of such facilities.

(6) All construction within the District, including construction undertaken by or on behalf of the District, must be in compliance with the City's Building Code and any other applicable ordinances. The District shall not provide utility service to any structure

within the City which has not been constructed in compliance with the City's Building Code.

(d) OPERATION OF CERTAIN DISTRICT FACILITIES

(1) In the event the District retains control and operations of District facilities, the District shall comply with the requirements of state and federal law governing the operation of Wastewater Facilities, Water Works Facilities and Storm Drainage Facilities.

(2) In the event the District retains control and operation of District facilities, the District shall allow, permit and assist the agents of the City to make reasonable periodic inspections of the District's Wastewater Facilities and the District shall deliver to the City's chief public health official at least one copy of any written report concerning the operation or maintenance of its Wastewater Facilities which is filed with any state or federal agency.

(e) ADDING OR EXCLUDING LAND

The District shall not annex, disannex or otherwise add or delete any land to or from the District unless it first receives approval from the City by motion, resolution or ordinance of the City's city council.

(f) SUBDIVISION AND PLATS

The District shall not provide any form of water, wastewater or storm water drainage service, directly or indirectly to any land within or without the District unless prior to the initiation of service to such land a subdivision plat or development plat has been filed with and finally approved by the City Planning Commission of the City of Houston and, in the case of a subdivision plat, the plat has been filed in the real property records of the county in which the subdivided land is located.

(g) CONTRACTS

(1) All contracts, agreements or other undertakings for personal or professional services or supplies, entered into by the District, shall provide, that in the event the District is abolished by the City, the City shall have the unilateral right to terminate such contracts, agreements or other undertakings effective on or after the date of abolition.

(2) The District shall not enter into any contract, agreement or other undertaking which would or might obligate the District in an amount in excess of \$50,000, unless the contract is first approved by the Building Official, or unless the contract, agreement or undertaking is payable solely from the proceeds of Bonds approved by the City provided, however, that if the Building Official fails to approve or disapprove a contract, agreement or other undertaking for which his approval is required, within 60 days after receipt by the City of a written application for approval, the contract, agreement or other undertaking shall be deemed to be approved and the District shall be authorized to enter into the contract, agreement or other undertaking.

(3) The District shall not enter into any contract which contains any provision, other than the one described in (1), above, which is or becomes effective upon the annexation or abolition of the District by the City.

(h) RECORDS AND INSPECTIONS

The District shall allow, permit and assist the agents of the City to make reasonable inspections of the books and records of the District and shall deliver to the City, each year, at least one copy of any financial report or reports submitted to the State of Texas or any department or agency thereof.

(i) NOTICE TO PROPERTY OWNERS

The District shall provide written notice to property owners within the District on an annual basis, that property located within the District was developed subject to a Utility Allocation Agreement which conveyed certain rights and responsibilities upon the District and the City, and further shall advise the property owner that such agreement or agreements are available for inspection by the property owner at all reasonable times at a location specified by the District.

(j) AMENDMENTS

After creation of the District the Conditions applicable to the District may only be amended by an ordinance or ordinances of the City and no City officer or official is authorized or empowered to vary or waive the terms of the Conditions absent such amendment.



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 4/29/2020

HPW – 20CJ06 CMI Contract / ARKK Engineers L.L.C.

Agenda Item#: 32.

Summary:

****PULLED – Will not be considered on 7/29**

ORDINANCE appropriating \$26,400.00 out of Dedicated Drainage and Street Renewal Capital Fund – Drainage Charge; \$26,400.00 out of Dedicated Drainage and Street Renewal Capital Fund – Ad Valorem Tax; approving and authorizing Professional Construction Management and Inspection Services Contract between City of Houston and **ARKK ENGINEERS, LLC** for Paving and Drainage Projects; providing funding for CIP Cost Recovery financed by the Dedicated Drainage and Street Renewal Capital Fund – Drainage Charge and the Dedicated Drainage and Street Renewal Capital Fund - Ad Valorem Tax

Background:

SUBJECT: Professional Construction Management and Inspection Services Contract between the City of Houston and ARKK Engineers L.L.C. for Paving and Drainage Projects.

RECOMMENDATION: Approve Professional Construction Management and Inspection Services Contract with ARKK Engineers L.L.C. for Paving and Drainage Projects and appropriate funds.

PROJECT NOTICE/JUSTIFICATION: This project is part of the City's Capital Improvement Plan (CIP) for paving and drainage construction projects.

DESCRIPTION/SCOPE: This contract provides for Construction Management and Inspection Services for the Capital Projects of Houston Public Works in connection with paving and drainage construction projects.

LOCATION: The projects are located throughout the City of Houston.

SCOPE OF CONTRACT AND FEE: This contract will provide Construction Management and Inspection Services, including contract administration, processing pay estimates, coordinating schedules, evaluating proposals and change orders, site representation, inspection, document control, project closeout, constructability review, and other tasks requested by the Director of the Houston Public Works.

Project funding for construction management services will be appropriated with the contract award. The requested appropriation of \$48,000.00 will provide for limited pre-construction review and preparation as required.

The total requested appropriation is \$52,800.00 to be appropriated as follows: \$48,000.00 for contract services and \$4,800.00 for CIP Cost Recovery.

services and \$4,800.00 for CIP Cost Recovery.

PAY OR PLAY PROGRAM: The proposed contract requires compliance with the City's 'Pay or Play' ordinance regarding health benefits for employees of City contractors. In this case, the Contractor provides health benefits to eligible employees in compliance with City policy.

M/WBE PARTICIPATION: ARKK Engineers L.L.C. has proposed the following firms to achieve the 24% goal for this project.

<u>Name of Firm</u>	<u>Certification Type</u>	<u>Work Description</u>	<u>Amount</u>	<u>Percentage</u>
1. KIT Professionals, Inc.	MBE	Construction Inspection and Support Services	\$11,520.00	24.00%
Total			\$11,520.00	24.00%

FISCAL NOTE: No significant Fiscal Operating impact is anticipated as a result of this project.

Carol Ellinger Haddock, P.E., Director
Houston Public Works

WBS Nos. N-320668-0046-4 and M-430220-0038-4

Amount of Funding:

Total \$52,800.00

\$26,400.00 - Fund No. 4042 - Dedicated Drainage and Street Renewal Capital Fund - Drainage Charge

\$26,400.00 - Fund No. 4046 - Dedicated Drainage and Street Renewal Capital Fund - Ad Valorem Tax

Contact Information:

Juan Chavira, PE, PMP
Assistant Director, Capital Projects
Phone: (832) 395-2441

ATTACHMENTS:

Description	Type
Signed Coversheet	Signed Cover sheet
Maps	Backup Material



CITY OF HOUSTON - CITY COUNCIL

Meeting Date:

ALL

Item Creation Date: 4/29/2020

HPW – 20CJ06 CMI Contract / ARKK Engineers L.L.C.

Agenda Item#:

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		Total	\$11,520.00	24.00%

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DocuSigned by:

Carol Ellinger Haddock

7/9/2020

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Carol Ellinger Haddock, P.E., Director
Houston Public Works

WBS Nos. N-320668-0046-4 and M-430220-0038-4

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Juan Chavira, PE, PMP
Assistant Director, Capital Projects
Phone: (832) 395-2441

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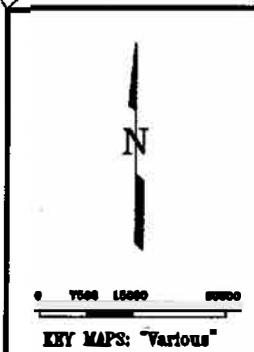
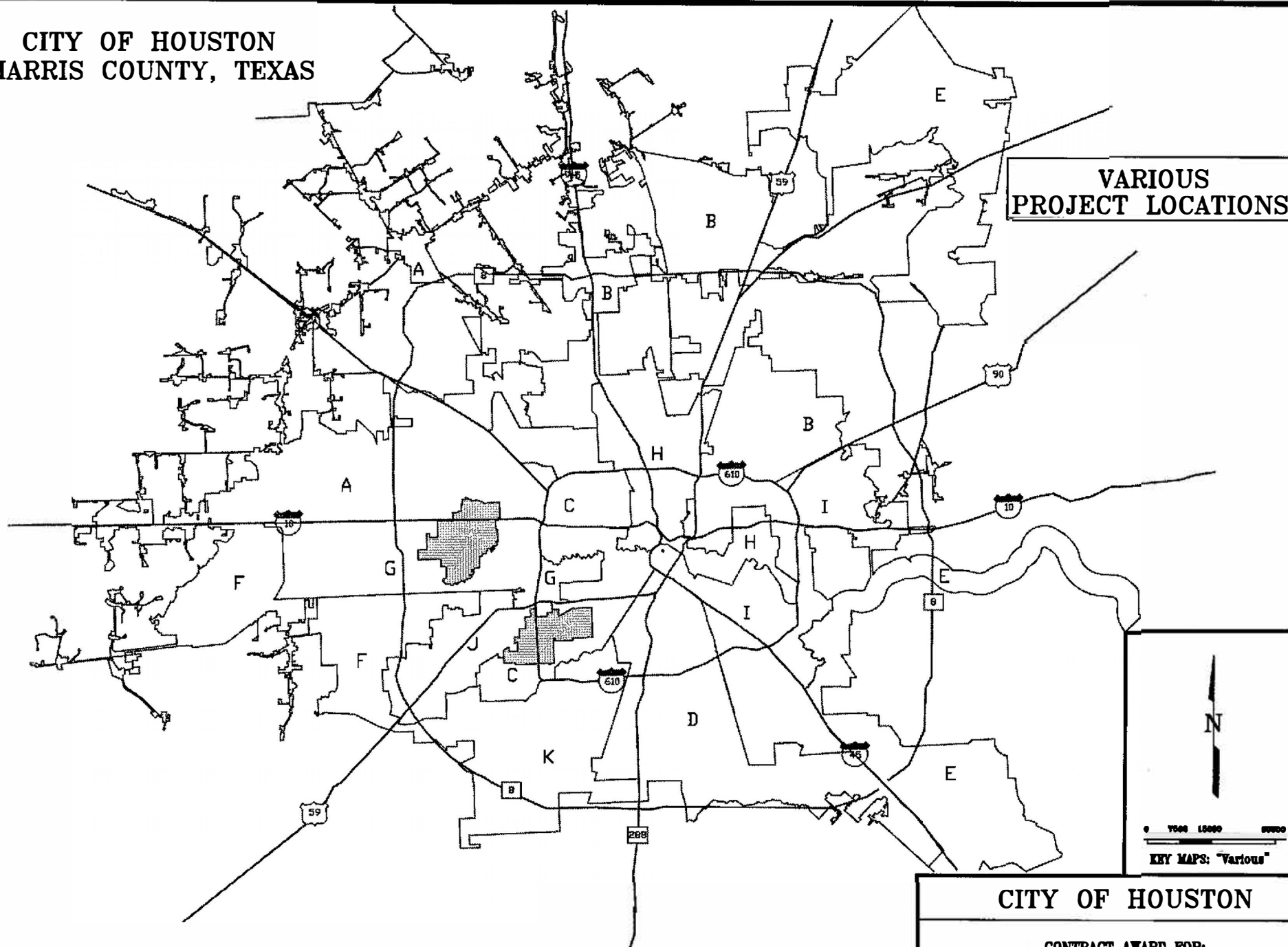
Description

SAP Documents
Maps
OBO Documents (Vendor Info Sheets & Letters of Intent)
Form B - Fair Campaign Ord.
Ownership Information Form (doc 0455) and Tax Report
Pay or Play (POP 1-3)
Form 1295

Type

Financial Information
Backup Material
Backup Material
Backup Material
Backup Material
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**CITY OF HOUSTON
HARRIS COUNTY, TEXAS**



CITY OF HOUSTON

**CONTRACT AWARD FOR:
CITY OF HOUSTON
N-320668-0046-4 & M-430220-0038-4
COUNCIL DISTRICTS: "ALL"**



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

ALL

Item Creation Date: 3/27/2020

HPW - 20DWO54R Large Diameter Waterline Technical
Services - Package 1

Agenda Item#: 33.

Summary:

ORDINANCE appropriating \$1,657,700.00 out of Water & Sewer System Consolidated Construction Fund; approving and authorizing Professional Engineering Services Contract between City of Houston and **AURORA TECHNICAL SERVICES, LLC** for Large Diameter Waterline Technical Services - Package 1 to City of Houston's Drinking Water Operations Branch; providing funding for CIP Cost Recovery financed by the Water & Sewer System Consolidated Construction Fund; providing a maximum contract amount

Background:

SUBJECT: Professional Engineering Services Contract between the City of Houston and Aurora Technical Services, LLC. for Large Diameter Waterline Technical Services – Package 1

RECOMMENDATION: (SUMMARY) An ordinance approving a Professional Engineering Services contract with Aurora Technical Services, LLC. and appropriate and allocate funds.

PROJECT NOTICE/JUSTIFICATION: This contract is to provide professional engineering services for Large Diameter Waterline Technical Services – Package 1 to the City of Houston's Drinking Water Operations Branch. Drinking Water Operations has identified a need for engineering support for their Large Diameter Water Mains that are 24-inch or larger in diameter. The work for this project will be requested and authorized through work orders to assist Drinking Water Operations to operate, maintain and improve drinking water transmission infrastructure.

DESCRIPTION/SCOPE: The Scope of Work provides for work authorizations to assist Drinking Water Operations in the repair and assessment of the City's large diameter water line infrastructure and to propose solutions. Services will include, but are not limited to, preparing construction documents for rehabilitation and repairs, providing technical support during emergency repairs, reviewing construction documents prepared by others for work to be performed on City Large Diameter Water Lines, providing guidance for updating and adding standards & specifications, providing asset management support, and assist in project scoping.

LOCATION: The projects are located throughout the City of Houston.

SCOPE OF CONTRACT AND FEE: Under the scope of the Contract, the Consultant will perform professional engineering services as defined by each work order. Work orders will

center around emergency or planned rehabilitation and assessment of the City's large diameter water line infrastructure. The work orders will include both basic and additional services. Professional engineering work orders will be authorized with a negotiated not-to-exceed or lump sum basis. The total contract amount is \$3,485,500.00.

The total cost of this project is \$3,636,200.00 to be funded as follows: \$3,485,500.00 for Contract Services and \$150,700.00 for CIP Cost Recovery.

PAY OR PLAY PROGRAM: The proposed contract requires compliance with the City's 'Pay or Play' ordinance regarding health benefits for employees of City contractors. In this case, the Contractor provides health benefits to eligible employees in compliance with City policy.

M/WBE PARTICIPATION: The M/WBE goal for the project is set at 24%. The Consultant has proposed the following firms to achieve this goal.

<u>Name of Firms</u>	<u>Work Description</u>	<u>Amount</u>	<u>% of Total Contract</u>
1. InfraTECH Engineers & Innovators, LLC	Civil Engineering Services	\$35,000.00	1.00%
2. United Engineers, Inc.	Surveying, SUE & Utility Coordination, Construction Phase	\$385,000.00	11.05%
3. Kuo & Associates, Inc.	Support Services Engineering Support Services	\$350,000.00	10.04%
4. Aviles Engineering Corporation	Geotechnical and Environmental Support Services	<u>\$70,000.00</u>	<u>2.01%</u>
TOTAL		\$840,000.00	24.10%

CIP NOTE: No significant Fiscal Operating impact is anticipated as a result of this project.

FISCAL NOTE: Funding for this item is included in the FY21 Adopted Budget. Therefore, no Fiscal Note is required as stated in the Financial Policies.

Carol Ellinger Haddock, P.E., Director
Houston Public Works

WBS No. S-000020-0071-3

Department	FY21	Out – Years	Total Amount
Houston Public Works	\$669,500.00	\$1,309,000.00	\$1,978,500.00

Amount of Funding:

\$3,636,200.00 – Total Cost

\$1,657,700.00 – Fund No. 8500 Water and Sewer System Consolidated Construction Fund

\$1,978,500.00 – Fund No. 8300 Water and Sewer System Operating Fund

Contact Information:

Andrew Molly, P.E.

Senior Assistant Director, Drinking Water Operations

Phone: (832)395-3785

ATTACHMENTS:

Description

Coversheet (revised)

2020-668 Executed Ordinance

Type

Signed Cover sheet

Ordinance/Resolution/Motion



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 7/28/2020

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	Support Services		

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DocuSigned by:

Carol Haddock

7/27/2020

Carol E. Haddock, P.E., Director
Houston Public Works

WBS No. S-000020-0071-3

Department	FY21	Out – Years	Total Amount
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\$1,978,500.00 – Fund No. 8300 Water and Sewer System Operating Fund

Contact Information:

Andrew Molly, P.E.

Senior Assistant Director, Drinking Water Operations

Phone: (832)395-3785

ATTACHMENTS:

Description

Funding Documents
Form B - Compilation of Contractor
Map of the Location
Affidavit of ownership and Tax report
Form - 1295 Certificate of Interested Parties
POP Documents
Funding Verification for Fund 8300
Ordinance
OBO Documents (revised)
Contract

Type

Signed Cover sheet
Backup Material
Backup Material
Backup Material
Backup Material
Backup Material
Financial Information
Ordinance/Resolution/Motion
Backup Material
Contract/Exhibit

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 reference.

- () Other – Grant Funds Available.

Date 7/28, 2020


City Controller of the City of Houston, Texas

① 8500-2000-520106-522780

1,507,700.00

42-9494

② 8300-1-520141

669,500.00

45-324169

③ 8500-1-522730

150,700.00

PA01SRD1ER

3-4734

FUND REF:

AMOUNT:


ENCUMB. NO.:

0446-16082

DE FR 88 3-27870

City of Houston, Texas Ordinance No.

2020-668

 AN ORDINANCE APPROPRIATING THE SUM OF \$1,657,700.00 OUT OF THE WATER & SEWER SYSTEM CONSOLIDATED CONSTRUCTION FUND; APPROVING AND AUTHORIZING A PROFESSIONAL ENGINEERING SERVICES CONTRACT BETWEEN THE CITY OF HOUSTON AND AURORA TECHNICAL SERVICES, LLC FOR LARGE DIAMETER WATERLINE TECHNICAL SERVICES – PACKAGE 1 TO THE CITY OF HOUSTON'S DRINKING WATER OPERATIONS BRANCH; PROVIDING FUNDING FOR CIP COST RECOVERY FINANCED BY THE WATER AND SEWER SYSTEM CONSOLIDATED CONSTRUCTION FUND; 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. The City Council hereby appropriates the sum or sums of money set out in the title of this Ordinance, out of the respective fund or funds set out in such title as follows: the sum of **\$3,485,500.00** is appropriated for contract services related to the project described in the title, and the sum of **\$150,700.00** is appropriated for CIP COST RECOVERY relating to construction of facilities financed by the fund described in such title.

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 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 agreement, agreements or other undertaking described in the title of this ordinance, 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. 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 29th day of July, 2020
APPROVED this ____ day of _____, 20____.

Mayor of the City of Houston, Texas.

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.

Atty. General
City Secretary

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: AUG - 4 2020

FUNDING SOURCE:

\$1,978,500.00 – Water & Sewer System Operating Fund (8300)

(Prepared by Legal Dept. Atty. General)

(ARC/sjl 05/27/2020)

Assistant City Attorney

(Requested by Carol Ellinger Haddock, P.E., Director, Houston Public Works)

(L.D. File No. 0802000116001)

CERTIFICATE OF CITY CONTROLLER

I, Chris B. Brown, City Controller of the City of Houston, Texas, pursuant to Article II, Section 19a of the Charter of the City of Houston, with respect to the sum of **\$1,657,700.00** required for the project referenced in the title of this ordinance, do hereby certify as follows:

- (1) The sum of **\$1,657,700.00** will be funded from water and sewer system bond proceeds and/or water and sewer system commercial paper proceeds (first-in-first-out basis) pursuant to Ordinance No. 93-1409 authorizing the creation of the **Water and Sewer System Consolidated Construction Fund**. To the extent that this sum will be paid with bond proceeds, it is in the treasury in the said fund, and is not appropriated for any other purpose.
- (2) To the extent that the **\$1,657,700.00** will be paid by commercial paper proceeds, funds will be received into the treasury and available before the maturity of said obligation, and such anticipated funds have not already been appropriated for any other purpose. Such sum will be received as a cash draw(s) to the City of Houston pursuant to the Water and Sewer System Commercial Paper Ordinance, Ordinance No. 93-1209.

City Controller

Water.Cer8500

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	

**CITY OF HOUSTON
AND
AURORA TECHNICAL SERVICES, LLC**

**WORK ORDER
PROFESSIONAL ENGINEERING SERVICES
FOR DESIGN OF
LARGE DIAMETER WATERLINE TECHNICAL SERVICES - PACKAGE 1**

WBS NO. S-000020-0071-3

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EXHIBITS

"A"	ADDITIONAL TERMS
• "A-1"	SCOPE OF WORK
"B"	PROJECT SCHEDULE (N/A)
"C"	MAXIMUM RAW SALARIES
"D"	FORM OF CERTIFICATE OF INSURANCE
"E"	DRUG POLICY COMPLIANCE AGREEMENT
"F"	DRUG POLICY COMPLIANCE DECLARATION
"G"	ENGINEER'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS IN PERFORMANCE OF A CITY CONTRACT
"H"	SUBCONTRACTOR'S ASSIGNMENT OF COPYRIGHTS
"I"	FORM POP 2 - CERTIFICATION OF AGREEMENT TO COMPLY WITH PAY OR PLAY PROGRAM
"J"	CERTIFICATION OF AGREEMENT TO COMPLY WITH STANDARD DOT TITLE VI ASSURANCES
	APPENDIX A LANGUAGE

CONTRACT
FOR
PROFESSIONAL ENGINEERING SERVICES
FOR
LARGE DIAMETER WATERLINE TECHNICAL SERVICES - PACKAGE 1
WBS NO. S-000020-0071-3

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

THIS CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES ("Contract") is made on the date countersigned by the City Controller, by and between the **CITY OF HOUSTON, TEXAS** (the "City"), a municipal corporation and home-rule city of the State of Texas principally situated in Harris County, and **AURORA TECHNICAL SERVICES, LLC** (the "Engineer"), acting by and through its duly authorized officer. The initial addresses of the parties, which one party may change by giving notice to the respective other party, are as follows:

City

Director
Houston Public Works
City of Houston
P.O. Box 1562
Houston, Texas 77251

Engineer

RAFAEL ORTEGA, P.E., PRESIDENT
AURORA TECHNICAL SERVICES, LLC
2121 SAGE ROAD, SUITE 150
HOUSTON, TEXAS 77056

RECITALS:

WHEREAS, the City desires to obtain professional engineering services in connection with the planning and/or design of the Project hereinafter described; and

WHEREAS, the Engineer desires to provide such services in exchange for the fees hereinafter specified;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants herein contained, it is agreed as follows:

ARTICLE 1

GENERAL

- 1.1 **Definitions:** The following Definitions are used throughout this Contract, including Exhibit "A". See Exhibit "A" for any additional Definitions applicable to this Contract.
- 1.1.1 **Additional Services:** Services completed by Engineer in support of the Project that are not part of Basic Services, but are included in Article 2 of this Contract and as further described in Exhibit "A", Exhibit "A-1", and the Notice(s) to Proceed.
- 1.1.2 **Basic Services:** Services completed by Engineer in support of the Project, included in Article 2 of this Contract and as further described in Exhibit "A", Exhibit "A-1", and the Notice(s) to Proceed.
- 1.1.3 **City:** As defined in the preamble of this Contract, including its successors and assigns.
- 1.1.4 **City Design Manual:** "City of Houston Infrastructure Design Manual" in effect at the time of execution of this Contract, a current version of which can be found on the internet at the following URL:
<https://edocs.publicworks.houstontx.gov/engineering-and-construction/design-manuals.html>
- 1.1.5 **City Personnel:** All City employees, but not elected officials.
- 1.1.6 **Construction Documents:** All of the graphic and written information prepared or assembled by Engineer for communicating the design and for administering the bidding and construction of the Project.
- 1.1.7 **Construction Package:** The services and deliverables that make up a whole or a part of the Project, as further described in this Contract.
- 1.1.8 **Consultant (also "Subcontractor"):** The professional Consultant or other professional entity subcontracted by Engineer to provide a portion of engineering services required under the City-Engineer Contract.
- 1.1.9 **Consultant Markup:** A markup factor of 10%, which Engineer may apply only to Consultant subcontract invoices for Additional Services performed by the Consultant. Such markup shall include the non-professional services related to the Consultant's subcontract including all administrative costs, accounting costs, all contract administration, processing of invoices, monitoring of Consultant's work for compliance including project schedules, quality control, general administrative communication and coordination. Engineer shall not apply any Consultant Markup to Basic Services performed by Consultant or any services by Engineer.

- 1.1.10 **Consultant Subcontract Cost:** The ordinary and reasonable cost of Consultant subcontracts made by Engineer and approved by the Director for the principal purpose of obtaining the professional services of others in connection with the performance of any service under this Contract.
- 1.1.11 **Cooperative Development Agreement:** A contract between the City and a Developer in which the City and Developer share the cost of construction and other eligible costs.
- 1.1.12 **Developer:** The owner or agent of the owner development lots or tracts of property for further sale, lease, development, or redevelopment for residential, commercial, or industrial use.
- 1.1.13 **Director:** The Director of the Department of Houston Public Works, or such other person designated from time to time by the Director by notice to Engineer to administer this Contract on behalf of the City.
- 1.1.14 **Documents:** The reports, charts, analyses, maps, letters, tabulations, exhibits, notes, models, photographs, the original transparencies of all drawings, Construction Documents, computer programs including source and object codes, and other work products obtained by or prepared by Engineer as part of its services under this Contract. The Director shall specify the medium and format in which Engineer shall provide such documents.
- 1.1.15 **Engineer:** As defined in the preamble of this Contract, including its successors and assigns.
- 1.1.16 **Geographic Information System (GIS):** A system designed to capture, store, manipulate, analyze, manage, and present all types of geographical information.
- 1.1.17 **Negotiated Lump Sum:** An amount consistent with the terms of this Contract that City shall pay Engineer for the completed performance of services, not to exceed the estimated total of the following:
- 1.1.17.1 Raw Salary times Raw Salary Multiplier for services performed directly by Engineer and Engineer's employees, plus
 - 1.1.17.2 Reimbursable Expenses, plus
 - 1.1.17.3 Consultant Subcontract Costs plus Engineer's Consultant Markup, plus
 - 1.1.17.4 Reasonable fees paid to contract personnel and personnel employed through employment agencies plus Engineer's Consultant Markup.
- 1.1.18 **Notice to Proceed:** A written communication from the Director that authorizes Engineer to begin performance of work. Multiple Notices to Proceed should be anticipated for contracts that include multiple projects/subprojects. A Notice to Proceed will contain the following:
- 1.1.18.1 A declaration that the City has allocated adequate funds for that phase or service;
 - 1.1.18.2 The Negotiated Lump Sum for all work described in the Notice to Proceed;

- 1.1.18.3 A work description for each service Engineer, Consultants, or suppliers will perform under the Notice to Proceed;
- 1.1.18.4 The maximum cost and portion of the Negotiated Lump Sum associated with each work description;
- 1.1.18.5 Whether the work description represents a Basic or Additional Service;
- 1.1.18.6 The phase of the Project to which the work is attributable; and
- 1.1.18.7 Acceptance of the preceding Phase, when applicable.

1.1.19 **Project:** As identified in the title of this Contract.

1.1.20 **Project Schedule:** The schedule of project activities and events, showing initiation point, duration, and ending points using the form attached as Exhibit "B". The schedule will indicate time to be allowed for reviews by the City staff. The Project Schedule shall be drafted by Engineer in consultation with the Director, approved by the Director, and updated monthly at the time of invoice submittal.

1.1.21 **Raw Salary:** The actual cost of salary (annual base salary (excluding bonuses) divided by 2080) of an employee of Engineer for each hour during which such employee is actively performing services of benefit to the City and directly related to the Project. Maximum Raw Salary rates by employee category for the duration of the Contract are shown on Exhibit "C" attached hereto and, by reference, incorporated. The Raw Salary rates of Consultant shall not exceed the Raw Salary rates of Engineer without reasonable justification and prior written approval from the Director.

1.1.22 **Raw Salary Multiplier:** The Raw Salary Multiplier (when applied to Raw Salary) is 3.0 and includes all payment due Engineer for Raw Salary, salary burdens, benefits, insurance, overtime premium, payroll taxes, bonuses, overhead profit and clerical and management support, vacations, holidays and non-productive time of all kinds. The categories of service for which Raw Salary are payable are set out in Exhibit "C". All other categories of service are treated as overhead and are a part of the Raw Salary Multiplier. Payments to contract personnel and personnel employed through employment agencies are not subject to enhancement by the Raw Salary Multiplier.

1.1.23 **Reimbursable Expenses:** Reimbursable Expenses are limited to the following: (1) the ordinary and reasonable cost of copying, printing, postage, delivery services, long distance telephone calls and any additional expenses listed in Exhibit "A" incurred by the Engineer in the course of his performance of services under this Contract, including any sales tax Engineer is legally required to pay for Reimbursable Expenses; and (2) the ordinary and reasonable costs of travel including meals and lodging to and from points outside of Houston by representatives of the Engineer, not-to-exceed the amounts established under the City's then current travel reimbursement policy for its employees, if such travel is reasonably necessary to accomplish a task and authorized by the Director.

1.1.24 **Subcontractor (also "Consultant"):** The professional Consultant or other professional entity subcontracted by Engineer to provide a portion of engineering services required under the City-Engineer Contract.

1.1.25 **Supplemental Notice to Proceed:** A Notice to Proceed amending a preceding Notice to Proceed, which must be issued before services commence, containing the elements required for the original Notice to Proceed and the following:

- 1.1.25.1 A description of the changes in the scope or quality of work between the Supplemental Notice to Proceed and the preceding Notice to Proceed;
- 1.1.25.2 Acceptance for work completed under the previous Notice to Proceed, when applicable;
- 1.1.25.3 The percentage difference between the original Notice to Proceed for that Phase and all subsequent Supplemental Notices to Proceed; and
- 1.1.25.4 The incremental cost of the services in the Supplemental Notice to Proceed.

1.1.26 **Work:** The entire construction required to be provided by the Construction Documents. The Work may constitute the whole or a part of the Project and may be one or more Construction Packages.

1.2 **Review of Existing Information**

- 1.2.1 Existing utility information, existing record drawings of previous projects, and existing survey information are readily available to the Engineer and the public. The Director shall provide access to such information. It is the responsibility of the Engineer to physically gather this information from available sources.
- 1.2.2 The Engineer shall review applicable existing information and develop independent recommendations based on the information.

ARTICLE 2 **DUTIES OF ENGINEER**

2.1 **Services in General:** Engineer agrees to provide prompt and efficient professional services in relation to the design and management of the Project for the fees hereinafter specified. Engineer shall perform its work in accordance with the professional skill and care ordinarily provided by competent engineers, practicing in the same or similar locality and under the same or similar circumstances and professional license; and as expeditiously as is prudent considering the ordinarily professional skill and care of a competent engineer.

2.1.1 Engineer also agrees to perform such specific tasks as are set forth in Exhibit "A-1", when directed to do so by a Notice to Proceed, which is attached hereto and made a part hereof for all purposes. In the event of an inconsistency between these terms and conditions and the terms of Exhibit "A-1", the terms of Exhibit "A-1" shall control.

2.1.2 The Basic Services in this Contract are divided into three distinct phases:

- 2.1.2.1 Phase I - Preliminary Design;

- 2.1.2.2 Phase II - Final Design; and
- 2.1.2.3 Phase III - Construction Phase Services.
- 2.1.3 Preliminary and Final Designs shall conform to the latest City Design Manual as well as other design criteria that may be provided for this Contract by the Director.
- 2.1.4 The City may use a construction project manager as well as City personnel to review portions of the design; however, Engineer acknowledges that while others may suggest design ideas and components of the Project, such suggestions do not relieve Engineer of its professional responsibility to the City for complete design of the Project.
- 2.1.5 Engineer shall make periodic verbal or written reports and recommendations to the Director with respect to conditions, transactions, situations or circumstances encountered by Engineer relating to the services to be performed under this Contract and shall attend meetings determined to be necessary by the Director.
- 2.1.6 The Engineer shall reference the City's Project Title and City's Project WBS Numbers on all correspondence and submittals.
- 2.1.7 The Engineer shall manage the efforts of the Project team members and Consultants, assign manpower, delegate responsibilities, review work progress, monitor conformance to the scope regarding the budget and schedule, and otherwise direct the progress of the work.
- 2.1.8 Periodic meetings shall be held to review the progress of the engineering effort or to address other issues which may arise. The Director shall initiate meetings that include the Engineer and his Consultants, and if necessary, the Director and other applicable parties. The Engineer shall prepare and deliver meeting record memorandum of decisions and action items to the City within two business days after each meeting.
- 2.1.9 The Engineer shall notify the Director immediately of any deviation from the Scope of Services and/or Fee agreed to in this Contract. The Engineer shall not perform services outside of the Contract scope without a duly executed Amendment to this Contract.
- 2.1.10 The Engineer shall route all written communication with regulatory agencies, neighborhood associations, and City Council through the Director.
- 2.1.11 Engineer shall, upon written request, provide the Director with a written and/or electronic copy of materials prepared and/or referenced by Engineer or made available to it as a result of its performance under this Contract.
- 2.1.12 Engineer shall coordinate performance of the services hereunder with the Director and such other persons as the Director may specify.
- 2.1.13 Engineer shall perform the Basic Services or Additional Services required for any Phase of this Contract only upon receipt of a Notice to Proceed.
- 2.1.14 Engineer understands and acknowledges that the City may determine not to proceed with this Contract after completion of Engineer's services for any Notice to Proceed. Engineer understands and acknowledges that the City may determine not to proceed with this Contract after completion of Engineer's services for either Phase I - Preliminary Design or Phase II - Final Design.
- 2.1.15 Engineer shall review Notices to Proceed to ensure the work descriptions specified within the Notices to Proceed and change order forms are adequately detailed. Engineer shall report to the Director any

work description that does not adequately detail the services Engineer intends to provide. Engineer may not receive payment for work if the work description in a Supplemental Notice to Proceed does not appear different in scope from the work description in a previous Notice to Proceed.

- 2.1.16 Engineer shall coordinate the performance of services hereunder with the Director and governmental agencies and other bodies having jurisdiction over this Project or City consultants performing services related to the Project.
- 2.1.17 Engineer agrees that the Director may reduce the scope of services for any of the services identified in the Notice to Proceed or may divide the Project into separate Construction Packages by issuing a written notice describing: (1) the scope of the reduced Project or the scope of each Construction Package; and (2) the revised Time of Performance.
- 2.1.18 Engineer understands and acknowledges that this Contract contains the entirety of potential services the City may request from Engineer through issuance of Notices to Proceed and that the inclusion of any particular service in this Contract does not guarantee that Engineer will be requested to perform that service during the performance of this Contract.
- 2.1.19 Time is of the essence to the performance by the Engineer under this Contract.
- 2.1.20 Engineer shall identify all government agencies having regulatory jurisdiction and obtain authorization from the City prior to communication with the agencies.

2.2 Phase I – Preliminary Design

- 2.2.1 Engineer shall submit to the Director, within ten days of the Notice to Proceed for Phase I, a Project Schedule reflecting actual dates for activities and reviews set forth therein. The Project Schedule shall commence on the date of the Notice to Proceed and be based upon the number of calendar days established in this Contract.
- 2.2.2 Once the Engineer has billed for the entire Limit on Phase I Compensation, Engineer shall complete the Phase I work for no further compensation.
- 2.2.3 Engineer shall submit 5 copies of the preliminary design and outline specification Documents to the Director in hard copy format and one electronic copy in the format requested by the Director.
- 2.2.4 Engineer shall attend preliminary conferences with officials from local, state, and federal agencies; utility companies; and other entities as necessary for the Project.
- 2.2.5 Engineer shall conduct a thorough utility plan review, and Engineer shall follow the City's Utility Coordination Ordinance and procedures.
- 2.2.6 The Notice to Proceed for Phase I shall specify Phase I milestones and the Engineer's Raw Salary with corresponding classifications times the Raw Salary Multiplier, Reimbursable Expenses, and Consultant Subcontract Cost necessary to reach each milestone. Engineer shall perform all services necessary to complete each milestone.
- 2.2.7 After receiving the Notice to Proceed for Phase I, Engineer shall perform the following Phase I services during the Project:

- 2.2.7.1 Prepare a Preliminary Engineering Report (PER) which contains the findings and recommendations resulting from this Phase of work. Follow the guidelines in Exhibit A-1, at a minimum, and as further described in the Notice to Proceed;
- 2.2.7.2 Prepare and participate in the Technical Review Committee (TRC) meeting, as further described in Article 2 of this Contract; and
- 2.2.8 For projects requiring drainage and pavement improvements, the Engineer shall perform the following work as part of Basic Services:
 - 2.2.8.1 Hydrologic and hydraulic analysis (drainage analysis) of the existing and proposed condition for the design rainfall and the extreme rainfall. Include off-site contribution drainage areas and overland flow path analysis. Variance from current City design criteria requires City approval;
 - 2.2.8.2 Compare existing drainage system versus proposed drainage improvements in tabular and graphic profile including: hydraulic grade line; water surface elevation; ponded width; critical elevation (gutter); allowable maximum ponded elevation; allowable maximum ponded width; drainage area; 2-year peak outflow rate; and 100-year peak outflow rate;
 - 2.2.8.3 Determine the hydraulic impact and mitigation options of the proposed drainage improvements to the existing drainage system HGL of an interconnected City system including but not limited to in-line system storage and in-line system restriction as part of these services;
 - 2.2.8.4 Identify hydraulic impacts and mitigation options of the proposed drainage improvements to the receiving system of other governmental agencies including, but not limited to, detention basin, or low impact design (LID) method; and
 - 2.2.8.5 Engineer understands and acknowledges that standard engineering practice typically requires multiple modeling iterations for development of a sound proposed condition and determination of the best viable level of service.

2.3 Phase II - Final Design

- 2.3.1 The Engineer shall submit to the Director within ten days of any Notice to Proceed for Phase II, the Project Schedule updated to reflect firm dates for the beginning and end of each activity set forth therein and the review dates for such activities.
- 2.3.2 The Engineer shall submit a detailed construction cost estimate at the 60%, 90%, and Bid Ready Drawings stages:
 - 2.3.2.1 Engineer shall inform the Director of any adjustments to previous estimates of the Project construction cost which are indicated by market conditions or authorized changes in the scope and requirements of the Project within five business days of determining the adjustment; and
 - 2.3.2.2 Engineer does not guarantee that bids will not vary from the final construction cost estimate.

- 2.3.3 The Engineer shall submit **5** copies of the recommendations, analyses and other deliverables identified in this Contract in hard copy format and one electronic copy in the format requested by the Director.
- 2.3.4 Agency Approvals and Signatures
- 2.3.4.1 The Engineer shall design the Project in compliance with the standard of care in the industry and the requirements of applicable laws, codes, and regulations, including the City of Houston Building Code. The Construction Documents shall conform to applicable federal, state, and City regulations.
- 2.3.4.2 The Engineer shall prepare the Documents necessary to obtain approval of governmental authorities having jurisdiction over the design or operation of the Project and all public and private utilities including pipeline transmission and railroad companies affected by the Project; obtain the signatures of representatives of such governmental authorities and public and private utilities; and obtain the signatures of City officials indicated by the City's standard title block for drawings.
- 2.3.4.3 The Engineer shall obtain required signatures from other governmental agencies, public utilities, and private utilities, which may impact the Project prior to final approval by the Department of Houston Public Works. Governmental agencies include, but are not limited to, Harris County and Harris County Flood Control District. Utility signatures include, but are not limited to, AT&T, Centerpoint Energy-Electric, Centerpoint Energy-Gas, and cable TV.
- 2.3.5 Additional Requirements
- 2.3.5.1 The Engineer is responsible for quality and completion of the Final Design as requested by the Director.
- 2.3.5.2 The Engineer shall specify the minimum acceptable performance and/or material standards associated with temporary facilities and structures that are determined necessary to implement the Project, that are potentially cause for significant disruption to local communities or businesses, and that are not solely for the convenience of the construction contractor.
- 2.3.5.3 The Engineer shall review results from Additional Services prior to submittal to the City and where applicable, incorporate this information into the Final Design documents. Such Additional Services may include, but not be limited to, survey, geotechnical, environmental, traffic control, storm water pollution prevention plans, street lighting plans, tree mitigation/planting plans, and special studies.
- 2.3.5.4 The Engineer shall incorporate the City Standard Details as applicable. The Engineer shall review each Standard Details and edit as necessary to suit Project-specific requirements and to meet the design intent of the Project. Revisions to the Standard Details shall not be incorporated based solely on Engineer's preference, but are subject to review and acceptance by the Director. The Engineer shall notify the Director of all proposed changes to Standard Details and provide reasons for such

proposed changes. The Engineer shall prepare additional nonstandard details necessary for bidding and construction of the Project.

2.3.5.5 The Engineer shall verify findings from Utility Plan Review with the results of the Survey Services (see Additional Services) and identify potential conflicts during construction. Proposed designs shall strive to avoid conflicts where physically and financially feasible. Relocations of private utilities shall be coordinated with the City of Houston as early in design process as possible.

2.3.5.6 The Engineer shall obtain the written approval for the necessary Right of Entry to the properties affected by the Project, using the City's designated form that is currently in use. The Engineer shall turn in all acquired Rights of Entry to the City before proceeding to Phase III, Construction Phase Services. The Engineer shall perform its due diligence prior to coordinating with the City for additional assistance. Engineer shall identify and prepare encroachment Letters.

2.3.5.7 The Engineer shall prepare a construction duration estimate for the proposed project. The construction duration estimate shall be based upon tasks, subtasks, critical dates, milestones, and deliverables and shall consider the interdependence of the various items, and adjacent construction projects. Scheduling software or other available industry methodologies may be used to assist in the construction duration estimate preparation. The Engineer must substantiate the construction duration estimate to the City and assist the City in interpreting the estimate. The construction duration estimate shall be submitted no later than the Final Drawing and Specification milestone submittal.

2.3.5.8 For Water Plant projects, the Engineer shall perform the following work:

2.3.5.8.1 Develop valve and water plant shut-down sequences for situations in which construction could necessitate a partial or entire shut-down;

2.3.5.8.2 Plan sequences in coordination with the assigned project manager of the (City's Drinking Water Operations Branch of the Houston Public Works Department Houston Water Service Line). ("Drinking Water Operations"), and include sequences in Bid Documents; and

2.3.5.8.3 Prepare a plan view showing locations of existing valves, and required working condition status to operate during construction.

2.3.5.9 For projects with paving and drainage improvements and other projects, as applicable:

2.3.5.9.1 Design of in-line system storage and or restriction shall be include in Basic Services; and

2.3.5.9.2 Floodplain Management Office approval is part of Basic Services.

2.3.6 Bidding Services

2.3.6.1 The Engineer shall prepare specifications in accordance with the Construction Specification Institute (CSI) standard format adopted by the City. The Engineer shall use the City Standard Specifications Table of Contents for Construction Documents

as a guide for organization of the Contract Documents. The City Standard Specifications (Divisions 00-16) are prepared to include the requirements, features, construction materials, and related items desired by the City based on the City's experience and needs. The Engineer shall review each Standard Specification and supplement as necessary to suit Project-specific requirements and to meet the design intent of the Project. Supplements to the Standard Specifications shall not be incorporated based solely on the Engineer's preference. Supplements are subject to review and acceptance by the Director. The Engineer shall prepare additional nonstandard specifications necessary for bidding and construction of the Project. Incorporate Guide Specifications necessary for bidding and construction of the Project.

- 2.3.6.2 The Engineer shall incorporate the CSI Division 00 front-end documents provided by the City into the Project specifications.
- 2.3.6.3 The Engineer shall prepare detailed Construction Documents and Conformed Drawings based on the guidelines provided by the Director. The Construction Documents shall set forth recommended alternate bid items for the Project in a manner that permits ready evaluation and comparison. The Engineer shall furnish copies of the Construction Documents and the Conformed Drawings to the City within ten business days after bid award, or as otherwise stated by the City, in the following numbers and formats: 10 full size sets; seven reduced size drawings (11 inches by 17 inches); eight sets of the project manual; and one compact disc of all associated reports. Conformed Drawings represent the Bid Documents revised to reflect all addenda changes made during the bid period.
 - 2.3.6.3.1 The Engineer shall furnish the City with an electronic copy of the final plans in a format usable by AutoCAD 2016.
- 2.3.6.4 The Engineer shall assist the City in conducting the pre-bid conference and submit meeting minutes within three business days.
- 2.3.6.5 The Engineer shall prepare necessary addenda to address issues or clarifications necessary for completion of the bidding process.
- 2.3.6.6 The Engineer shall furnish three copies of the tabulation of bids received with a written recommendation for the award of a construction contract, and submit within three business days after the bid opening.
- 2.3.6.7 The Engineer shall provide clarification, correct discrepancies, correct errors and omissions; assist the City in evaluating the bid proposals; and assist in the preparation of a construction contract between the City and the successful bidder.

2.4 Phase III – Construction Phase Services

- 2.4.1 Upon issuance of a Notice to Proceed for Phase III, Engineer shall provide professional services during construction to assist in obtaining a completed Project in accordance with the purpose and intent of the Construction Documents.

- 2.4.2 The Engineer shall participate in pre-construction conferences and monthly construction progress meetings. When requested by the construction project manager, the Engineer shall attend other meetings related to project design in lieu of attending the monthly construction progress meetings.
- 2.4.3 The Engineer shall make visits to the Project site at appropriate intervals as construction proceeds to observe and provide a written construction site observation report on the progress and the quality of the executed Work.
- 2.4.3.1 The frequency of these visits should be monthly, after the construction contractor has mobilized and is constructing the proposed improvements. Site visits should occur during times when the construction contractor is actively performing major construction activities. Site visits should be coordinated with the construction project manager. These monthly visits shall be combined with any site visits made to resolve field problems relating to the construction or monthly progress meetings.
- 2.4.3.2 The personnel provided by Engineer to perform site visits shall be experienced in the administration of construction contracts and shall be under the supervision of a professional engineer registered by the State of Texas. Supporting personnel shall be provided from the Project design team when specialized knowledge of the Project design is required.
- 2.4.3.3 Site Observation Reports
- 2.4.3.3.1 The report shall be included in the Engineer's monthly invoice, unless otherwise approved by the Director.
- 2.4.3.3.2 The report shall be in writing, shall include all referenced supporting documents, and shall advise the Director of deviations from the Construction Documents, the contractor's construction schedule, or other items as set forth below, observed by or brought to the attention of the Engineer at the time of the Site Observation.
- 2.4.3.3.3 Provide percentage of completion of the Work and an overall map, showing complete and incomplete areas.
- 2.4.3.3.4 The report shall be submitted to the construction project manager within three business days after the site visit.
- 2.4.3.3.5 The following guidelines are intended to provide consistency when preparing the required Construction Site Observation Reports. These guidelines are intended to be the minimum requirements and do not replace sound professional judgment.
- 2.4.3.3.5.1 A brief narrative of the type of construction activities occurring at the time of the site visit is to be prepared. The narrative should include a description of the progress to date and the general quality of the ongoing work (based upon the Contract Documents). The following items should be observed and reported for each project site:

- 2.4.3.3.5.1.1 The date and time period on the job site;
- 2.4.3.3.5.1.2 The station and street work in progress or facility location observed;
- 2.4.3.3.5.1.3 The description of work should include the type of activities the construction contractor was performing (e.g. excavating, backfilling, paving, etc.), approximate size of crew, number and type of equipment in use (e.g. 1 back hoe, 3 dump trucks, etc.), and where these activities were occurring (e.g. Along Misty Valley, between Foggy Lane and Rainy Day);
- 2.4.3.3.5.1.4 Whether the work is in general conformance with the Contract Documents or report the observed deficiencies;
- 2.4.3.3.5.1.5 Identify whether the traffic control plan is being followed by the construction contractor or report the observed deficiencies and the impact the construction is having on traffic;
- 2.4.3.3.5.1.6 Whether NPDES storm water pollution prevention plan (SWPPP) is being followed by the construction contractor or report the observed deficiencies;
- 2.4.3.3.5.1.7 Whether trench safety system is in compliance with the construction contractor's submittal or report the observed deficiencies;
- 2.4.3.3.5.1.8 Note what discussions were held with the inspector, other City personnel, or construction contractor;
- 2.4.3.3.5.1.9 Note what type of progress construction contractor has made since the last site visit;

2.4.3.3.5.1.10 To assist in the description of the work activities, the use of color photographs is required. Two photographs are to be furnished. Include a "byline" with each photograph. The byline should describe the activity, time and place; and

2.4.3.3.5.1.11 Report any work that has been discovered that have not been approved by the Director or any work that deviates from the approved submittal or Contract Documents.

2.4.3.3.5.2 Unsafe conditions and major work deficiencies observed should be immediately brought to the attention of the City Inspector and the construction project manager. Document such notifications on the report.

2.4.3.3.5.3 Report and color photographs are to be sent to the design project manager (one copy) and construction project manager (one copy).

2.4.4 The Engineer shall review and take appropriate action upon the shop drawings, samples, and other submissions furnished by the construction contractor and submitted to Engineer by the City. Engineer shall determine if the shop drawings, samples, and other submissions conform to the requirements of the Construction Documents. Engineer shall notify the Director if the shop drawings, samples or other submissions do not conform to the Construction Documents. Such action(s) shall be taken within 14 calendar days of receipt from the City unless approved in advance by the Director. Engineer shall maintain a log of all construction contractor submittals which shall include the submittal date, the action taken, and the date returned.

2.4.5 The Engineer shall prepare supporting data and provide other services (including revisions to Construction Documents) at no charge to the City in connection with change orders when such change orders are required either: (1) to make clarifications or to correct discrepancies, errors, or omissions in the Construction Documents; or (2) to conform the Construction Documents to the requirements of all applicable laws, codes, and regulations, including the City of Houston Building Code (which is expressly made applicable to this Project) as it was in effect at the time of execution of this Contract.

2.4.6 The Engineer shall review laboratory, shop, and mill tests of material and equipment for general conformance with Contract Document requirements and report to the Director in writing on such matters.

- 2.4.7 The Engineer shall provide design clarifications and recommendations to assist the City in resolving field problems relating to the construction. Requests for Information (RFIs) will normally be generated by the construction contractor when a situation or condition is anticipated or encountered in the field that may not be fully addressed in the construction Contract Documents. RFIs are to be reviewed, a complete and fully responsive written answer provided, and returned to the construction project manager with a copy to the design project manager within five business days depending upon the criticality and impacted cost of the condition as described in the RFI. Engineer's response to RFI's concerning proposed modifications or unforeseen conditions shall only address the technical and design aspect of the issue. Any cost or schedule impacts shall be addressed to the construction contractor by the construction project manager.
- 2.4.8 The Engineer shall evaluate construction contractor change and cost proposals and substitutions and recommend to the City to either approve or disapprove the construction contractor's proposal or substitution, unless instructed not to do so by the Director.
- 2.4.9 No less than 30 days and no more than 45 days before the expiration of the correction period established by the Construction Documents, Engineer, in company with the Director, shall observe the construction site. Within 14 days after such observation, Engineer shall furnish the Director with a written report enumerating items which require repair or replacement as provided under the correction period provisions of the Construction Documents.F
- 2.4.10 To avoid misunderstandings or questions, Engineer understands and agrees that the Director shall have the responsibility for the general administration of the construction contract. Accordingly, Engineer shall not have the authority or responsibility to issue direct instructions to the construction contractor, to reject work done by the construction contractor, or to require special inspections or tests. Engineer, however, shall provide continuing counsel to the Director throughout the construction of the Project.
- 2.4.11 Within 30 calendar days of receipt of construction contractor's "as-built" drawings, the Engineer shall prepare and submit the Record Drawings to the design project manager. The Record Drawings shall become the property of the City and shall show significant changes made in the Work by the construction contractor during the construction of the Project. Record Drawings shall be prepared on the original as-bid drawings in the format specified by the Director at the time of execution. The Engineer shall prepare the record documents based solely upon the marked-up "as-built" drawings, addenda, revisions, change orders and other data furnished by the City and the construction contractor. The "as-built" drawings provided by the construction contractor shall clearly depict:
- 2.4.11.1 Any deviations from the proposed utilities alignments shown in the as-bid drawings;
 - 2.4.11.2 Actual alignments of utilities if different from alignment shown in the as-bid drawings; and
 - 2.4.11.3 The presence of existing utilities that are either not shown or shown incorrectly in the as-bid drawings should be accurately depicted.
 - 2.4.11.4 Other revisions to be shown include:
 - 2.4.11.4.1 PPCM (Potentially Petroleum Contaminated Material) encounters;
 - 2.4.11.4.2 Lengths for proposed utilities that differ from that shown in the as-bid

- drawings;
- 2.4.11.4.3 Deviations from proposed tunneling lengths;
- 2.4.11.4.4 Existing pavement composition, i.e. "unreinforced concrete with asphalt overlay";
- 2.4.11.4.5 The name of the manufacturer for installed valves that are 20 inches and larger in diameter;
- 2.4.11.4.6 Deviations from proposed restrained joint lengths for water line project only;
- 2.4.11.4.7 Identify type of pipe material installed;
- 2.4.11.4.8 Revisions due to construction contractor's Requests for Information; and
- 2.4.11.4.9 Other changes made by the construction contractor.
- 2.4.11.5 Project RFI's (construction contractor's Request for Information) should be reviewed to ensure the accuracy of the record drawings.
- 2.4.11.6 Changes shall be made electronically using the Conformed Drawings as a baseline. Actual alignments of utilities shall be shown. Incorrectly shown utilities shall be crossed out and drawn correctly. Inaccurate callouts shall have a line drawn through them. Revised callouts shall be noted in the Conformed Drawings.
- 2.4.11.7 All record drawing revisions shall be accompanied by a revision number contained within a triangle. The revision shall then be dated and initialed in the revision block. Any revisions made by, or under the supervision of, an Engineer other than the one whose seal appears on the subject drawing shall be signed and sealed by the Professional Engineer responsible for the revision.
- 2.4.12 Provide, in the event the Project construction exceeds the time stated in the Construction Documents by more than 30 days, the continuing services required to be done by Engineer during construction of the Project.
- 2.4.13 For contracts that require the construction contractor to service, calibrate, maintain or provide periodic site inspections for a period of one year after the date of substantial completion, the Engineer shall accompany the construction contractor and construction project manager during such visits. For projects involving startup, testing, calibration, training and operation of facilities or systems, the Engineer shall assist the construction project manager in accomplishing such tasks in accordance with the Contract Documents.
- 2.4.14 When requested by the Director, the Engineer shall visit manufacturers' facilities in order to prequalify major products and materials to be incorporated into a construction contract or verify manufacturers' compliance with the Contract Documents. The Engineer shall accompany City staff or may travel unaccompanied, as approved by the Director. A written report shall be generated to document the results of the trips. Cost for travel shall be considered a Reimbursable Expense.
- 2.4.15 Within 30 calendar days of receipt of the construction "as-built" drawings, the Engineer shall provide field verified GPS'ed information of all newly installed storm water assets (i.e., manholes, inlets,

junction boxes, and outfalls). All GIS information shall be delivered in the required format detailed in the Storm Water GIS Data Standards/Specifications and Procedural Document provided by the City.

2.5 Additional Services: Engineer shall perform the Additional Services specified below if and when the Director authorizes such services.

2.5.1 Survey Services

2.5.1.1 Perform in accordance with the City Design Manual and other City design requirements as designated in writing by the Director.

2.5.1.2 Where new City of Houston monumentation is required in accordance with the City Design Manual, provide separate cost for task under surveying Additional Services.

2.5.2 Drug Detection and Deterrence. Conduct random, reasonable suspicion, and post-accident drug testing necessary to comply with this Contract.

2.5.3 Geotechnical Investigation. Perform in accordance with the City Design Manual and other City requirements as designated in writing by the Director.

2.5.4 Environmental Site Assessment. Perform in accordance with the City Design Manual and other City requirements as designated in writing by the Director.

2.5.5 Special Licenses and Permits (Payment)

2.5.5.1 The actual cost of special licenses and permits, including required inspection fees, shall be reimbursed by the City.

2.5.5.2 This Additional Service does not include engineering work associated with Basic Services.

2.5.6 Traffic Control Plan (TCP)

2.5.6.1 The specific traffic control work consists of the completed TCP, appropriate specifications and general notes, and traffic control construction cost estimates.

2.5.6.2 The TCP shall show detailed construction sequences and the necessary traffic control phases, complete with all barricades, signing, striping, delineation, detours, temporary traffic signals and any other devices, to protect the traveling public and provide safety to the construction forces.

2.5.6.3 The TCP should be accomplished with the least inconvenience to the traveling public consistent with expeditious completion of the Project in time and costs.

2.5.6.4 Construction Sequencing and TCP shall be in accordance with general traffic engineering principles and practices governing traffic control during construction as prescribed by the guidelines of the "Texas Manual on Uniform Traffic Control Devices" (TMUTCD), and City of Houston requirements.

2.5.6.5 Standards and Guidelines

2.5.6.5.1 The construction of the Project should be scheduled or sequenced to minimize the down time for the construction contractor and to maximize the utilization of space for the travel ways. Sequencing is accomplished by partitioning the Project into construction phases, which may be further segmented into steps. A "phase" is a major

portion of the construction, scheduled in a logical progression toward Project completion. A "step" is a minor portion of the construction, subordinate to a particular phase.

2.5.6.5.2 The TCP should clearly distinguish areas of construction with areas of traffic for each phase. The work zone is also to be distinguished from the actual construction limits.

2.5.6.5.3 Maintain minimum emergency travel lane width of ten feet at all times. If space is not available within the existing roadway, temporary widening of the pavement section may be necessary to provide a minimum 10-foot emergency travel lane.

2.5.6.5.4 The TCP should contain the following basic elements:

2.5.6.5.4.1 Project approach signing;

2.5.6.5.4.2 Phasing overview (as applicable);

2.5.6.5.4.3 Detailed plans for each phase of construction and any designated steps; and

2.5.6.5.4.4 Necessary TCP details, including appropriate City standards (Barricade & Construction, etc.), typical lane closures, and intersection details.

2.5.6.6 Drawings

2.5.6.6.1 Engineer shall verify and show existing field conditions of roadways and access to adjacent properties.

2.5.6.6.2 Engineer shall show traffic control devices and location of traffic flow, indicated by direction arrows, for each phase of the Project.

2.5.6.6.3 Engineer shall define construction areas by appropriate identifications, such as cross-hatching. Show all barricades, traffic signing, traffic signal changes, detour routing, and special intersection treatment details.

2.5.6.6.4 Engineer shall show only roadways that are existing or to be constructed under the Project. Do not show roadways that have been removed or that will be constructed in future contracts.

2.5.6.6.5 Engineer shall prepare cross sections for major thoroughfares and for each roadway variation showing the traffic lanes, construction pavement markings, delineators, barriers, buffer zone for barrels and concrete traffic barriers (CTBs), pavement drop-off, and construction details.

2.5.6.6.6 Engineer shall pictorially represent all construction signing and label with appropriate identification number as shown in TMUTCD. Show and identify all other traffic control devices in the plans and cross sections.

- 2.5.6.6.7 Engineer shall use a "typical" TCP detail for portions of the Project wherever possible.
- 2.5.6.6.8 Engineer shall prepare traffic control construction quantities and estimate of construction cost.
- 2.5.6.6.9 Engineer shall add general notes to the drawings or to the City's Standard General Note Drawing, as required for clarity.
- 2.5.6.6.10 Engineer shall include the City of Houston Standard Specifications for Traffic Control, and supplement as required.
- 2.5.6.7 For paving projects, include the following.
 - 2.5.6.7.1 Engineer shall show temporary traffic control measures required during construction, such as temporary adjustments to traffic signal configurations, revisions to signal timing sequences, installations of contractor-supplied equipment and conduit to provide for proper signal operation, and parking restriction signs in areas where parking is not currently restricted but added roadway capacity is required.
 - 2.5.6.7.2 Where substantial roadway capacity is being lost during construction, the Engineer shall show placement of contractor-supplied changeable message signs with proposed messages to encourage use of alternative routes by the traveling public.
- 2.5.7 Storm Water Pollution Prevention Plan (SWPPP). Perform in accordance with the City Design Manual and other City requirements.
- 2.5.8 Existing Conditions Survey and Analysis
 - 2.5.8.1 The Engineer shall perform a survey and analyses of the existing conditions at designated locations. The Engineer shall submit the results of this work in a separate report.
 - 2.5.8.2 This special service is used where a separate deliverable is desired, and where the survey/analysis is not directly related to the scope of the new work, thus the engineering cost would not be included in the Basic Services.
- 2.5.9 Street Lighting Plans
 - 2.5.9.1 For new roadway construction or complete roadway reconstruction, it is the City of Houston's practice to upgrade street lighting along all roadways to current recommended levels as part of the Capital Improvement Projects.
 - 2.5.9.2 Proposed Street Lighting locations shall be provided at 1"=40' scale (minimum) consistent with project overall layouts.
 - 2.5.9.3 Design consultant will prepare the lighting layout, spacing the streetlights in accordance with the current published CenterPoint Energy Guidelines and Specifications. Distances shall avoid driveway/utility conflicts. The design should include any existing street lighting and generally begin layouts at intersections working away from them.

- 2.5.9.4 Street Lighting plans shall show the proposed street lighting locations, electrical conduits, pull boxes and power feed locations provided by CenterPoint Energy in accordance with published CenterPoint Energy specifications.
- 2.5.9.5 The approved layout will be submitted to CenterPoint Energy for review and cost estimate preparation for temporary or new fixtures. Conduit and pull box costs shall be included in the Engineer's Project construction cost estimate.
- 2.5.9.6 Street Lighting Plans shall include a table showing the locations of the existing and proposed streetlights by station number.
- 2.5.10 Tree Protection, Mitigation, and Planting Plan. Perform in accordance with the City Design Manual and other City requirements, as designated in writing by the Director.
- 2.5.11 Traffic Signals. Perform in accordance with the City Design Manual and other City requirements, as designated in writing by the Director.
- 2.5.12 Impact Analysis and Mitigation Report for projects requiring drainage and pavement improvements.
 - 2.5.12.1 Perform Impact Analysis and Mitigation Report when authorized by the City as designated in writing by the Director.
 - 2.5.12.2 A separate hydraulic analysis and report as required by government agencies having regulatory jurisdiction.
 - 2.5.12.3 Includes quantification of existing and proposed outflows and water surface elevation at outfall to the receiving system.
- 2.5.13 Design of detention pond or low impact development. For mitigation of adverse impacts; perform in accordance with the City Design Manual and other City requirements as designated in writing by the Director.
- 2.5.14 Technical Review Committee (TRC) Meeting
 - 2.5.14.1 The Engineer shall attend a Pre-TRC meeting, as scheduled by the Director.
 - 2.5.14.1.1 The purpose of the Pre-TRC is to allow the Director to review the preliminary design, presentation materials, and recommendations.
 - 2.5.14.1.2 The Engineer shall have completed and submitted the Preliminary Engineering Report (PER) prior to the Pre-TRC meeting.
 - 2.5.14.1.3 As part of the Pre-TRC, the Engineer shall prepare a Microsoft PowerPoint presentation, a TRC agenda and an executive summary showing the alternatives, recommendations, and estimated construction and project costs.
 - 2.5.14.2 The Engineer will have two weeks to revise the report and presentation based on comments from the Pre-TRC. Once revisions have been made, the Engineer shall submit to the Director one copy of the report with all exhibits, maps, and computer model output listed in other parts of this Contract. The Executive Summary from the report will be included with the notice of TRC distribution.
 - 2.5.14.3 Upon successful completion of the Pre-TRC meeting, the Engineer shall attend a TRC Meeting.

- 2.5.14.3.1 The purpose of the TRC meeting is to present the preliminary engineering recommendations to the City's Technical Review Committee for approval to proceed to Final Design.
- 2.5.14.3.2 The Engineer will provide equipment for preparation and presentation of the TRC meeting.
- 2.5.14.3.3 Members of the TRC are City staff and may include senior managers representing engineering, operations, maintenance, and construction divisions. Other stakeholders may attend at the City's direction.
- 2.5.14.3.4 The TRC will evaluate the Engineer's recommendations and approve or modify as appropriate.
- 2.5.14.3.5 Within three business days following the TRC Meeting, the Engineer shall submit a summary of the decisions and action items from the meeting, and a revised construction cost estimate.
- 2.5.14.3.6 At the conclusion of the TRC, Engineer shall:
 - 2.5.14.3.6.1 Submit a revised estimate of probable construction cost, based on the outcome of the TRC;
 - 2.5.14.3.6.2 Revise the PER in response to the Technical Review Committee's record of decisions and action items and furnish three final copies of the PER; and
 - 2.5.14.3.6.3 Submit final PER in PDF Format on a CD in a single file with a Table of Contents.
 - 2.5.14.3.6.4 Engineer shall make such revisions to the preliminary design as may be required by the Director as a result of Committee recommendations.
- 2.5.14.3.7 Upon acceptance by the TRC of the need to acquire additional right-of-way or easements for the project, the Director may issue to the Engineer a Notice to Proceed for the preparation of right-of-way and easement documents. These documents shall be delivered to the Director within the time specified in the Notice to Proceed.

2.5.15 Independent Quantity Take-Off

2.5.15.1 Engineer shall perform the following service(s).

- 2.5.15.1.1 Have an independent third party (Estimator) perform a quantity take-off from the Bid Ready Drawings and Specifications prior to Final Submittal. Engineer may provide other documents that will assist the Estimator to complete the task; however, these documents shall in no way compromise the independent judgment of the Estimator. Estimator shall identify each bid item and prepare the quantities for each bid item in accordance with the City of Houston's Standard Construction Specifications and/or Custom Specifications, as applicable, that is part of the detailed construction cost estimate.

- 2.5.15.1.2 Engineer is to review the quantity take-off with the Estimator and resolve all discrepancies in the bid items and quantities.
- 2.5.15.1.3 Engineer is to submit a signed letter confirming that an independent quantity take-off was performed, identifying the independent third party who performed the quantity take off, and certifying the accurateness of the bid items and quantities that are included in the detailed construction cost estimate.
- 2.5.15.1.4 The Engineer shall submit a check print of the third party review and mark-up of an independent quantity take-off to accompany the signed letter deliverable. Each unit price item shall be highlighted indicating that it has been checked. The check print shall be initialed by the author and the reviewer.

2.5.16 Other Additional Services

- 2.5.16.1 Provide the services of a Consultant to perform subsurface investigations, including performance of test borings, soil samples, and other foundation investigations, laboratory analyses of the samples, and engineering analyses. Engineer or the Consultant shall prepare a detailed report of all findings, and Engineer shall deliver to the Director two bound copies of the report and an electronic copy in the form requested by the Director.
- 2.5.16.2 Prepare special studies and reports, such as environmental Documents (including representation and testimony at hearings and community meetings), grant applications, etc.
- 2.5.16.3 Provide the services of an independent cost estimator as a consultant to make a comprehensive construction cost estimate for the Project, in a form satisfactory to the Director. The independent cost estimate shall be in addition to the cost estimates prepared by Engineer.
- 2.5.16.4 Provide value engineering services including the review of other engineers, either within the same organization or in other firms, to determine whether a proposed solution is optimum and, if not, to suggest a better approach for meeting the Project's functional and financial criteria.
- 2.5.16.5 Provide a scale model of the Project.
- 2.5.16.6 Reproduce Construction Documents, reports, and other materials, other than those reproductions included in the Basic Services, and excluding reproductions for the office use of Engineer and Engineer's Consultants.
- 2.5.16.7 Provide, in the event of termination of Engineers services pursuant to this Contract, such services as are reasonable and necessary for preserving partially finished work products or for the recording of work products in a particular manner (including the making of record prints of drawings, etc.).
- 2.5.16.8 Provide construction management services on the site during Project construction.

- 2.5.16.9 During the Final Design or Construction Phase, make revisions to Construction Documents, prepare addenda, or prepare change orders to reflect Project scope changes requested by the Director, required to address changed conditions or change in direction previously approved by the Director, mandated by changing governmental laws, or necessitated by City's acceptance of substitutions proposed by the construction contractor.
- 2.5.16.10 Prepare supporting data and other services in connection with change orders, other than those change orders and related services included in Section 2.4 of Article 2 of this Contract.
- 2.5.16.11 Consult with the City concerning replacement of any construction work damaged by fire or any other causes and furnish professional services as may be required in connection with the replacement of such work.
- 2.5.16.12 Prepare or obtain the services of a Consultant to prepare Operation and Maintenance (O & M) Manuals.
- 2.5.16.13 Prepare for, present to, and attend public engagement, preliminary conferences with the City, as requested by the Director. In addition to the foregoing, Engineer shall attend all other meetings as required by the Director.
- 2.5.16.14 Perform services in the event the Basic Services are suspended by the Director for a period exceeding 12 months, and the Engineer provides evidence satisfactory to the Director that additional effort is necessary to resume the Basic Services.
- 2.5.16.15 Unless instructed otherwise by the Director, cooperate fully with surety's representative in the event of construction contractor default; permit surety to copy all relevant documents at surety's expense.
- 2.5.16.16 Provide any Additional Services or other design services related to the Project and not otherwise included in the Basic Services or Additional Services as requested by the Director.
- 2.5.16.17 Travel to points outside Houston and its extraterritorial jurisdiction, if such travel is reasonably necessary to accomplish a task under this Contract and is authorized in writing by the Director. Travel costs shall include common carrier fares, ground transportation expenses and parking fees, and for overnight trips, the costs of lodging and meals and shall not exceed the appropriation limits of this Contract.

- 2.6 **Time of Performance:** Engineer shall perform the Basic Services in accordance with the following:
 - 2.6.1 Phase I - Preliminary Design – per negotiated work order for each Construction Package separately;
 - 2.6.2 Phase II - Final Design – per negotiated work order for each Construction Package separately;
 - 2.6.3 Phase III - Construction Phase Services shall be completed at reasonable intervals in conjunction with the progress of the Project construction and for the period of construction time stated in the Construction Documents;
 - 2.6.4 Time taken for review of Phase I and Phase II designs by City personnel shall be in addition to the calendar day periods specified above. In the preparation of the Project Schedule, Engineer shall allow

at a minimum, 21 calendar days for City review of Phase I, and 21 calendar days for City review of Phase II; and

- 2.6.5 Upon written request of Engineer to the Director and the Director's approval, the City shall grant time extensions during each Phase for any delays caused by the City or other agencies with which the services must be coordinated and over which Engineer has no control.

2.7 Engineer's Invoices

- 2.7.1 Unless instructed otherwise in writing by the Director, Engineer must invoice the City for all Phase I amounts plus all Phase I-related Additional Services and Reimbursable Expenses before the Director issues a Notice to Proceed for Phase II.
- 2.7.2 Unless instructed otherwise in writing by the Director, Engineer must invoice the City for all Phase II lump sum payments plus all Phase II-related Additional Services and Reimbursable Expenses before the Director issues a Notice to Proceed for Phase III.
- 2.7.3 The amounts set out in the Phases I, II, and III Notices to Proceed shall constitute Engineer's total compensation under the Contract for a Construction Package unless the Director requests in writing an Additional Service or Reimbursable Expense not related to any of the above phases.
- 2.7.4 If Director and Engineer do not agree to the lump sum amount for such Construction Package, then the Director may send notice to the Engineer deleting such Construction Package from the Contract.
- 2.7.5 To receive fees for Phase I Services, Engineer shall submit copies of original invoices showing the corresponding Phase I Services and associated costs performed for each Construction Package and not previously invoiced. The invoice must include itemizations supporting the costs included. The itemization shall include, where applicable:
- 2.7.5.1 A breakdown of the type and cost of each item included within the definition of Reimbursable Expenses;
 - 2.7.5.2 A breakdown of the individual expenditures allowable as travel costs in the definition of Reimbursable Expenses;
 - 2.7.5.3 The actual invoice cost of Consultant Subcontract Cost plus Consultant Markup, including a copy of the Consultant's invoice;
 - 2.7.5.4 The number of hours expended by Engineer's employees times Raw Salary times Raw Salary Multiplier for each Construction Package and upon request by the Director a copy of employee time sheets;
 - 2.7.5.5 Reasonable costs of contract personnel and personnel employed through employment agencies plus the Consultant Markup; and
 - 2.7.5.6 A breakdown of the work performed in the Construction Package and a percent of the total that is completed.
- 2.7.6 To receive fees for Additional Services, Engineer shall submit copies of original invoices showing the corresponding Additional Services performed and not previously invoiced. The invoice must include itemizations supporting the costs included. The itemization shall include, where applicable:
- 2.7.6.1 A breakdown of the type and cost of each item included within the definition of Reimbursable Expenses;

- 2.7.6.2 A breakdown of the individual expenditures allowable as travel costs in the definition of Reimbursable Expenses;
- 2.7.6.3 The actual invoice cost of Consultant Subcontract Cost plus Consultant Markup, including a copy of that the Consultant's invoice;
- 2.7.6.4 The number of hours expended by Engineer's employees times the Raw Salary times the Raw Salary Multiplier for each Additional Service and upon request by the Director a copy of employee time sheets;
- 2.7.6.5 Reasonable contract personnel cost of personnel and personnel employed through employment agencies, plus Consultant Markup; and
- 2.7.6.6 A reference to the work description in the applicable Notice to Proceed that authorized the item.
- 2.7.7 With each monthly invoice Engineer shall submit a copy of the updated Project Schedule, a brief narrative of the services performed in the preceding month, and a list of the planned activities for the following month. Any request for modification of the approved Project Schedule shall be submitted by Engineer in writing for the Director's consideration.
- 2.7.8 Claims for Additional Services shall be submitted for payment within a maximum of 60 days from the date of completion of the Additional Service.
- 2.7.9 Upon request of the Director, Engineer shall submit reports to the Director for informational purposes, showing all of the information set out in this Section, although such information shall not affect the method by which Engineer is paid.

2.8 **Insurance.** Engineer shall provide and maintain certain insurance and Endorsements in full force and effect at all times during the term of this Contract and any extensions thereto. Such insurance is described as follows.

2.8.1 **Risks and Limits of Liability**

2.8.1.1 Engineer shall maintain the following insurance coverages in the following amounts:

<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	<ul style="list-style-type: none"> • Texas Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> • Bodily Injury by accident \$1,000,000 (each accident) • Bodily Injury by Disease \$1,000,000 (policy limit) • Bodily Injury by Disease \$1,000,000 (each employee)
Commercial General Liability: Including Broad Form Coverage, Bodily Injury and Property Damage (Products and Completed Operations required when Physical Operations performed)	<ul style="list-style-type: none"> • \$1,000,000 Limit each Occurrence and \$2,000,000 aggregate per 12-month period
Automobile Liability	<ul style="list-style-type: none"> • \$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Professional Liability	<ul style="list-style-type: none"> • \$2,000,000 Limit per claim/aggregate

Excess Liability applicable to Commercial General and Automobile Liability	<ul style="list-style-type: none"> \$1,000,000 Limit each occurrence/aggregate
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

- 2.8.2 **Insurance Coverage.** At all times during the term of this Contract and any extensions or renewals, Engineer shall provide and maintain insurance coverage that meets the Contract requirements. Prior to beginning performance under the Contract, at any time upon the Director's request, or each time coverage is renewed or updated, Engineer shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Engineer shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Engineer waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Engineer 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.
- 2.8.3 **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 (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) 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.
- 2.8.4 **Required Coverage.** The City shall be an Additional Insured under this Contract, and all policies except Professional Liability and Worker's Compensation must name the City as an Additional Insured. Engineer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Engineer'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 Contract. If professional liability coverage is written on a "claims made" basis, Engineer 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 Contract with a duration of two years after substantial completion.
- 2.8.5 **Notice.** **ENGINEER 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, Engineer shall provide other suitable policies in order to maintain the required coverage. If Engineer does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Engineer from any further performance under this Agreement and begin procedures to terminate for default.

2.9 **INDEMNIFICATION.** ENGINEER AGREES TO AND SHALL, TO THE EXTENT PERMITTED BY TEXAS LOCAL GOVERNMENT CODE §271.904, 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 ARISING AS A RESULT OF ENGINEER'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONSULTANTS', OR SUBCONTRACTORS' ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS IN CONNECTION WITH ITS PERFORMANCE UNDER THIS AGREEMENT, WHETHER ENGINEER IS IMMUNE FROM LIABILITY OR NOT. ENGINEER SHALL INDEMNIFY AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. THE INDEMNITY SHALL APPLY WHETHER OR NOT THE EVENT IS CAUSED BY THE CONTRIBUTORY NEGLIGENCE OF THE CITY.

2.10 **Ownership of Documents:** Engineer shall grant and assign and hereby does grant and assign to the City all right, title, interest and full ownership worldwide in and to any work, invention and all Documents, including Construction Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets, source and object codes and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Engineer, its agents, employees, contractors and subcontractors pursuant to this Contract (collectively, the "Works"), to have and to hold the same unto the City absolutely. This right of ownership shall include the City's ability to modify, sell, or license all computer programs, including all access to programming codes necessary to do so.

2.10.1 Engineer agrees that neither it nor any of its agents, employees, contractors or subcontractors shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works. If requested by the Director, the Engineer shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.

2.10.2 Engineer shall execute all documents required by the Director to further evidence such assignment and ownership. Engineer shall cooperate with the City in registering, creating or enforcing any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Engineer is requested and rendered pursuant to this Section, the City shall reimburse Engineer for all out-of-pocket expenses incurred by Engineer in rendering such assistance. On termination of this Contract or upon request by the Director, Engineer shall deliver all Works to the City. Engineer shall obtain written agreements in the form specified in Exhibit "H" from its agents, contractors and subcontractors performing work hereunder which bind them to the terms contained in this Section.

2.10.3 The Engineer may, however, retain copies of such Documents. The Engineer shall have the right to use such copies internally, but the Engineer may not sell, license or otherwise market such Documents. Upon request by the Director, the Engineer shall deliver such Documents to the City.

2.10.4 Engineer does not represent that the Documents are or are intended to be, suitable for use on other Projects or extensions of this Project, to the extent that the Documents are site-specific. Any modification to the Engineer's work product or unintended use of same will be at the sole risk of the City.

2.11 Consultants

- 2.11.1 Engineer shall not subcontract any part of its Contract without approval by the Director.
- 2.11.2 Engineer shall be responsible for services performed by Consultants to the same extent as if the services were performed by Engineer.
- 2.11.3 Engineer shall replace any Consultant when requested to do so by the Director, who shall state the reasons for such request.
- 2.11.4 Engineer shall provide the Director with a copy of any of its Consultant subcontracts at Director's request.

2.12 Payment of Consultants

- 2.12.1 Engineer shall make timely payments to all persons and entities supplying labor, materials or equipment for the performance of this Contract in accordance with the State of Texas Prompt Payment Act.
- 2.12.2 Engineer agrees to protect, defend, and indemnify the City from any claims or liability arising out of Engineer's failure to make such payments.
- 2.12.3 Disputes relating to payment of MWBE subcontractors shall be submitted to mediation in the same manner as any other disputes under the MWBE subcontract. Failure of Engineer to comply with the decisions of the mediator may, at the sole discretion of the City, be deemed a material breach leading to termination of this Contract.

2.13 **Participation in Bidding and Construction.** Engineer agrees not to participate in the bidding process as a bidder and not to engage in construction of the Project as a contractor or subcontractor. By written agreement, Engineer shall require each Consultant for Project engineering services to be bound by the requirements of this Section.

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

2.15 Minority and Women Business Enterprises Participation

- 2.15.1 It is the City's policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide Percentage Goals for contracting with MWBEs, are incorporated into this Contract.
- 2.15.2 Engineer shall make good faith efforts to award subcontracts or supply agreements in at least **24%** of the value of this Contract to MWBEs. Engineer acknowledges that it has reviewed the requirements

for good faith efforts on file with the City's Office of Business Opportunity ("OBO") and will comply with them. To this end, Engineer shall maintain records showing:

- 2.15.2.1 Subcontracts and supply agreements with Minority Business Enterprises;
 - 2.15.2.2 Subcontracts and supply agreements with Women's Business Enterprises; and
 - 2.15.2.3 Specific efforts to identify and award subcontracts and supply agreements to MWBEs.
- 2.15.3 Engineer shall submit periodic reports of its efforts under this Section to the Director of Office of Business Opportunity in the form and at the times he or she prescribes.
- 2.15.4 Engineer shall require written subcontracts with all MWBE subcontractors and suppliers and shall submit all disputes with MWBE subcontractors to binding mediation in Houston, Texas if directed to do so by the Director of Office of Business Opportunity. If Engineer is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, then the subcontract must also be signed by the attorneys of the respective parties.

2.16 Drug Abuse Detection and Deterrence

- 2.16.1 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. Engineer shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Engineers, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Contract and is on file in the City Secretary's Office.
- 2.16.2 Before the City signs this Contract, Engineer shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
- 2.16.2.1 A copy of its drug-free workplace policy;
 - 2.16.2.2 The Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E"; and
 - 2.16.2.3 A written designation of all safety impact positions or, if applicable, a Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "G".
- 2.16.3 If Engineer files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance of this Contract or on completion of this Contract if performance is less than six months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "F". Engineer shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each six-month period of performance and within 30 days of completion of this Contract. The first six-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Engineer begins work under this Contract.
- 2.16.4 Engineer also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Engineer's employee work force.
- 2.16.5 Engineer shall require that its subcontractors comply with the Executive Order, and Engineer shall secure and maintain the required documents for City inspection.

- 2.17 **Confidentiality.** Engineer and each of its Consultants shall keep all Documents and City work products or data it receives in strict confidence. Engineer shall not divulge such records or the information contained therein except as approved in writing by the Director or as otherwise required by law.
- 2.18 **Licenses and Permits.** Engineer shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Engineer shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license.
- 2.19 **Title VI Assurances.** The requirements and terms of the United States Department of Transportation Title VI program, as revised from time to time, are incorporated into this Contract for all purposes. Engineer has reviewed Exhibit "J" and shall comply with its terms and conditions.
- 2.20 **Pay or Play.** The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this Contract for all purposes. Engineer has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions.
- 2.21 **Anti-Boycott of Israel.** Engineer certifies that Engineer 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.
- 2.22 **Zero Tolerance Policy for Human Trafficking and Related Activities.** 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. Engineer 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 this Agreement's effective date. Engineer shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Engineer or its subcontractors providing services or goods under this Agreement.
- 2.23 **Preservation of Contracting Information.**
- 2.23.1 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract and the Engineer agrees that this Contract can be terminated if the Engineer 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 Contract, then for the duration of this Contract (including the initial term, any renewal terms, and any extensions), Engineer shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Contract 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, Engineer shall provide any Contracting Information related to this Contract that is

in the custody or possession of Engineer. Upon the expiration or termination of this Contract, Engineer shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this Contract that is in the custody or possession of Engineer, or (b) preserve the Contracting Information related to this Contract as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy.

- 2.23.2 If Engineer 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 Engineer and may terminate this Contract. To effect final termination, the Director must notify Engineer in writing with a copy of the notice to the CPO. After receiving the notice, Engineer shall, unless the notice directs otherwise, immediately discontinue all services under this Contract, and promptly cancel all orders or subcontracts chargeable to this Contract.

ARTICLE 3

DUTIES OF THE CITY

- 3.1 **Fees, In General.** The City shall pay fees to the Engineer for all services rendered by Engineer in accordance with the terms and conditions of this Contract, subject to the appropriation limits of Article 3 hereof.
- 3.1.1 If services are suspended by the Director for a period exceeding 12 months, Engineer's fees will be subject to renegotiation, subject to the appropriation limits described this Contract.
- 3.1.2 If Engineer receives payment from the City for work performed by any Consultant or for materials provided by any supplier and Engineer withholds or has withheld payment to the Consultant or supplier on account of a deficiency in the quality or quantity of that Consultant's or supplier's work or materials, or if the Director reasonably believes that the work or a portion thereof cannot be completed for the remaining unpaid amount of any applicable limit or lump sum prices, the City may withhold the amount associated with such work or materials from any pending or future payments to the Engineer until the next regular payment to Engineer occurring after the City receives reasonable documentation that the deficiency has been remedied.
- 3.1.3 The City shall not authorize any work on the Project without issuing a Notice to Proceed.
- 3.1.4 All invoices are subject to approval by the Director and are due and payable 30 days after receipt. All payments shall be made by check. Such checks shall be made payable to Engineer and payments shall be addressed to Engineer at its address specified herein for notices. The City agrees that it will not unreasonably delay or withhold payment or approval of any invoice. Neither partial payments made hereunder nor approval of invoices or services by the Director shall be construed as final acceptance or approval of that part of Engineer's services to which such partial payment or approval relates nor shall such payments be construed as relieving Engineer of any of its obligations hereunder with respect thereto.
- 3.2 **Fees for Basic Services:** Subject to all the terms and conditions of this Contract, the City shall pay, and Engineer agrees to accept as full compensation for the Basic Services, the following fees.

- 3.2.1 Phase I - Preliminary Design. Subject to the Limit on Phase I Compensation, the City shall pay a fee for the complete performance of Phase I Basic Services work consisting of:
- 3.2.1.1 Raw Salary Times Raw Salary Multiplier, plus
 - 3.2.1.2 Reimbursable Expenses, plus
 - 3.2.1.3 Consultant Subcontract Cost for services that Engineer subcontracts to a Consultant, plus
 - 3.2.1.4 Reasonable fees paid to contract personnel and personnel employed through employment agencies.
- 3.2.2 Phase II – Final Design Phase Service.. For Phase II services performed for a Construction Package, the City shall pay a Negotiated Lump Sum which will be set out in the Notice to Proceed for such Construction Package. The Director and Engineer shall agree in writing to a Negotiated Lump Sum fee for each Construction Package prior to issuance of the Phase II Notice to Proceed. Engineer guarantees that it shall perform all Phase II services for the Negotiated Lump Sum fees set out in the respective Notices to Proceed.
- 3.2.3 Phase III - Construction Phase Services. For Phase III services performed for a Construction Package, the City shall pay a Negotiated Lump Sum which will be set out in the Notice to Proceed for such Construction Package. The Director and Engineer shall agree in writing to a Negotiated Lump Sum fee for each Construction Package prior to issuance of the Phase III Notice to Proceed. Engineer guarantees that it shall perform all Phase III services for the Negotiated Lump Sum fees set out in the respective Notices to Proceed.
- 3.2.4 At the discretion of the Director, Phase II and III services for a Construction Package may be included in the same Notice to Proceed for a Construction Package. For Phase II and III services performed for a Construction Package, the City shall pay a Negotiated Lump Sum which will be set out in the Notice to Proceed for such Construction Package. The Director and Engineer shall agree in writing to a Negotiated Lump Sum fee for each Phase II and III respectively for each Construction Package prior to issuance of the Notice to Proceed. Engineer guarantees that it shall perform Phase II and III services for the Negotiated Lump Sum fees set out in the respective Notices to Proceed.
- 3.2.5 After Engineer has completed the performance of all of the required services for Phase III, the City shall pay Engineer the total amount owed for that Phase less any amounts previously paid pursuant to the monthly invoices.

3.3 **Fees for Additional Services.** Subject to all the terms and conditions of this Contract, the City shall pay and Engineer agrees to accept, as full compensation for authorized Additional Services, the fees specified in this Section.

- 3.3.1 Survey Additional Services: For Route Topographical Survey only, the City shall pay Engineer a portion of the Negotiated Lump Sum fee according to the terms in the applicable Notice to Proceed or at the rate of **\$4.50** per linear foot for **Minor street**, and **\$4.50** per linear foot for **Major street** of actual Survey performed. If these services are provided by the Engineer's Consultant, the City shall pay Engineer at the above rates plus Consultant markup.

3.3.2 For Drug Detection and Deterrence Additional Services, the City shall pay Engineer a portion of the Negotiated Lump Sum fee according to the terms in the applicable Notice to Proceed in advance or as follows:

3.3.2.1 The cost of invoiced laboratory analyses necessary for personnel producing services under this Contract; and

3.3.2.2 Raw Salary times Raw Salary Multiplier for employees' time not-to-exceed one-hour total for each random test conducted.

3.3.3 For all other Additional Services, the City will pay Engineer a portion of the Negotiated Lump Sum fee according to the terms in the applicable Notice to Proceed.

3.4 **Limit of Appropriation.** Engineer recognizes that under certain provisions of the Charter of the City of Houston, the City may not obligate itself by contract to an extent in excess of an amount appropriated by the City Council and further recognizes that only **\$1,225,000.00** has been appropriated and **\$150,000.00** has been allocated and budgeted by City Council to pay the Cost of Basic Services hereunder and that only **\$282,000.00** has been appropriated and **\$519,500.00** has been allocated and budgeted by the City Council to pay the cost of Additional Services hereunder for a total amount of **\$1,507,000.00** for appropriation and **\$669,500.00** for allocation.

3.4.1 In the event the appropriation for Basic Services is insufficient to compensate Engineer for Basic Services, Engineer shall suspend its Basic Services at such time as the total appropriation for Basic Services is expended, but shall resume such Basic Services, if and when authorized by the Director as provided elsewhere herein, upon transfer of funds by the Director or appropriation of additional funds by the City Council for Basic Services.

3.4.2 In the event the appropriation for Additional Services is insufficient to compensate Engineer for authorized Additional Services in accordance with the payment provisions of Article 3 hereof, Engineer shall suspend its Additional Services at such time as the total appropriation for Additional Services is expended, but shall resume such Additional Services, if and when authorized by the Director as provided elsewhere herein, upon transfer of funds by the Director or appropriation of additional funds by the City Council for Additional Services.

3.4.3 The Director may authorize the transfer of funds between Basic Services and Additional Services when necessary to continue services by issuing a Supplemental Notice to Proceed, provided that the transfer of funds does not exceed 25% of the Negotiated Lump Sum in the original Notice to Proceed and total funds authorized do not exceed the total amount appropriated by City Council.

3.5 **Method of Payment.** The City shall pay on the basis of monthly invoices submitted by Engineer and approved by the Director, showing the services performed and the fee. Invoices from Engineer shall show the hours worked in the preceding month and the corresponding hourly rates for Services. The City shall pay Engineer within 30 days of the receipt and approval of the invoices. The City shall make payments to the Engineer at the address for notices.

3.6 Certain Duties of the City

3.6.1 In addition to its other duties under this Contract, the City shall perform the following services:

- 3.6.1.1 When requested to do so in writing by the Engineer, provide access to information such as existing drawings, maps, field notes, statistics, computations, and other data in the possession of the City which in the Director's opinion will assist the Engineer in the performance of its services hereunder; and
- 3.6.1.2 Examine the Construction Documents submitted by the Engineer and render decisions pertaining thereto within a reasonable time so as to avoid unnecessary delay in the progress of the Engineer's services.

3.7 Partial Payments

3.7.1 For Phase II and III Basic Services the City shall make partial payments of the fees on the basis of monthly invoices submitted by Engineer and approved by the Director. The invoices must show for each Construction Package the following on the standard format provided by the City:

- 3.7.1.1 The percentage of the total services completed in the applicable Phase in the preceding month;
- 3.7.1.2 A summary of the services performed during the period covered by the invoice; and
- 3.7.1.3 The amount due for such services, according to the below Milestones.

3.7.2 The amount of partial payments due for services performed during Phase II shall be a percentage of the total fee due for each Construction Package for Phase II services equal to the percentage of the total Phase II services performed during the period covered by the invoice. The percentage of the total fee due for partial payments for Phase II services shall not exceed the following:

<u>MILESTONE</u>	<u>MAXIMUM PHASE II PAYMENT</u>
1. Research Utilities	N/A
2. Plot Topographic Survey and Utilities	N/A
3. Submit 60% Drawings	N/A
4. Submit 90% Final Drawings and Specifications	N/A
5. Bid-Ready Drawings and Specifications	95%
6. Completion of Phase II Services	100%

3.7.3 The amount of partial payment due for services performed during Phase III shall be a percentage of the lump sum fee equal to the percentage of the total services for that Phase performed during the period covered by the invoice.

3.7.4 The amount of partial payment due for Additional Services shall be a percentage of the lump sum fee equal to the percentage of the total services (for the Phase for which the Additional Service was authorized) performed during the period covered by the invoice.

3.7.5 Definition of above Phase II Milestones for payment

3.7.5.1 Research Utilities

3.7.5.1.1 Engineer obtains and completes review of available record drawings.

- 3.7.5.1.2 Engineer completes the utility plan review, as defined in this Scope of Services.
- 3.7.5.1.3 Engineer completes coordination with other agencies, as defined in this Scope of Services.
- 3.7.5.1.4 Engineer verifies information obtained in this Section against findings from Survey.
- 3.7.5.1.5 Engineer obtains maps and correspondence from applicable private utilities, showing and verifying location of existing private utilities.
- 3.7.5.2 Plot of Topographical Surveys and Utilities. Engineer submits set of plan drawings showing results of topographic survey and location of existing public and private utilities.
- 3.7.5.3 Submit Drawings and Draft Specifications (60% Design Submittal)
 - 3.7.5.3.1 Engineer submits sets of completed construction drawings, including as a minimum:
 - 3.7.5.3.1.1 Cover Sheet;
 - 3.7.5.3.1.2 Index Sheet (list of drawings);
 - 3.7.5.3.1.3 Overall Layout Sheet;
 - 3.7.5.3.1.4 Survey Control Map;
 - 3.7.5.3.1.5 General Notes Sheets (as required);
 - 3.7.5.3.1.6 Plan and profile drawings of existing conditions, existing utilities and proposed improvements;
 - 3.7.5.3.1.7 Details of crossings (RR, HCFCD, TXDOT, etc.), potentially contaminated areas, and proposed real estate acquisitions;
 - 3.7.5.3.1.8 Standard Details;
 - 3.7.5.3.1.9 Traffic Control Plan, Detour Plans and temporary Traffic Signal plans (if required);
 - 3.7.5.3.1.10 Storm Water Pollution Prevention Plan (If required);
 - 3.7.5.3.1.11 Tree and plant protection plan (If required);
 - 3.7.5.3.1.12 For Paving and Drainage Projects, also include:
 - 3.7.5.3.1.12.1 Typical roadway section/cross section;
 - 3.7.5.3.1.12.2 Proposed Traffic Signal Plans;
 - 3.7.5.3.1.12.3 Proposed Paving Marking and Signage Plans;
 - 3.7.5.3.1.12.4 Street Lighting Plans;
 - 3.7.5.3.1.12.5 Drainage Area Maps; and
 - 3.7.5.3.1.12.6 Houston Storm, and other Hydraulic and Hydrology Sewer Computations.

- 3.7.5.3.1.13 For Facilities Projects, also include process flow diagrams, piping diagrams, hydraulic profile diagrams, and instrumentation diagrams, as applicable;
- 3.7.5.3.1.14 For Water & Wastewater Projects, also include design calculations for the proposed improvements and system head curves for pumps; and
- 3.7.5.3.1.15 Engineer submits sheet-by-sheet quantity takeoff, flagman hour calculation, and documentation to support the construction duration specified.
- 3.7.5.3.1.16 Engineer shall submit documentation of Right-of-Entry, Encroachments, and Specialty features notices.
- 3.7.5.3.2 Engineer submits sets of draft construction specifications including as a minimum:
 - 3.7.5.3.2.1 Table of Contents;
 - 3.7.5.3.2.2 Document 00410 (Bid Form) with all bid items, including quantities, and other detailed construction cost estimates supporting Document 00410;
 - 3.7.5.3.2.3 Section 01110 (Summary of Work);
 - 3.7.5.3.2.4 Completed technical specifications (Division 01 through 16, as required); and
 - 3.7.5.3.2.5 All supplemental and non-standard technical specifications included in Divisions 02 through 16 identified.
- 3.7.5.3.3 Engineer submits documentation that drawings were submitted to private utilities for final review. Engineer makes initial coordination effort with private utilities regarding potential conflicts for the Project.
- 3.7.5.3.4 Engineer submits design review checklist (as available).
- 3.7.5.4 Submit Final Drawings and Specifications (90% Design Submittal)
 - 3.7.5.4.1 Engineer submits completed sets of construction drawings, with all review comments resolved, including all comment logs with responses.
 - 3.7.5.4.2 Engineer submits completed construction specifications, with all review comments resolved.
 - 3.7.5.4.3 Engineer submits a completed Document 00410 (Bid Form) with all bid items, including quantities, and other detailed construction cost estimates supporting Document 00410 Master List.
 - 3.7.5.4.3.1 Engineer shall perform quality assurance and quality control on Document 00410. Engineer shall provide

evidence of their internal review and mark-up as preparation for the submittal of Document 00410. The Engineer shall submit a check print of the internal review, initialed by the author and the reviewer. Each unit price item shall be highlighted indicating that it has been checked. This submittal is not considered complete until the Engineer's submittal of associated quality assurance and quality control documents, along with any associated redlines, is provided.

- 3.7.5.4.4 Engineer submits sheet-by-sheet quantity takeoff, flagman hour calculation, and documentation to support the construction duration specified.
 - 3.7.5.4.4.1 Engineer shall provide evidence of their internal review, a third-party review, and a third party mark-up as preparation for the Engineer's submittal of the sheet by sheet takeoff. The Engineer shall submit a check print of the internal review, initialed by the author and the reviewer. Each unit price item shall be highlighted indicating that it has been checked. This submittal is not considered complete until the Engineer's submittal of associated quality assurance and quality control documents, along with any associated redlines, is provided.
- 3.7.5.4.5 Engineer provides documentation of permit submittal or permit approvals, as applicable, from TXDOT, HCFCD, Railroads, U.S. Army Corps of Engineers, and Harris County Public Infrastructure Department.
- 3.7.5.4.6 Engineer provides document submittals of plans to City for Building Permit Application (including Floodplain Management Office) and to Texas Department of Licensing and Regulations for ADA requirements, if applicable.
- 3.7.5.4.7 For Wastewater projects and other projects as applicable, Engineer submits Draft Engineering Design Report (DEDR) in conformance with TCEQ requirements.
- 3.7.5.4.8 The Engineer shall provide a PDF with quality assurance and quality control markups for all quantity calculations, and all design calculations.
- 3.7.5.4.9 The Engineer shall provide an internal quality assurance and quality control marked-up plan set with each submittal.

3.7.5.5 Submit Bid-Ready Drawings and Specifications

- 3.7.5.5.1 Engineer submits bid-ready construction documents, signed and sealed construction drawings with all required signatures, and completed construction specifications, including signed letter of Quantity Take Off.
- 3.7.5.5.2 Engineer provides documentation that application for City Building Permits (including Floodplain Administration) has been approved to Texas Department of Licensing and Regulations for ADA requirements, if applicable.
- 3.7.5.5.3 For Wastewater projects or other projects as applicable, Engineer submits Final Engineering Design Report (FEDR) in conformance with TCEQ requirements.
- 3.7.5.5.4 Engineer submits Final ESA I and II (as applicable), and Final Geotechnical reports, including Trench Safety Letter if required.

ARTICLE 4
TERMINATION

4.1 Termination by the City for Convenience

- 4.1.1 The Director may terminate Engineer's performance under this Contract at any time by giving seven days written notice to Engineer. As soon as possible, but not later than the effective date of such notice, Engineer shall, unless the notice directs otherwise, immediately discontinue all services in connection with this Contract and shall proceed to promptly cancel all existing orders and Consultant subcontracts insofar as such orders or subcontracts are chargeable to this Contract. Within seven days after the effective date of notice of termination, Engineer shall deliver copies of all Documents to the Director and submit an invoice showing in detail services performed under this Contract to the date of termination. The City shall then pay the prescribed fees to Engineer for services actually performed under this Contract up to the date of termination less such payment on account of charges previously made, in the same manner as prescribed in Article 3 of this Contract. Any installments or lump sum fees shall be prorated in accordance with the progress of the Work at the effective date of termination. Engineer may, if necessary, submit invoices for vendor and Consultant charges reasonably necessary for the Project which are incurred prior to the effective date of termination and received by Engineer after its initial termination invoice.
- 4.1.2 Engineer understands and acknowledges that if the City determines not to proceed with this Contract, according to the terms of this article, the Director shall provide Engineer with a written notice of his intent to terminate this Contract and this Contract shall terminate upon Engineer's receipt of such written notice.

- 4.2 Termination by the City for Cause.** City may terminate this Contract in the event of a material default by Engineer and a failure by Engineer to cure such default after receiving notice thereof, as provided in this

Section. Default by Engineer shall occur if Engineer fails to observe or perform any of its duties under this Contract, if Engineer dies (if an individual), or for some other reason is unable to render services hereunder. Should such a default occur, the Director will deliver a written notice to Engineer describing such default and the proposed date of termination. Such date may not be sooner than the seventh day following receipt of the notice. The Director, at his or her sole option, may extend the proposed date of termination to a later date. If Engineer cures such default to the Director's reasonable satisfaction prior to the proposed date of termination, then the proposed termination shall be ineffective. If Engineer fails to cure such default prior to the proposed date of termination, then City may terminate its performance under this Contract as of such date, and Engineer shall deliver all Documents to the Director within seven days of the effective date of the termination. If the City's cost of obtaining completion of the work by other engineers, in combination with other direct costs sustained by the City as a result of the default, exceeds the remaining contract amounts unpaid to Engineer, the City shall not be obligated to make any further payment to Engineer. This provision does not relieve Engineer of any other obligation Engineer may have to the City.

- 4.3 **Termination by Engineer for Cause.** Engineer may terminate its performance only upon default of the City. Should such default occur, Engineer shall have the right to terminate all or part of its duties under this Contract as of the 14th day following the receipt by the City of a notice from Engineer describing such default and intended termination, provided: (1) such termination shall be ineffective if within the 14 day period the City cures the default; and (2) such termination may be stayed beyond such 14 day period, at the sole option of Engineer, pending cure of the default.

ARTICLE 5

MISCELLANEOUS PROVISIONS

- 5.1 **Independent Contractor.** The relationship of Engineer to the City shall be that of an independent contractor.
- 5.2 **Business Structure and Assignments.** Engineer shall not assign this Contract at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Chapter 9 of the Texas Business & Commerce Code. In the case of such an assignment, Engineer shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee. Engineer shall not delegate any portion of its performance under this Contract without the Director's prior written consent.
- 5.3 **Parties in Interest.** This Contract shall not bestow any rights upon any third party, but rather, shall bind and benefit the City and Engineer only.
- 5.4 **Non-waiver.** Failure of either Party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by any appropriate remedy, strict compliance with

any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

- 5.5 **Governing Law and Venue.** 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.
- 5.6 **Notices.** All notices required or permitted hereunder shall be in writing and shall be deemed received when actually received or if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the other party at the address prescribed in the preamble hereof or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.
- 5.7 **Captions.** The captions at the beginning of the articles and sections of this Contract are guides and labels to assist in locating and reading such articles and sections and, therefore, will be given no effect in construing this Contract and shall not be restrictive of or be used to interpret the subject matter of any article, section, or part of this Contract.
- 5.8 **Acceptances and Approvals.** Any acceptance or approval by the City, or its agents or employees shall not constitute nor be deemed to be a release of the responsibility and liability of Engineer, its employees, agents, Consultants, or suppliers for the accuracy, competency, and completeness for any Documents prepared or services performed pursuant to the terms and conditions of this Contract, nor shall acceptance or approval be deemed to be an assumption of such responsibility or liability by the City, or its agents and employees, for any defect, error or omission in any Documents prepared or services performed by Engineer, its employees, agents, Consultants or suppliers pursuant to this Contract.
- 5.9 **Inspections and Audits.** Representatives of the City shall have the right to examine and review all books, records, and billing documents which are directly related to performance or payment under this Contract. Engineer shall maintain such books, records, and billings for three years after the cessation of its other duties under this Contract. This right of audit extends to the records of Engineer's Consultants, and Engineer's agreements with its Consultants shall provide this right to the City.
- 5.10 **Construction Budget.** If a construction budget for this Project is indicated in an exhibit to this Contract, Engineer will use its best efforts to design the Project so that it is likely that the Project may be constructed within that budget. At any point Engineer becomes reasonably aware that the construction budget will likely be exceeded, Engineer will notify City of its awareness of that likelihood.
- 5.11 **Site Conditions.** Engineer understands that it is in the interest of the City that the construction of the Project being designed by the Engineer under this Contract shall proceed in a prompt and efficient manner. Engineer

will make a reasonable effort to identify and note on its construction documents interferences that will be encountered on the site of the construction by the construction contractor.

- 5.12 **Ambiguities.** In the event of any ambiguity in any of the terms of this Contract, it shall not be construed for or against any Party because of such Party's involvement in the preparation or drafting of this Contract.
- 5.13 **Entire Agreement.** This Contract merges the prior negotiations and understandings of the Parties hereto and embodies the entire agreement of the Parties, and there are no other agreements, assurances, conditions, covenants (expressed or implied) or other terms with respect to the subject matter hereof, whether written or verbal.
- 5.14 **Survival.** Engineer shall remain obligated to the City under all clauses of this Contract that expressly or by their nature extend beyond the expiration or termination of the term of this Contract, including but not limited to the Ownership of Documents provisions of Article 2 of this Contract.
- 5.15 **ENGINEER'S DEBT: IF ENGINEER, AT ANY TIME DURING THE TERM OF THIS CONTRACT, 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 ENGINEER HAS INCURRED A DEBT, THE CONTROLLER SHALL IMMEDIATELY NOTIFY ENGINEER IN WRITING. IF ENGINEER 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 ENGINEER UNDER THIS CONTRACT, AND ENGINEER WAIVES ANY RECOURSE THEREFOR. ENGINEER 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 CONTRACT.**

SIGNATURE

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):

DocuSigned by:
By: Rebecca Lindley
Name: Rebecca Lindley
Title: Corporate Secretary

ENGINEER:
AURORA TECHNICAL SERVICES, LLC
By: Rafael Ortega
Name: RAFAEL ORTEGA, P.E.
Title: PRESIDENT

Federal Tax Identification No. 474473226

ATTEST/SEAL:

CITY:
THE CITY OF HOUSTON, TEXAS
Signed by:

City Secretary

Mayor

APPROVED:

DocuSigned by:
Carol Haddock
Houston Public Works

COUNTERSIGNED BY:

City Controller

APPROVED AS TO FORM:

Arued [Signature]
Assistant City Attorney
L.D. File No. 0802000116001

DATE COUNTERSIGNED:

EXHIBIT "A"

ADDITIONAL TERMS

LARGE DIAMETER WATERLINE TECHNICAL SERVICES - PACKAGE 1

WBS No. S-000020-0071-3

GENERAL

1.1 Additional Definitions used in this Contract

1.1.1 **Negotiated Lump Sum:** An amount consistent with the terms of this Contract that City shall pay Engineer for the complete performance of services, not to exceed the estimated total of the following:

1.1.1.1 Raw Salary times Raw Salary Multiplier for services performed directly by Engineer and Engineer's employees, plus

1.1.1.2 Reimbursable Expenses, plus

1.1.1.3 Consultant Subcontract Costs plus Engineer's Consultant Markup, plus

1.1.1.4 Reasonable fees paid to contract personnel and personnel employed through employment agencies plus Engineer's Consultant Markup.

1.1.2 **Negotiated Work Order:** Individual Project assignments issued by the Director under this Contract. Each Negotiated Work Order shall define the specific requirements of the work to be performed, including Basic and Additional Services, for any Phase of this Contract.

1.2 General Description of Project

1.2.1 The Project generally is described as follows:

The Project involves multiple Negotiated Work Orders involving various engineering support activities pertaining to the City's large diameter water main system to assist in operating, maintaining and improving water transmission infrastructure. Effort may include but not limited to preparing construction packages, technical support, condition assessment, hydraulic modeling, and emergency transmission main shut down and repairs. In response to a Negotiated Work Order issued by the City of Houston, the Engineer shall provide engineering services requested in such Negotiated Work Order. The individual scope of work, defining the specific requirements of the work to be performed, shall be attached to each Negotiated Work Order issued to the Engineer.

1.2.2 Each individual Negotiated Work Order will direct the Engineer to perform one or both of the following Tasks:

1.2.2.1 Task A:

1.2.2.1.1 Develop a contract document (no drawings) for bidding purposes. This document is hereafter referred to as the "base document". The purpose of this base document is to provide a legal and procedural framework for obtaining the services of a contractor, who will assist DWO in transmission main shut down, evaluation and repairs, and to

procure or install various large diameter appurtenances for the City via work orders. This base document must include:

- 1.2.2.1.1.1 Water transmission mains (24-inch and larger) and appurtenances;
- 1.2.2.1.1.2 Miscellaneous construction items;
- 1.2.2.1.1.3 A provision for the time period for the contractor's services; and
- 1.2.2.1.1.4 Procedures for supplementing the base document designs for each specific project.

1.2.2.1.2 In addition to the above, prepare required addenda to revise the contract document prior to the City accepting bids, assist the City in securing bids, attend pre-bid conferences, assist the City in evaluating the bid proposals, prepare bid tabulations and provide a recommendation for the award of the contract.

1.2.2.2 Task B:

1.2.2.2.1 Provide engineering services when the Director requests technical support relating to water transmission main (24-inch and larger). These services may include the preparation of construction drawings or sketches and appropriate documents, development or evaluation of technical specifications and details, issuance of technical memorandums, or review of new technology or products or similar analysis, support of City's modeling efforts, condition assessment support including field observations or other tasks requested of Engineer for a specific assignment.

- 1.3 **Contract Term.** This Contract is effective on the Countersignature Date and expires upon the completion of the last Negotiated Work Order issued within 3 years from the Countersignature Date. If the Director, at his or her sole discretion, makes a written request for renewal to Engineer at least 30 days before expiration of the then-current terms, and if sufficient funds are allocated, then, upon expiration of the then-current term, this Agreement is renewed for 1 year(s) upon the same terms and conditions. This Contract may only be renewed for 2 additional term(s) beyond the initial term.

DUTIES OF ENGINEER

2.1 **Additional General Duties**

- 2.1.1 Within two weeks of issuance of each Negotiated Work Order, Engineer shall provide the Director a written schedule of completion of the Basic Services required under the Negotiated Work Order, which must be approved by the Director.

DUTIES OF THE CITY

- 3.1 **Fees for Basic or Additional Services:** the City shall pay and Engineer agrees to accept the fees specified in this Section.

3.1.1 For Task A services, the fee will be based on Time and Materials not to exceed the amount

established in the Notice to Proceed for each Negotiated Work Order.

3.1.2 For Task B services, the fees will be based on one of the following:

3.1.2.1 For Route Topographical Survey, the City shall pay Engineer at the rates set out in the following chart:

Length of Topographic Requirement (per assignment)			
Right of Way Width	Less than 300'	300' to 500'	More than 500'
Less than 80'	\$6.60 / L.F.	\$5.74 / L.F.	\$5.17 / L.F.
80' and More	\$7.15 / L.F.	\$6.23 / L.F.	\$5.70 / L.F.

3.1.2.2 Projects equal to or greater than 5,000 LF may require Basic or Additional Services, as set out in the Notice to Proceed for each Negotiated Work Order:

3.1.2.2.1 A negotiated lump sum which will be set out in the Notice to Proceed for each Negotiated Work Order. The Director and Engineer shall agree in writing to a Negotiated Lump Sum fee for Basic and Additional services necessary to complete each Construction Negotiated Work Order prior to issuance of the Notice to Proceed. Engineer guarantees that it shall perform all services for the Negotiated Lump Sum fees set out in the respective Notices to Proceed.

3.1.3 For Basic Services or Other Additional Services set forth in Article 2, the City will pay:

3.1.3.1 Raw Salary times Raw Salary Multiplier plus Reimbursable Expenses for Basic or Additional Services that are performed directly by Engineer or its employees;

3.1.3.2 Consultant Subcontract Cost plus Consultant Markup for Basic or Additional Services that Engineer subcontracts to a Consultant; or

3.1.3.3 Temporary personnel agency costs plus Consultant Mark-up x Overhead and Profit Factor where temporary employee works in Engineer's office.

EXHIBIT A-1

SCOPE OF WORK

LARGE DIAMETER WATER LINE TECHNICAL SERVICES FOR DWO – PACKAGE 1

WBS No. S-00020-0071-3

SERVICE

CONTRACT ARTICLE

Work Order PES for DWO On-Call Project – Package 1

Basic Services:

- Phase II – Final Design.....2.2
 - This item will be authorized for the creation of the contract documents for Construction Award for a LDWL On-Call Contractor.
- Design During Phase III.....2.3
 - This item will be authorized for all of the effort associated with design solutions for emergency repairs, which will occur after the construction contractor is on-board, which is Phase III.
- Phase III – Construction Phase Services.....2.4
 - This item will be authorized for typical EOR support during Phase III such as submittals and RFQs.

Standard Additional Services:

- Drug Detection and Deterrence.....2.16
 - This item will be authorized as per the contract.
- Other Additional Services
 - This item will be authorized in the event of unforeseen scope.

Added Additional Services:

- Corrosion Protection Services
 - This item will be authorized to provide a NACE certified Cathodic Protection or Corrosion Specialist on the occasions that the emergency work requires it.
- Hydraulic Modeling and Shutdown Planning
 - This item will be authorized if City's Planning requests that any modeling related to shutdown of LDWL for emergency repair be handled within the contract.
- Transient Analysis Modeling Support
 - This item will be authorized if City's Planning requests that any modeling related to transient analysis of LDWL for emergency repair be handled within the contract.
- Subsurface Utility Engineering
 - This item will be authorized if the emergency repair is believed to be in close proximity to critical infrastructure.
- Public Information and Assistance
 - This item will be authorized if the emergency repair requires an atypical and extensive amount of interaction with the public.

O&M Services

Basic Services:

- Staff Augmentation
 - This item will be authorized for providing staff from either the Engineer or consultants of the contract, to be assigned at 611 Walker, and work on tasks as assigned by the City's Planning Group.

Standard Additional Services:

- Survey Services
 - This item will be authorized in the event that the Easement Access Verification scope necessitates re-negotiating with an underlying fee owner for increased rights to own and operate the City's existing water lines. This item may include a Metes and Bounds survey of the existing water line easement or related courthouse research.

Other Additional Services

- This item will be authorized in the event of unforeseen scope.

Added Additional Services:

Hydraulic Modeling and Shutdown Planning

- This item will be authorized if City's Planning requests that any modeling related to shutdown be handled within the contract.

Transient Analysis Modeling Support

- This item will be authorized if City's Planning requests that any modeling related to transient analysis be handled within the contract.

Water System Modeling Support

- This item will be authorized if City's Planning requests that any system modeling be handled within the contract.

Easement Access Verification

- This item will be authorized to read through existing easement documents (provided by the City), identify potential access issues in the City's rights to operate and maintain the water line, and provide suggested revisions to the easement language.
- This item will also be authorized to support the Real Estate Intake Package process, in the event that the City elects to move forward with re-negotiating with the underlying fee owner for increased rights.

Field Coordination and Support to City Staff

- This item will be authorized in the event that the DWO requires atypical and extensive amount of field coordination or support that is not associated with any other budgeted scope within the contract.

Record Drawing and GIS Verification

- This item will be authorized to compare As-Builts and Submittal information to the City geodatabase, specifically as it relates to plan numbers, pipe material, age of water line, water line size, geometry, and related information.

Condition Assessment and Prioritization

- This item will be authorized to assist DWO in performing condition assessments of existing LDWLs, prioritizing their rehab/replacement and providing support to the City's utilization of specialty non-destructive testing (NDT) contractors and vendors including material testing of failed pipes.

CIP Planning Assistance

- This item will be authorized to assist DWO in developing, prioritizing and budgeting for the CIP.

Subsurface Utility Engineering

- This item will be authorized in the event that proposed work is believed to be in close proximity to critical infrastructure.

Public Information and Assistance

- This item will be authorized in the event that DWO requires an atypical and extensive amount of interaction with the public that is not associated with any other budgeted scope within the contract.

Technology Assessment and Trainings

- This item will be authorized for assisting DWO with assessment of different technologies that can support O&M of water lines and providing related training to City personnel.

Updates to IDM, Standard Specifications, and Details

- This item will be authorized for assisting DWO with reviewing proposed updates or to develop revisions to the IDM, Standard Specifications, and Details.

Technical Memoranda and SOPs

- This item will be authorized for assisting DWO with creating requested Technical Memoranda and Standard Operating Procedure documents.

Review and Coordination with Other Projects

- This item will be authorized for assisting DWO with plan reviews and coordination with City and Non-City projects that may impact DWO-maintained LDWLs.

EXHIBIT "B"

PROJECT SCHEDULE

N/A

EXHIBIT "C"

MAXIMUM RAW SALARIES

<u>Classification</u>	<u>Raw Salary Rates</u>
Senior Project Manager	\$85.00/Hr.
Senior Technical Professional	\$75.00/Hr.
Senior/Supervising Engineer	\$69.00/Hr.
Project Manager	\$64.00/Hr.
Professional Engineer	\$57.00/Hr.
Graduate Engineer	\$49.00/Hr.
Senior Designer	\$42.00/Hr.
Designer	\$37.00/Hr.
CADD Technician	\$32.00/Hr.
Project Administrator/Project Controls	\$43.00/Hr.
Construction Manager	\$70.00/Hr.
Senior Inspector	\$37.00/Hr.
Construction Inspector	\$29.00/Hr.

EXHIBIT "D"
CERTIFICATE OF INSURANCE

Please visit <http://purchasing.houstontx.gov/guide.shtml>, and find "Insurance & Indemnification" for the most current insurance certificates and requirements.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/17/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	Garey Gruber Insurance Agency 9894 Bissonnet Suite 590 Houston, TX 77036	CONTACT NAME: Garey Gruber PHONE (A/C, No, Ext): (281) 741-2653 E-MAIL: garey@gruberagency.net ADDRESS: (281) 741-9373	FAX (A/C, No): (281) 741-9373
INSURED	Aurora Technical Services, LLC Rafael Ortega 2121 Sage Rd Suite 150 Houston, TX 77056	INSURER(S) AFFORDING COVERAGE	
		INSURER A: The Hartford	NAIC # 19682
		INSURER B: Progressive County Mutual	29203
		INSURER C: Argonaut Insurance Company	19801
		INSURER D: The Hartford	19682
		INSURER E:	
		INSURER F:	

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

NSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
1	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	61SBABB6270	7/14/2020	7/14/2021	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
3	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	02573336-5	7/14/2020	7/14/2021	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
1	<input checked="" type="checkbox"/> UMBRELLA LIAB EXCESS LIAB <input checked="" type="checkbox"/> OCCUR CLAIMS-MADE DED RETENTION \$	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	61SBABB6270	7/14/2020	7/14/2021	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
2	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>	61 WBC AG8WTW	7/15/2020	7/15/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
2	Professional Liability			121 AE 0004271	06/26/2020	06/26/2021	Each Occurance 2,000,000 Aggregate Limit 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Engineering Consulting

In respects to General Liability and Auto Liability, The City of Houston is included as Additional Insured with waiver of subrogation and in respects to Workers Comp they are included with Waiver of Subrogation. Applies to: Large Dia Water Line Tech Services for DWO-Package 1; WBS No. S-00020-0071-3

CERTIFICATE HOLDER	CANCELLATION
Project Manager City of Houston - HPW 611 Walker - 21st Floor Houston, TX 77002 Attn: Gabriel Mussio, P.E.	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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Spectrum

BUSINESS LIABILITY COVERAGE FORM

QUICK REFERENCE
BUSINESS LIABILITY COVERAGE FORM
READ YOUR POLICY CAREFULLY

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BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section C. - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section G. - Liability And Medical Expenses Definitions.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section D. - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

(a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(b) The "bodily injury" or "property damage" occurs during the policy period; and

(c) Prior to the policy period, no insured listed under Paragraph 1. of Section C. - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

(2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section C. - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

(1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

BUSINESS LIABILITY COVERAGE FORM

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".
- e. **Incidental Medical Malpractice**
- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
 - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
 - (b) You are not engaged in the business or occupation of providing such services.
 - (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES

Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
- (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
- provided that:
- (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:
- (1) All expenses we incur.
 - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
 - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
 - (5) All costs taxed against the insured in the "suit".
 - (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
 - (a) Agrees in writing to:
 - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
 - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (b) Provides us with written authorization to:
 - (i) Obtain records and other information related to the "suit"; and
 - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph 1.b.(b) of Section B. – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

- (1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

BUSINESS LIABILITY COVERAGE FORM

(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

BUSINESS LIABILITY COVERAGE FORM

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
 - (a) Body piercing (not including ear piercing);
 - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
 - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

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o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

- (8) Arising out of an offense committed by an insured whose business is:

(a) Advertising, broadcasting, publishing or telecasting;

(b) Designing or determining content of web sites for others; or

(c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs a., b. and c. under the definition of "personal and advertising injury" in Section G. – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;

- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;

- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

- (12) Arising out of:

(a) An "advertisement" for others on your web site;

(b) Placing a link to a web site of others on your web site;

(c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or

(d) Computer code, software or programming used to enable:

(i) Your web site; or

(ii) The presentation or functionality of an "advertisement" or other content on your web site;

- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

(a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";

(b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or

(c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning or Explosion

Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section D. - Liability And Medical Expenses Limits Of Insurance.

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2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by,

- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

- b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed

before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit



The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

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contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In connection with your premises; or
 - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
- This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In the performance of your ongoing operations;
 - (b) In connection with your premises owned by or rented to you; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to 2.a. or 2.b. above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to 2.b. above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs **a.** and **b.** apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

BUSINESS LIABILITY COVERAGE FORM

This Paragraph f. applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section A. – Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. – Coverages.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us**a. Transfer Of Rights Of Recovery**

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

- b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision - Permits

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- b. The insurance afforded to the vendor is subject to the following additional exclusions:

- (1) This insurance does not apply to:
 - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (b) Any express warranty unauthorized by you;
 - (c) Any physical or chemical change in the product made intentionally by the vendor;
 - (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a. Their financial control of you; or
- b. Premises they own, maintain or control while you lease or occupy these premises.

BUSINESS LIABILITY COVERAGE FORM

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(1) In the performance of your ongoing operations for the additional insured(s); or

(2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or

b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above;
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

- 7. "Electronic data" means information, facts or programs:
 - a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section D. – Liability and Medical Expenses Limits of Insurance.
- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph f. does not include that part of any contract or agreement:

BUSINESS LIABILITY COVERAGE FORM

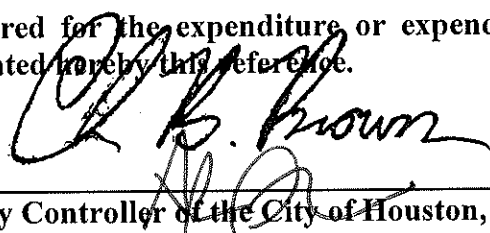
- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
- (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
- (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;

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 reference.
- () Other – Grant Funds Available.


City Controller of the City of Houston, Texas

Date 7/28, 2020

① 8500-2000-520106-522780

② 8300-1-520141

③ 8500-1-522730

FUND REF:

AMOUNT:

ENCUMB. NO.:

1,507,700.00

669,500.00

154,700.00

PA01SRD1ER

42-9494

45-324149

3-4734

CA 46-16082

DE FR 86 3-27870

City of Houston, Texas Ordinance No. 2020-668

AN ORDINANCE APPROPRIATING THE SUM OF \$1,657,700.00 OUT OF THE WATER & SEWER SYSTEM CONSOLIDATED CONSTRUCTION FUND; APPROVING AND AUTHORIZING A PROFESSIONAL ENGINEERING SERVICES CONTRACT BETWEEN THE CITY OF HOUSTON AND AURORA TECHNICAL SERVICES, LLC FOR LARGE DIAMETER WATERLINE TECHNICAL SERVICES – PACKAGE 1 TO THE CITY OF HOUSTON'S DRINKING WATER OPERATIONS BRANCH; PROVIDING FUNDING FOR CIP COST RECOVERY FINANCED BY THE WATER AND SEWER SYSTEM CONSOLIDATED CONSTRUCTION FUND; 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. The City Council hereby appropriates the sum or sums of money set out in the title of this Ordinance, out of the respective fund or funds set out in such title as follows: the sum of **\$3,485,500.00** is appropriated for contract services related to the project described in the title, and the sum of **\$150,700.00** is appropriated for CIP COST RECOVERY relating to construction of facilities financed by the fund described in such title.

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 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 agreement, agreements or other undertaking described in the title of this ordinance, 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. 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 29th day of July, 20 20

APPROVED this ____ day of _____, 20 ____.

Mayor of the City of Houston, Texas.

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG - 4 2020.

Atty. General

City Secretary

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: AUG - 4 2020

FUNDING SOURCE:

\$1,978,500.00 – Water & Sewer System Operating Fund (8300)

(Prepared by Legal Dept. Atty. General)

(ARC/sjl 05/27/2020)

Assistant City Attorney

(Requested by Carol Ellinger Haddock, P.E., Director, Houston Public Works)

(L.D. File No. 0802000116001)

CERTIFICATE OF CITY CONTROLLER

I, Chris B. Brown, City Controller of the City of Houston, Texas, pursuant to Article II, Section 19a of the Charter of the City of Houston, with respect to the sum of **\$1,657,700.00** required for the project referenced in the title of this ordinance, do hereby certify as follows:

- (1) The sum of **\$1,657,700.00** will be funded from water and sewer system bond proceeds and/or water and sewer system commercial paper proceeds (first-in-first-out basis) pursuant to Ordinance No. 93-1409 authorizing the creation of the **Water and Sewer System Consolidated Construction Fund**. To the extent that this sum will be paid with bond proceeds, it is in the treasury in the said fund, and is not appropriated for any other purpose.
- (2) To the extent that the **\$1,657,700.00** will be paid by commercial paper proceeds, funds will be received into the treasury and available before the maturity of said obligation, and such anticipated funds have not already been appropriated for any other purpose. Such sum will be received as a cash draw(s) to the City of Houston pursuant to the Water and Sewer System Commercial Paper Ordinance, Ordinance No. 93-1209.

City Controller

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	

**CITY OF HOUSTON
AND
AURORA TECHNICAL SERVICES, LLC**

**WORK ORDER
PROFESSIONAL ENGINEERING SERVICES
FOR DESIGN OF**

LARGE DIAMETER WATERLINE TECHNICAL SERVICES - PACKAGE 1

WBS NO. S-000020-0071-3

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EXHIBITS

"A"	ADDITIONAL TERMS
• "A-1"	SCOPE OF WORK
"B"	PROJECT SCHEDULE (N/A)
"C"	MAXIMUM RAW SALARIES
"D"	FORM OF CERTIFICATE OF INSURANCE
"E"	DRUG POLICY COMPLIANCE AGREEMENT
"F"	DRUG POLICY COMPLIANCE DECLARATION
"G"	ENGINEER'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS IN PERFORMANCE OF A CITY CONTRACT
"H"	SUBCONTRACTOR'S ASSIGNMENT OF COPYRIGHTS
"I"	FORM POP 2 - CERTIFICATION OF AGREEMENT TO COMPLY WITH PAY OR PLAY PROGRAM
"J"	CERTIFICATION OF AGREEMENT TO COMPLY WITH STANDARD DOT TITLE VI ASSURANCES APPENDIX A LANGUAGE

CONTRACT
FOR
PROFESSIONAL ENGINEERING SERVICES
FOR

LARGE DIAMETER WATERLINE TECHNICAL SERVICES - PACKAGE 1

WBS NO. S-000020-0071-3

THE STATE OF TEXAS

§
§
§

COUNTY OF HARRIS

THIS CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES ("Contract") is made on the date countersigned by the City Controller, by and between the **CITY OF HOUSTON, TEXAS** (the "City"), a municipal corporation and home-rule city of the State of Texas principally situated in Harris County, and **AURORA TECHNICAL SERVICES, LLC** (the "Engineer"), acting by and through its duly authorized officer. The initial addresses of the parties, which one party may change by giving notice to the respective other party, are as follows:

City

Director
Houston Public Works
City of Houston
P.O. Box 1562
Houston, Texas 77251

Engineer

RAFAEL ORTEGA, P.E., PRESIDENT
AURORA TECHNICAL SERVICES, LLC
2121 SAGE ROAD, SUITE 150
HOUSTON, TEXAS 77056

RECITALS:

WHEREAS, the City desires to obtain professional engineering services in connection with the planning and/or design of the Project hereinafter described; and

WHEREAS, the Engineer desires to provide such services in exchange for the fees hereinafter specified;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants herein contained, it is agreed as follows:

ARTICLE 1
GENERAL

- 1.1 **Definitions:** The following Definitions are used throughout this Contract, including Exhibit "A". See Exhibit "A" for any additional Definitions applicable to this Contract.
- 1.1.1 **Additional Services:** Services completed by Engineer in support of the Project that are not part of Basic Services, but are included in Article 2 of this Contract and as further described in Exhibit "A", Exhibit "A-1", and the Notice(s) to Proceed.
- 1.1.2 **Basic Services:** Services completed by Engineer in support of the Project, included in Article 2 of this Contract and as further described in Exhibit "A", Exhibit "A-1", and the Notice(s) to Proceed.
- 1.1.3 **City:** As defined in the preamble of this Contract, including its successors and assigns.
- 1.1.4 **City Design Manual:** "City of Houston Infrastructure Design Manual" in effect at the time of execution of this Contract, a current version of which can be found on the internet at the following URL:
<https://edocs.publicworks.houstontx.gov/engineering-and-construction/design-manuals.html>
- 1.1.5 **City Personnel:** All City employees, but not elected officials.
- 1.1.6 **Construction Documents:** All of the graphic and written information prepared or assembled by Engineer for communicating the design and for administering the bidding and construction of the Project.
- 1.1.7 **Construction Package:** The services and deliverables that make up a whole or a part of the Project, as further described in this Contract.
- 1.1.8 **Consultant (also "Subcontractor"):** The professional Consultant or other professional entity subcontracted by Engineer to provide a portion of engineering services required under the City-Engineer Contract.
- 1.1.9 **Consultant Markup:** A markup factor of 10%, which Engineer may apply only to Consultant subcontract invoices for Additional Services performed by the Consultant. Such markup shall include the non-professional services related to the Consultant's subcontract including all administrative costs, accounting costs, all contract administration, processing of invoices, monitoring of Consultant's work for compliance including project schedules, quality control, general administrative communication and coordination. Engineer shall not apply any Consultant Markup to Basic Services performed by Consultant or any services by Engineer.

- 1.1.10 **Consultant Subcontract Cost:** The ordinary and reasonable cost of Consultant subcontracts made by Engineer and approved by the Director for the principal purpose of obtaining the professional services of others in connection with the performance of any service under this Contract.
- 1.1.11 **Cooperative Development Agreement:** A contract between the City and a Developer in which the City and Developer share the cost of construction and other eligible costs.
- 1.1.12 **Developer:** The owner or agent of the owner development lots or tracts of property for further sale, lease, development, or redevelopment for residential, commercial, or industrial use.
- 1.1.13 **Director:** The Director of the Department of Houston Public Works, or such other person designated from time to time by the Director by notice to Engineer to administer this Contract on behalf of the City.
- 1.1.14 **Documents:** The reports, charts, analyses, maps, letters, tabulations, exhibits, notes, models, photographs, the original transparencies of all drawings, Construction Documents, computer programs including source and object codes, and other work products obtained by or prepared by Engineer as part of its services under this Contract. The Director shall specify the medium and format in which Engineer shall provide such documents.
- 1.1.15 **Engineer:** As defined in the preamble of this Contract, including its successors and assigns.
- 1.1.16 **Geographic Information System (GIS):** A system designed to capture, store, manipulate, analyze, manage, and present all types of geographical information.
- 1.1.17 **Negotiated Lump Sum:** An amount consistent with the terms of this Contract that City shall pay Engineer for the completed performance of services, not to exceed the estimated total of the following:
- 1.1.17.1 Raw Salary times Raw Salary Multiplier for services performed directly by Engineer and Engineer's employees, plus
 - 1.1.17.2 Reimbursable Expenses, plus
 - 1.1.17.3 Consultant Subcontract Costs plus Engineer's Consultant Markup, plus
 - 1.1.17.4 Reasonable fees paid to contract personnel and personnel employed through employment agencies plus Engineer's Consultant Markup.
- 1.1.18 **Notice to Proceed:** A written communication from the Director that authorizes Engineer to begin performance of work. Multiple Notices to Proceed should be anticipated for contracts that include multiple projects/subprojects. A Notice to Proceed will contain the following:
- 1.1.18.1 A declaration that the City has allocated adequate funds for that phase or service;
 - 1.1.18.2 The Negotiated Lump Sum for all work described in the Notice to Proceed;

- 1.1.18.3 A work description for each service Engineer, Consultants, or suppliers will perform under the Notice to Proceed;
- 1.1.18.4 The maximum cost and portion of the Negotiated Lump Sum associated with each work description;
- 1.1.18.5 Whether the work description represents a Basic or Additional Service;
- 1.1.18.6 The phase of the Project to which the work is attributable; and
- 1.1.18.7 Acceptance of the preceding Phase, when applicable.

1.1.19 **Project:** As identified in the title of this Contract.

1.1.20 **Project Schedule:** The schedule of project activities and events, showing initiation point, duration, and ending points using the form attached as Exhibit "B". The schedule will indicate time to be allowed for reviews by the City staff. The Project Schedule shall be drafted by Engineer in consultation with the Director, approved by the Director, and updated monthly at the time of invoice submittal.

1.1.21 **Raw Salary:** The actual cost of salary (annual base salary (excluding bonuses) divided by 2080) of an employee of Engineer for each hour during which such employee is actively performing services of benefit to the City and directly related to the Project. Maximum Raw Salary rates by employee category for the duration of the Contract are shown on Exhibit "C" attached hereto and, by reference, incorporated. The Raw Salary rates of Consultant shall not exceed the Raw Salary rates of Engineer without reasonable justification and prior written approval from the Director.

1.1.22 **Raw Salary Multiplier:** The Raw Salary Multiplier (when applied to Raw Salary) is 3.0 and includes all payment due Engineer for Raw Salary, salary burdens, benefits, insurance, overtime premium, payroll taxes, bonuses, overhead profit and clerical and management support, vacations, holidays and non-productive time of all kinds. The categories of service for which Raw Salary are payable are set out in Exhibit "C". All other categories of service are treated as overhead and are a part of the Raw Salary Multiplier. Payments to contract personnel and personnel employed through employment agencies are not subject to enhancement by the Raw Salary Multiplier.

1.1.23 **Reimbursable Expenses:** Reimbursable Expenses are limited to the following: (1) the ordinary and reasonable cost of copying, printing, postage, delivery services, long distance telephone calls and any additional expenses listed in Exhibit "A" incurred by the Engineer in the course of his performance of services under this Contract, including any sales tax Engineer is legally required to pay for Reimbursable Expenses; and (2) the ordinary and reasonable costs of travel including meals and lodging to and from points outside of Houston by representatives of the Engineer, not-to-exceed the amounts established under the City's then current travel reimbursement policy for its employees, if such travel is reasonably necessary to accomplish a task and authorized by the Director.

- 1.1.24 **Subcontractor (also "Consultant"):** The professional Consultant or other professional entity subcontracted by Engineer to provide a portion of engineering services required under the City-Engineer Contract.
- 1.1.25 **Supplemental Notice to Proceed:** A Notice to Proceed amending a preceding Notice to Proceed, which must be issued before services commence, containing the elements required for the original Notice to Proceed and the following:
- 1.1.25.1 A description of the changes in the scope or quality of work between the Supplemental Notice to Proceed and the preceding Notice to Proceed;
 - 1.1.25.2 Acceptance for work completed under the previous Notice to Proceed, when applicable;
 - 1.1.25.3 The percentage difference between the original Notice to Proceed for that Phase and all subsequent Supplemental Notices to Proceed; and
 - 1.1.25.4 The incremental cost of the services in the Supplemental Notice to Proceed.
- 1.1.26 **Work:** The entire construction required to be provided by the Construction Documents. The Work may constitute the whole or a part of the Project and may be one or more Construction Packages.
- 1.2 **Review of Existing Information**
- 1.2.1 Existing utility information, existing record drawings of previous projects, and existing survey information are readily available to the Engineer and the public. The Director shall provide access to such information. It is the responsibility of the Engineer to physically gather this information from available sources.
 - 1.2.2 The Engineer shall review applicable existing information and develop independent recommendations based on the information.

ARTICLE 2

DUTIES OF ENGINEER

- 2.1 **Services in General:** Engineer agrees to provide prompt and efficient professional services in relation to the design and management of the Project for the fees hereinafter specified. Engineer shall perform its work in accordance with the professional skill and care ordinarily provided by competent engineers, practicing in the same or similar locality and under the same or similar circumstances and professional license; and as expeditiously as is prudent considering the ordinarily professional skill and care of a competent engineer.
- 2.1.1 Engineer also agrees to perform such specific tasks as are set forth in Exhibit "A-1", when directed to do so by a Notice to Proceed, which is attached hereto and made a part hereof for all purposes. In the event of an inconsistency between these terms and conditions and the terms of Exhibit "A-1", the terms of Exhibit "A-1" shall control.
 - 2.1.2 The Basic Services in this Contract are divided into three distinct phases:
 - 2.1.2.1 Phase I - Preliminary Design;

- 2.1.2.2 Phase II - Final Design; and
- 2.1.2.3 Phase III - Construction Phase Services.
- 2.1.3 Preliminary and Final Designs shall conform to the latest City Design Manual as well as other design criteria that may be provided for this Contract by the Director.
- 2.1.4 The City may use a construction project manager as well as City personnel to review portions of the design; however, Engineer acknowledges that while others may suggest design ideas and components of the Project, such suggestions do not relieve Engineer of its professional responsibility to the City for complete design of the Project.
- 2.1.5 Engineer shall make periodic verbal or written reports and recommendations to the Director with respect to conditions, transactions, situations or circumstances encountered by Engineer relating to the services to be performed under this Contract and shall attend meetings determined to be necessary by the Director.
- 2.1.6 The Engineer shall reference the City's Project Title and City's Project WBS Numbers on all correspondence and submittals.
- 2.1.7 The Engineer shall manage the efforts of the Project team members and Consultants, assign manpower, delegate responsibilities, review work progress, monitor conformance to the scope regarding the budget and schedule, and otherwise direct the progress of the work.
- 2.1.8 Periodic meetings shall be held to review the progress of the engineering effort or to address other issues which may arise. The Director shall initiate meetings that include the Engineer and his Consultants, and if necessary, the Director and other applicable parties. The Engineer shall prepare and deliver meeting record memorandum of decisions and action items to the City within two business days after each meeting.
- 2.1.9 The Engineer shall notify the Director immediately of any deviation from the Scope of Services and/or Fee agreed to in this Contract. The Engineer shall not perform services outside of the Contract scope without a duly executed Amendment to this Contract.
- 2.1.10 The Engineer shall route all written communication with regulatory agencies, neighborhood associations, and City Council through the Director.
- 2.1.11 Engineer shall, upon written request, provide the Director with a written and/or electronic copy of materials prepared and/or referenced by Engineer or made available to it as a result of its performance under this Contract.
- 2.1.12 Engineer shall coordinate performance of the services hereunder with the Director and such other persons as the Director may specify.
- 2.1.13 Engineer shall perform the Basic Services or Additional Services required for any Phase of this Contract only upon receipt of a Notice to Proceed.
- 2.1.14 Engineer understands and acknowledges that the City may determine not to proceed with this Contract after completion of Engineer's services for any Notice to Proceed. Engineer understands and acknowledges that the City may determine not to proceed with this Contract after completion of Engineer's services for either Phase I - Preliminary Design or Phase II - Final Design.
- 2.1.15 Engineer shall review Notices to Proceed to ensure the work descriptions specified within the Notices to Proceed and change order forms are adequately detailed. Engineer shall report to the Director any

work description that does not adequately detail the services Engineer intends to provide. Engineer may not receive payment for work if the work description in a Supplemental Notice to Proceed does not appear different in scope from the work description in a previous Notice to Proceed.

- 2.1.16 Engineer shall coordinate the performance of services hereunder with the Director and governmental agencies and other bodies having jurisdiction over this Project or City consultants performing services related to the Project.
- 2.1.17 Engineer agrees that the Director may reduce the scope of services for any of the services identified in the Notice to Proceed or may divide the Project into separate Construction Packages by issuing a written notice describing: (1) the scope of the reduced Project or the scope of each Construction Package; and (2) the revised Time of Performance.
- 2.1.18 Engineer understands and acknowledges that this Contract contains the entirety of potential services the City may request from Engineer through issuance of Notices to Proceed and that the inclusion of any particular service in this Contract does not guarantee that Engineer will be requested to perform that service during the performance of this Contract.
- 2.1.19 Time is of the essence to the performance by the Engineer under this Contract.
- 2.1.20 Engineer shall identify all government agencies having regulatory jurisdiction and obtain authorization from the City prior to communication with the agencies.

2.2 Phase I – Preliminary Design

- 2.2.1 Engineer shall submit to the Director, within ten days of the Notice to Proceed for Phase I, a Project Schedule reflecting actual dates for activities and reviews set forth therein. The Project Schedule shall commence on the date of the Notice to Proceed and be based upon the number of calendar days established in this Contract.
- 2.2.2 Once the Engineer has billed for the entire Limit on Phase I Compensation, Engineer shall complete the Phase I work for no further compensation.
- 2.2.3 Engineer shall submit 5 copies of the preliminary design and outline specification Documents to the Director in hard copy format and one electronic copy in the format requested by the Director.
- 2.2.4 Engineer shall attend preliminary conferences with officials from local, state, and federal agencies; utility companies; and other entities as necessary for the Project.
- 2.2.5 Engineer shall conduct a thorough utility plan review, and Engineer shall follow the City's Utility Coordination Ordinance and procedures.
- 2.2.6 The Notice to Proceed for Phase I shall specify Phase I milestones and the Engineer's Raw Salary with corresponding classifications times the Raw Salary Multiplier, Reimbursable Expenses, and Consultant Subcontract Cost necessary to reach each milestone. Engineer shall perform all services necessary to complete each milestone.
- 2.2.7 After receiving the Notice to Proceed for Phase I, Engineer shall perform the following Phase I services during the Project:

- 2.2.7.1 Prepare a Preliminary Engineering Report (PER) which contains the findings and recommendations resulting from this Phase of work. Follow the guidelines in Exhibit A-1, at a minimum, and as further described in the Notice to Proceed;
- 2.2.7.2 Prepare and participate in the Technical Review Committee (TRC) meeting, as further described in Article 2 of this Contract; and
- 2.2.8 For projects requiring drainage and pavement improvements, the Engineer shall perform the following work as part of Basic Services:
 - 2.2.8.1 Hydrologic and hydraulic analysis (drainage analysis) of the existing and proposed condition for the design rainfall and the extreme rainfall. Include off-site contribution drainage areas and overland flow path analysis. Variance from current City design criteria requires City approval;
 - 2.2.8.2 Compare existing drainage system versus proposed drainage improvements in tabular and graphic profile including: hydraulic grade line; water surface elevation; ponded width; critical elevation (gutter); allowable maximum ponded elevation; allowable maximum ponded width; drainage area; 2-year peak outflow rate; and 100-year peak outflow rate;
 - 2.2.8.3 Determine the hydraulic impact and mitigation options of the proposed drainage improvements to the existing drainage system HGL of an interconnected City system including but not limited to in-line system storage and in-line system restriction as part of these services;
 - 2.2.8.4 Identify hydraulic impacts and mitigation options of the proposed drainage improvements to the receiving system of other governmental agencies including, but not limited to, detention basin, or low impact design (LID) method; and
 - 2.2.8.5 Engineer understands and acknowledges that standard engineering practice typically requires multiple modeling iterations for development of a sound proposed condition and determination of the best viable level of service.

2.3 Phase II - Final Design

- 2.3.1 The Engineer shall submit to the Director within ten days of any Notice to Proceed for Phase II, the Project Schedule updated to reflect firm dates for the beginning and end of each activity set forth therein and the review dates for such activities.
- 2.3.2 The Engineer shall submit a detailed construction cost estimate at the 60%, 90%, and Bid Ready Drawings stages:
 - 2.3.2.1 Engineer shall inform the Director of any adjustments to previous estimates of the Project construction cost which are indicated by market conditions or authorized changes in the scope and requirements of the Project within five business days of determining the adjustment; and
 - 2.3.2.2 Engineer does not guarantee that bids will not vary from the final construction cost estimate.

- 2.3.3 The Engineer shall submit 5 copies of the recommendations, analyses and other deliverables identified in this Contract in hard copy format and one electronic copy in the format requested by the Director.
- 2.3.4 Agency Approvals and Signatures
- 2.3.4.1 The Engineer shall design the Project in compliance with the standard of care in the industry and the requirements of applicable laws, codes, and regulations, including the City of Houston Building Code. The Construction Documents shall conform to applicable federal, state, and City regulations.
- 2.3.4.2 The Engineer shall prepare the Documents necessary to obtain approval of governmental authorities having jurisdiction over the design or operation of the Project and all public and private utilities including pipeline transmission and railroad companies affected by the Project; obtain the signatures of representatives of such governmental authorities and public and private utilities; and obtain the signatures of City officials indicated by the City's standard title block for drawings.
- 2.3.4.3 The Engineer shall obtain required signatures from other governmental agencies, public utilities, and private utilities, which may impact the Project prior to final approval by the Department of Houston Public Works. Governmental agencies include, but are not limited to, Harris County and Harris County Flood Control District. Utility signatures include, but are not limited to, AT&T, Centerpoint Energy-Electric, Centerpoint Energy-Gas, and cable TV.
- 2.3.5 Additional Requirements
- 2.3.5.1 The Engineer is responsible for quality and completion of the Final Design as requested by the Director.
- 2.3.5.2 The Engineer shall specify the minimum acceptable performance and/or material standards associated with temporary facilities and structures that are determined necessary to implement the Project, that are potentially cause for significant disruption to local communities or businesses, and that are not solely for the convenience of the construction contractor.
- 2.3.5.3 The Engineer shall review results from Additional Services prior to submittal to the City and where applicable, incorporate this information into the Final Design documents. Such Additional Services may include, but not be limited to, survey, geotechnical, environmental, traffic control, storm water pollution prevention plans, street lighting plans, tree mitigation/planting plans, and special studies.
- 2.3.5.4 The Engineer shall incorporate the City Standard Details as applicable. The Engineer shall review each Standard Details and edit as necessary to suit Project-specific requirements and to meet the design intent of the Project. Revisions to the Standard Details shall not be incorporated based solely on Engineer's preference, but are subject to review and acceptance by the Director. The Engineer shall notify the Director of all proposed changes to Standard Details and provide reasons for such

proposed changes. The Engineer shall prepare additional nonstandard details necessary for bidding and construction of the Project.

2.3.5.5 The Engineer shall verify findings from Utility Plan Review with the results of the Survey Services (see Additional Services) and identify potential conflicts during construction. Proposed designs shall strive to avoid conflicts where physically and financially feasible. Relocations of private utilities shall be coordinated with the City of Houston as early in design process as possible.

2.3.5.6 The Engineer shall obtain the written approval for the necessary Right of Entry to the properties affected by the Project, using the City's designated form that is currently in use. The Engineer shall turn in all acquired Rights of Entry to the City before proceeding to Phase III, Construction Phase Services. The Engineer shall perform its due diligence prior to coordinating with the City for additional assistance. Engineer shall identify and prepare encroachment Letters.

2.3.5.7 The Engineer shall prepare a construction duration estimate for the proposed project. The construction duration estimate shall be based upon tasks, subtasks, critical dates, milestones, and deliverables and shall consider the interdependence of the various items, and adjacent construction projects. Scheduling software or other available industry methodologies may be used to assist in the construction duration estimate preparation. The Engineer must substantiate the construction duration estimate to the City and assist the City in interpreting the estimate. The construction duration estimate shall be submitted no later than the Final Drawing and Specification milestone submittal.

2.3.5.8 For Water Plant projects, the Engineer shall perform the following work:

2.3.5.8.1 Develop valve and water plant shut-down sequences for situations in which construction could necessitate a partial or entire shut-down;

2.3.5.8.2 Plan sequences in coordination with the assigned project manager of the (City's Drinking Water Operations Branch of the Houston Public Works Department Houston Water Service Line). ("Drinking Water Operations"), and include sequences in Bid Documents; and

2.3.5.8.3 Prepare a plan view showing locations of existing valves, and required working condition status to operate during construction.

2.3.5.9 For projects with paving and drainage improvements and other projects, as applicable:

2.3.5.9.1 Design of in-line system storage and or restriction shall be include in Basic Services; and

2.3.5.9.2 Floodplain Management Office approval is part of Basic Services.

2.3.6 Bidding Services

2.3.6.1 The Engineer shall prepare specifications in accordance with the Construction Specification Institute (CSI) standard format adopted by the City. The Engineer shall use the City Standard Specifications Table of Contents for Construction Documents

as a guide for organization of the Contract Documents. The City Standard Specifications (Divisions 00-16) are prepared to include the requirements, features, construction materials, and related items desired by the City based on the City's experience and needs. The Engineer shall review each Standard Specification and supplement as necessary to suit Project-specific requirements and to meet the design intent of the Project. Supplements to the Standard Specifications shall not be incorporated based solely on the Engineer's preference. Supplements are subject to review and acceptance by the Director. The Engineer shall prepare additional nonstandard specifications necessary for bidding and construction of the Project. Incorporate Guide Specifications necessary for bidding and construction of the Project.

- 2.3.6.2 The Engineer shall incorporate the CSI Division 00 front-end documents provided by the City into the Project specifications.
- 2.3.6.3 The Engineer shall prepare detailed Construction Documents and Conformed Drawings based on the guidelines provided by the Director. The Construction Documents shall set forth recommended alternate bid items for the Project in a manner that permits ready evaluation and comparison. The Engineer shall furnish copies of the Construction Documents and the Conformed Drawings to the City within ten business days after bid award, or as otherwise stated by the City, in the following numbers and formats: 10 full size sets; seven reduced size drawings (11 inches by 17 inches); eight sets of the project manual; and one compact disc of all associated reports. Conformed Drawings represent the Bid Documents revised to reflect all addenda changes made during the bid period.
 - 2.3.6.3.1 The Engineer shall furnish the City with an electronic copy of the final plans in a format usable by AutoCAD 2016.
- 2.3.6.4 The Engineer shall assist the City in conducting the pre-bid conference and submit meeting minutes within three business days.
- 2.3.6.5 The Engineer shall prepare necessary addenda to address issues or clarifications necessary for completion of the bidding process.
- 2.3.6.6 The Engineer shall furnish three copies of the tabulation of bids received with a written recommendation for the award of a construction contract, and submit within three business days after the bid opening.
- 2.3.6.7 The Engineer shall provide clarification, correct discrepancies, correct errors and omissions; assist the City in evaluating the bid proposals; and assist in the preparation of a construction contract between the City and the successful bidder.

2.4 Phase III – Construction Phase Services

- 2.4.1 Upon issuance of a Notice to Proceed for Phase III, Engineer shall provide professional services during construction to assist in obtaining a completed Project in accordance with the purpose and intent of the Construction Documents.

- 2.4.2 The Engineer shall participate in pre-construction conferences and monthly construction progress meetings. When requested by the construction project manager, the Engineer shall attend other meetings related to project design in lieu of attending the monthly construction progress meetings.
- 2.4.3 The Engineer shall make visits to the Project site at appropriate intervals as construction proceeds to observe and provide a written construction site observation report on the progress and the quality of the executed Work.
- 2.4.3.1 The frequency of these visits should be monthly, after the construction contractor has mobilized and is constructing the proposed improvements. Site visits should occur during times when the construction contractor is actively performing major construction activities. Site visits should be coordinated with the construction project manager. These monthly visits shall be combined with any site visits made to resolve field problems relating to the construction or monthly progress meetings.
- 2.4.3.2 The personnel provided by Engineer to perform site visits shall be experienced in the administration of construction contracts and shall be under the supervision of a professional engineer registered by the State of Texas. Supporting personnel shall be provided from the Project design team when specialized knowledge of the Project design is required.
- 2.4.3.3 Site Observation Reports
- 2.4.3.3.1 The report shall be included in the Engineer's monthly invoice, unless otherwise approved by the Director.
- 2.4.3.3.2 The report shall be in writing, shall include all referenced supporting documents, and shall advise the Director of deviations from the Construction Documents, the contractor's construction schedule, or other items as set forth below, observed by or brought to the attention of the Engineer at the time of the Site Observation.
- 2.4.3.3.3 Provide percentage of completion of the Work and an overall map, showing complete and incomplete areas.
- 2.4.3.3.4 The report shall be submitted to the construction project manager within three business days after the site visit.
- 2.4.3.3.5 The following guidelines are intended to provide consistency when preparing the required Construction Site Observation Reports. These guidelines are intended to be the minimum requirements and do not replace sound professional judgment.
- 2.4.3.3.5.1 A brief narrative of the type of construction activities occurring at the time of the site visit is to be prepared. The narrative should include a description of the progress to date and the general quality of the ongoing work (based upon the Contract Documents). The following items should be observed and reported for each project site:

- 2.4.3.3.5.1.1 The date and time period on the job site;
- 2.4.3.3.5.1.2 The station and street work in progress or facility location observed;
- 2.4.3.3.5.1.3 The description of work should include the type of activities the construction contractor was performing (e.g. excavating, backfilling, paving, etc.), approximate size of crew, number and type of equipment in use (e.g. 1 back hoe, 3 dump trucks, etc.), and where these activities were occurring (e.g. Along Misty Valley, between Foggy Lane and Rainy Day);
- 2.4.3.3.5.1.4 Whether the work is in general conformance with the Contract Documents or report the observed deficiencies;
- 2.4.3.3.5.1.5 Identify whether the traffic control plan is being followed by the construction contractor or report the observed deficiencies and the impact the construction is having on traffic;
- 2.4.3.3.5.1.6 Whether NPDES storm water pollution prevention plan (SWPPP) is being followed by the construction contractor or report the observed deficiencies;
- 2.4.3.3.5.1.7 Whether trench safety system is in compliance with the construction contractor's submittal or report the observed deficiencies;
- 2.4.3.3.5.1.8 Note what discussions were held with the inspector, other City personnel, or construction contractor;
- 2.4.3.3.5.1.9 Note what type of progress construction contractor has made since the last site visit;

2.4.3.3.5.1.10 To assist in the description of the work activities, the use of color photographs is required. Two photographs are to be furnished. Include a "byline" with each photograph. The byline should describe the activity, time and place; and

2.4.3.3.5.1.11 Report any work that has been discovered that have not been approved by the Director or any work that deviates from the approved submittal or Contract Documents.

2.4.3.3.5.2 Unsafe conditions and major work deficiencies observed should be immediately brought to the attention of the City Inspector and the construction project manager. Document such notifications on the report.

2.4.3.3.5.3 Report and color photographs are to be sent to the design project manager (one copy) and construction project manager (one copy).

2.4.4 The Engineer shall review and take appropriate action upon the shop drawings, samples, and other submissions furnished by the construction contractor and submitted to Engineer by the City. Engineer shall determine if the shop drawings, samples, and other submissions conform to the requirements of the Construction Documents. Engineer shall notify the Director if the shop drawings, samples or other submissions do not conform to the Construction Documents. Such action(s) shall be taken within 14 calendar days of receipt from the City unless approved in advance by the Director. Engineer shall maintain a log of all construction contractor submittals which shall include the submittal date, the action taken, and the date returned.

2.4.5 The Engineer shall prepare supporting data and provide other services (including revisions to Construction Documents) at no charge to the City in connection with change orders when such change orders are required either: (1) to make clarifications or to correct discrepancies, errors, or omissions in the Construction Documents; or (2) to conform the Construction Documents to the requirements of all applicable laws, codes, and regulations, including the City of Houston Building Code (which is expressly made applicable to this Project) as it was in effect at the time of execution of this Contract.

2.4.6 The Engineer shall review laboratory, shop, and mill tests of material and equipment for general conformance with Contract Document requirements and report to the Director in writing on such matters.

- 2.4.7 The Engineer shall provide design clarifications and recommendations to assist the City in resolving field problems relating to the construction. Requests for Information (RFIs) will normally be generated by the construction contractor when a situation or condition is anticipated or encountered in the field that may not be fully addressed in the construction Contract Documents. RFIs are to be reviewed, a complete and fully responsive written answer provided, and returned to the construction project manager with a copy to the design project manager within five business days depending upon the criticality and impacted cost of the condition as described in the RFI. Engineer's response to RFI's concerning proposed modifications or unforeseen conditions shall only address the technical and design aspect of the issue. Any cost or schedule impacts shall be addressed to the construction contractor by the construction project manager.
- 2.4.8 The Engineer shall evaluate construction contractor change and cost proposals and substitutions and recommend to the City to either approve or disapprove the construction contractor's proposal or substitution, unless instructed not to do so by the Director.
- 2.4.9 No less than 30 days and no more than 45 days before the expiration of the correction period established by the Construction Documents, Engineer, in company with the Director, shall observe the construction site. Within 14 days after such observation, Engineer shall furnish the Director with a written report enumerating items which require repair or replacement as provided under the correction period provisions of the Construction Documents.F
- 2.4.10 To avoid misunderstandings or questions, Engineer understands and agrees that the Director shall have the responsibility for the general administration of the construction contract. Accordingly, Engineer shall not have the authority or responsibility to issue direct instructions to the construction contractor, to reject work done by the construction contractor, or to require special inspections or tests. Engineer, however, shall provide continuing counsel to the Director throughout the construction of the Project.
- 2.4.11 Within 30 calendar days of receipt of construction contractor's "as-built" drawings, the Engineer shall prepare and submit the Record Drawings to the design project manager. The Record Drawings shall become the property of the City and shall show significant changes made in the Work by the construction contractor during the construction of the Project. Record Drawings shall be prepared on the original as-bid drawings in the format specified by the Director at the time of execution. The Engineer shall prepare the record documents based solely upon the marked-up "as-built" drawings, addenda, revisions, change orders and other data furnished by the City and the construction contractor. The "as-built" drawings provided by the construction contractor shall clearly depict:
- 2.4.11.1 Any deviations from the proposed utilities alignments shown in the as-bid drawings;
 - 2.4.11.2 Actual alignments of utilities if different from alignment shown in the as-bid drawings; and
 - 2.4.11.3 The presence of existing utilities that are either not shown or shown incorrectly in the as-bid drawings should be accurately depicted.
 - 2.4.11.4 Other revisions to be shown include:
 - 2.4.11.4.1 PPCM (Potentially Petroleum Contaminated Material) encounters;
 - 2.4.11.4.2 Lengths for proposed utilities that differ from that shown in the as-bid

- drawings;
- 2.4.11.4.3 Deviations from proposed tunneling lengths;
- 2.4.11.4.4 Existing pavement composition, i.e. "unreinforced concrete with asphalt overlay";
- 2.4.11.4.5 The name of the manufacturer for installed valves that are 20 inches and larger in diameter;
- 2.4.11.4.6 Deviations from proposed restrained joint lengths for water line project only;
- 2.4.11.4.7 Identify type of pipe material installed;
- 2.4.11.4.8 Revisions due to construction contractor's Requests for Information; and
- 2.4.11.4.9 Other changes made by the construction contractor.
- 2.4.11.5 Project RFI's (construction contractor's Request for Information) should be reviewed to ensure the accuracy of the record drawings.
- 2.4.11.6 Changes shall be made electronically using the Conformed Drawings as a baseline. Actual alignments of utilities shall be shown. Incorrectly shown utilities shall be crossed out and drawn correctly. Inaccurate callouts shall have a line drawn through them. Revised callouts shall be noted in the Conformed Drawings.
- 2.4.11.7 All record drawing revisions shall be accompanied by a revision number contained within a triangle. The revision shall then be dated and initialed in the revision block. Any revisions made by, or under the supervision of, an Engineer other than the one whose seal appears on the subject drawing shall be signed and sealed by the Professional Engineer responsible for the revision.
- 2.4.12 Provide, in the event the Project construction exceeds the time stated in the Construction Documents by more than 30 days, the continuing services required to be done by Engineer during construction of the Project.
- 2.4.13 For contracts that require the construction contractor to service, calibrate, maintain or provide periodic site inspections for a period of one year after the date of substantial completion, the Engineer shall accompany the construction contractor and construction project manager during such visits. For projects involving startup, testing, calibration, training and operation of facilities or systems, the Engineer shall assist the construction project manager in accomplishing such tasks in accordance with the Contract Documents.
- 2.4.14 When requested by the Director, the Engineer shall visit manufacturers' facilities in order to prequalify major products and materials to be incorporated into a construction contract or verify manufacturers' compliance with the Contract Documents. The Engineer shall accompany City staff or may travel unaccompanied, as approved by the Director. A written report shall be generated to document the results of the trips. Cost for travel shall be considered a Reimbursable Expense.
- 2.4.15 Within 30 calendar days of receipt of the construction "as-built" drawings, the Engineer shall provide field verified GPS'ed information of all newly installed storm water assets (i.e., manholes, inlets,

junction boxes, and outfalls). All GIS information shall be delivered in the required format detailed in the Storm Water GIS Data Standards/Specifications and Procedural Document provided by the City.

2.5 **Additional Services:** Engineer shall perform the Additional Services specified below if and when the Director authorizes such services.

2.5.1 Survey Services

2.5.1.1 Perform in accordance with the City Design Manual and other City design requirements as designated in writing by the Director.

2.5.1.2 Where new City of Houston monumentation is required in accordance with the City Design Manual, provide separate cost for task under surveying Additional Services.

2.5.2 Drug Detection and Deterrence. Conduct random, reasonable suspicion, and post-accident drug testing necessary to comply with this Contract.

2.5.3 Geotechnical Investigation. Perform in accordance with the City Design Manual and other City requirements as designated in writing by the Director.

2.5.4 Environmental Site Assessment. Perform in accordance with the City Design Manual and other City requirements as designated in writing by the Director.

2.5.5 Special Licenses and Permits (Payment)

2.5.5.1 The actual cost of special licenses and permits, including required inspection fees, shall be reimbursed by the City.

2.5.5.2 This Additional Service does not include engineering work associated with Basic Services.

2.5.6 Traffic Control Plan (TCP)

2.5.6.1 The specific traffic control work consists of the completed TCP, appropriate specifications and general notes, and traffic control construction cost estimates.

2.5.6.2 The TCP shall show detailed construction sequences and the necessary traffic control phases, complete with all barricades, signing, striping, delineation, detours, temporary traffic signals and any other devices, to protect the traveling public and provide safety to the construction forces.

2.5.6.3 The TCP should be accomplished with the least inconvenience to the traveling public consistent with expeditious completion of the Project in time and costs.

2.5.6.4 Construction Sequencing and TCP shall be in accordance with general traffic engineering principles and practices governing traffic control during construction as prescribed by the guidelines of the "Texas Manual on Uniform Traffic Control Devices" (TMUTCD), and City of Houston requirements.

2.5.6.5 Standards and Guidelines

2.5.6.5.1 The construction of the Project should be scheduled or sequenced to minimize the down time for the construction contractor and to maximize the utilization of space for the travel ways. Sequencing is accomplished by partitioning the Project into construction phases, which may be further segmented into steps. A "phase" is a major

portion of the construction, scheduled in a logical progression toward Project completion. A "step" is a minor portion of the construction, subordinate to a particular phase.

2.5.6.5.2 The TCP should clearly distinguish areas of construction with areas of traffic for each phase. The work zone is also to be distinguished from the actual construction limits.

2.5.6.5.3 Maintain minimum emergency travel lane width of ten feet at all times. If space is not available within the existing roadway, temporary widening of the pavement section may be necessary to provide a minimum 10-foot emergency travel lane.

2.5.6.5.4 The TCP should contain the following basic elements:

2.5.6.5.4.1 Project approach signing;

2.5.6.5.4.2 Phasing overview (as applicable);

2.5.6.5.4.3 Detailed plans for each phase of construction and any designated steps; and

2.5.6.5.4.4 Necessary TCP details, including appropriate City standards (Barricade & Construction, etc.), typical lane closures, and intersection details.

2.5.6.6 Drawings

2.5.6.6.1 Engineer shall verify and show existing field conditions of roadways and access to adjacent properties.

2.5.6.6.2 Engineer shall show traffic control devices and location of traffic flow, indicated by direction arrows, for each phase of the Project.

2.5.6.6.3 Engineer shall define construction areas by appropriate identifications, such as cross-hatching. Show all barricades, traffic signing, traffic signal changes, detour routing, and special intersection treatment details.

2.5.6.6.4 Engineer shall show only roadways that are existing or to be constructed under the Project. Do not show roadways that have been removed or that will be constructed in future contracts.

2.5.6.6.5 Engineer shall prepare cross sections for major thoroughfares and for each roadway variation showing the traffic lanes, construction pavement markings, delineators, barriers, buffer zone for barrels and concrete traffic barriers (CTBs), pavement drop-off, and construction details.

2.5.6.6.6 Engineer shall pictorially represent all construction signing and label with appropriate identification number as shown in TMUTCD. Show and identify all other traffic control devices in the plans and cross sections.

- 2.5.6.6.7 Engineer shall use a "typical" TCP detail for portions of the Project wherever possible.
- 2.5.6.6.8 Engineer shall prepare traffic control construction quantities and estimate of construction cost.
- 2.5.6.6.9 Engineer shall add general notes to the drawings or to the City's Standard General Note Drawing, as required for clarity.
- 2.5.6.6.10 Engineer shall include the City of Houston Standard Specifications for Traffic Control, and supplement as required.
- 2.5.6.7 For paving projects, include the following.
 - 2.5.6.7.1 Engineer shall show temporary traffic control measures required during construction, such as temporary adjustments to traffic signal configurations, revisions to signal timing sequences, installations of contractor-supplied equipment and conduit to provide for proper signal operation, and parking restriction signs in areas where parking is not currently restricted but added roadway capacity is required.
 - 2.5.6.7.2 Where substantial roadway capacity is being lost during construction, the Engineer shall show placement of contractor-supplied changeable message signs with proposed messages to encourage use of alternative routes by the traveling public.
- 2.5.7 Storm Water Pollution Prevention Plan (SWPPP). Perform in accordance with the City Design Manual and other City requirements.
- 2.5.8 Existing Conditions Survey and Analysis
 - 2.5.8.1 The Engineer shall perform a survey and analyses of the existing conditions at designated locations. The Engineer shall submit the results of this work in a separate report.
 - 2.5.8.2 This special service is used where a separate deliverable is desired, and where the survey/analysis is not directly related to the scope of the new work, thus the engineering cost would not be included in the Basic Services.
- 2.5.9 Street Lighting Plans
 - 2.5.9.1 For new roadway construction or complete roadway reconstruction, it is the City of Houston's practice to upgrade street lighting along all roadways to current recommended levels as part of the Capital Improvement Projects.
 - 2.5.9.2 Proposed Street Lighting locations shall be provided at 1"=40' scale (minimum) consistent with project overall layouts.
 - 2.5.9.3 Design consultant will prepare the lighting layout, spacing the streetlights in accordance with the current published CenterPoint Energy Guidelines and Specifications. Distances shall avoid driveway/utility conflicts. The design should include any existing street lighting and generally begin layouts at intersections working away from them.

- 2.5.9.4 Street Lighting plans shall show the proposed street lighting locations, electrical conduits, pull boxes and power feed locations provided by CenterPoint Energy in accordance with published CenterPoint Energy specifications.
- 2.5.9.5 The approved layout will be submitted to CenterPoint Energy for review and cost estimate preparation for temporary or new fixtures. Conduit and pull box costs shall be included in the Engineer's Project construction cost estimate.
- 2.5.9.6 Street Lighting Plans shall include a table showing the locations of the existing and proposed streetlights by station number.
- 2.5.10 Tree Protection, Mitigation, and Planting Plan. Perform in accordance with the City Design Manual and other City requirements, as designated in writing by the Director.
- 2.5.11 Traffic Signals. Perform in accordance with the City Design Manual and other City requirements, as designated in writing by the Director.
- 2.5.12 Impact Analysis and Mitigation Report for projects requiring drainage and pavement improvements.
 - 2.5.12.1 Perform Impact Analysis and Mitigation Report when authorized by the City as designated in writing by the Director.
 - 2.5.12.2 A separate hydraulic analysis and report as required by government agencies having regulatory jurisdiction.
 - 2.5.12.3 Includes quantification of existing and proposed outflows and water surface elevation at outfall to the receiving system.
- 2.5.13 Design of detention pond or low impact development. For mitigation of adverse impacts; perform in accordance with the City Design Manual and other City requirements as designated in writing by the Director.
- 2.5.14 Technical Review Committee (TRC) Meeting
 - 2.5.14.1 The Engineer shall attend a Pre-TRC meeting, as scheduled by the Director.
 - 2.5.14.1.1 The purpose of the Pre-TRC is to allow the Director to review the preliminary design, presentation materials, and recommendations.
 - 2.5.14.1.2 The Engineer shall have completed and submitted the Preliminary Engineering Report (PER) prior to the Pre-TRC meeting.
 - 2.5.14.1.3 As part of the Pre-TRC, the Engineer shall prepare a Microsoft PowerPoint presentation, a TRC agenda and an executive summary showing the alternatives, recommendations, and estimated construction and project costs.
 - 2.5.14.2 The Engineer will have two weeks to revise the report and presentation based on comments from the Pre-TRC. Once revisions have been made, the Engineer shall submit to the Director one copy of the report with all exhibits, maps, and computer model output listed in other parts of this Contract. The Executive Summary from the report will be included with the notice of TRC distribution.
 - 2.5.14.3 Upon successful completion of the Pre-TRC meeting, the Engineer shall attend a TRC Meeting.

- 2.5.14.3.1 The purpose of the TRC meeting is to present the preliminary engineering recommendations to the City's Technical Review Committee for approval to proceed to Final Design.
- 2.5.14.3.2 The Engineer will provide equipment for preparation and presentation of the TRC meeting.
- 2.5.14.3.3 Members of the TRC are City staff and may include senior managers representing engineering, operations, maintenance, and construction divisions. Other stakeholders may attend at the City's direction.
- 2.5.14.3.4 The TRC will evaluate the Engineer's recommendations and approve or modify as appropriate.
- 2.5.14.3.5 Within three business days following the TRC Meeting, the Engineer shall submit a summary of the decisions and action items from the meeting, and a revised construction cost estimate.
- 2.5.14.3.6 At the conclusion of the TRC, Engineer shall:
 - 2.5.14.3.6.1 Submit a revised estimate of probable construction cost, based on the outcome of the TRC;
 - 2.5.14.3.6.2 Revise the PER in response to the Technical Review Committee's record of decisions and action items and furnish three final copies of the PER; and
 - 2.5.14.3.6.3 Submit final PER in PDF Format on a CD in a single file with a Table of Contents.
 - 2.5.14.3.6.4 Engineer shall make such revisions to the preliminary design as may be required by the Director as a result of Committee recommendations.
- 2.5.14.3.7 Upon acceptance by the TRC of the need to acquire additional right-of-way or easements for the project, the Director may issue to the Engineer a Notice to Proceed for the preparation of right-of-way and easement documents. These documents shall be delivered to the Director within the time specified in the Notice to Proceed.

2.5.15 Independent Quantity Take-Off

2.5.15.1 Engineer shall perform the following service(s).

- 2.5.15.1.1 Have an independent third party (Estimator) perform a quantity take-off from the Bid Ready Drawings and Specifications prior to Final Submittal. Engineer may provide other documents that will assist the Estimator to complete the task; however, these documents shall in no way compromise the independent judgment of the Estimator. Estimator shall identify each bid item and prepare the quantities for each bid item in accordance with the City of Houston's Standard Construction Specifications and/or Custom Specifications, as applicable, that is part of the detailed construction cost estimate.

- 2.5.15.1.2 Engineer is to review the quantity take-off with the Estimator and resolve all discrepancies in the bid items and quantities.
- 2.5.15.1.3 Engineer is to submit a signed letter confirming that an independent quantity take-off was performed, identifying the independent third party who performed the quantity take off, and certifying the accurateness of the bid items and quantities that are included in the detailed construction cost estimate.
- 2.5.15.1.4 The Engineer shall submit a check print of the third party review and mark-up of an independent quantity take-off to accompany the signed letter deliverable. Each unit price item shall be highlighted indicating that it has been checked. The check print shall be initialed by the author and the reviewer.

2.5.16 Other Additional Services

- 2.5.16.1 Provide the services of a Consultant to perform subsurface investigations, including performance of test borings, soil samples, and other foundation investigations, laboratory analyses of the samples, and engineering analyses. Engineer or the Consultant shall prepare a detailed report of all findings, and Engineer shall deliver to the Director two bound copies of the report and an electronic copy in the form requested by the Director.
- 2.5.16.2 Prepare special studies and reports, such as environmental Documents (including representation and testimony at hearings and community meetings), grant applications, etc.
- 2.5.16.3 Provide the services of an independent cost estimator as a consultant to make a comprehensive construction cost estimate for the Project, in a form satisfactory to the Director. The independent cost estimate shall be in addition to the cost estimates prepared by Engineer.
- 2.5.16.4 Provide value engineering services including the review of other engineers, either within the same organization or in other firms, to determine whether a proposed solution is optimum and, if not, to suggest a better approach for meeting the Project's functional and financial criteria.
- 2.5.16.5 Provide a scale model of the Project.
- 2.5.16.6 Reproduce Construction Documents, reports, and other materials, other than those reproductions included in the Basic Services, and excluding reproductions for the office use of Engineer and Engineer's Consultants.
- 2.5.16.7 Provide, in the event of termination of Engineers services pursuant to this Contract, such services as are reasonable and necessary for preserving partially finished work products or for the recording of work products in a particular manner (including the making of record prints of drawings, etc.).
- 2.5.16.8 Provide construction management services on the site during Project construction.

- 2.5.16.9 During the Final Design or Construction Phase, make revisions to Construction Documents, prepare addenda, or prepare change orders to reflect Project scope changes requested by the Director, required to address changed conditions or change in direction previously approved by the Director, mandated by changing governmental laws, or necessitated by City's acceptance of substitutions proposed by the construction contractor.
- 2.5.16.10 Prepare supporting data and other services in connection with change orders, other than those change orders and related services included in Section 2.4 of Article 2 of this Contract.
- 2.5.16.11 Consult with the City concerning replacement of any construction work damaged by fire or any other causes and furnish professional services as may be required in connection with the replacement of such work.
- 2.5.16.12 Prepare or obtain the services of a Consultant to prepare Operation and Maintenance (O & M) Manuals.
- 2.5.16.13 Prepare for, present to, and attend public engagement, preliminary conferences with the City, as requested by the Director. In addition to the foregoing, Engineer shall attend all other meetings as required by the Director.
- 2.5.16.14 Perform services in the event the Basic Services are suspended by the Director for a period exceeding 12 months, and the Engineer provides evidence satisfactory to the Director that additional effort is necessary to resume the Basic Services.
- 2.5.16.15 Unless instructed otherwise by the Director, cooperate fully with surety's representative in the event of construction contractor default; permit surety to copy all relevant documents at surety's expense.
- 2.5.16.16 Provide any Additional Services or other design services related to the Project and not otherwise included in the Basic Services or Additional Services as requested by the Director.
- 2.5.16.17 Travel to points outside Houston and its extraterritorial jurisdiction, if such travel is reasonably necessary to accomplish a task under this Contract and is authorized in writing by the Director. Travel costs shall include common carrier fares, ground transportation expenses and parking fees, and for overnight trips, the costs of lodging and meals and shall not exceed the appropriation limits of this Contract.

2.6 Time of Performance: Engineer shall perform the Basic Services in accordance with the following:

- 2.6.1 Phase I - Preliminary Design – per negotiated work order for each Construction Package separately;
- 2.6.2 Phase II - Final Design – per negotiated work order for each Construction Package separately;
- 2.6.3 Phase III - Construction Phase Services shall be completed at reasonable intervals in conjunction with the progress of the Project construction and for the period of construction time stated in the Construction Documents;
- 2.6.4 Time taken for review of Phase I and Phase II designs by City personnel shall be in addition to the calendar day periods specified above. In the preparation of the Project Schedule, Engineer shall allow

at a minimum, 21 calendar days for City review of Phase I, and 21 calendar days for City review of Phase II; and

- 2.6.5 Upon written request of Engineer to the Director and the Director's approval, the City shall grant time extensions during each Phase for any delays caused by the City or other agencies with which the services must be coordinated and over which Engineer has no control.

2.7 Engineer's Invoices

- 2.7.1 Unless instructed otherwise in writing by the Director, Engineer must invoice the City for all Phase I amounts plus all Phase I-related Additional Services and Reimbursable Expenses before the Director issues a Notice to Proceed for Phase II.
- 2.7.2 Unless instructed otherwise in writing by the Director, Engineer must invoice the City for all Phase II lump sum payments plus all Phase II-related Additional Services and Reimbursable Expenses before the Director issues a Notice to Proceed for Phase III.
- 2.7.3 The amounts set out in the Phases I, II, and III Notices to Proceed shall constitute Engineer's total compensation under the Contract for a Construction Package unless the Director requests in writing an Additional Service or Reimbursable Expense not related to any of the above phases.
- 2.7.4 If Director and Engineer do not agree to the lump sum amount for such Construction Package, then the Director may send notice to the Engineer deleting such Construction Package from the Contract.
- 2.7.5 To receive fees for Phase I Services, Engineer shall submit copies of original invoices showing the corresponding Phase I Services and associated costs performed for each Construction Package and not previously invoiced. The invoice must include itemizations supporting the costs included. The itemization shall include, where applicable:
- 2.7.5.1 A breakdown of the type and cost of each item included within the definition of Reimbursable Expenses;
 - 2.7.5.2 A breakdown of the individual expenditures allowable as travel costs in the definition of Reimbursable Expenses;
 - 2.7.5.3 The actual invoice cost of Consultant Subcontract Cost plus Consultant Markup, including a copy of the Consultant's invoice;
 - 2.7.5.4 The number of hours expended by Engineer's employees times Raw Salary times Raw Salary Multiplier for each Construction Package and upon request by the Director a copy of employee time sheets;
 - 2.7.5.5 Reasonable costs of contract personnel and personnel employed through employment agencies plus the Consultant Markup; and
 - 2.7.5.6 A breakdown of the work performed in the Construction Package and a percent of the total that is completed.
- 2.7.6 To receive fees for Additional Services, Engineer shall submit copies of original invoices showing the corresponding Additional Services performed and not previously invoiced. The invoice must include itemizations supporting the costs included. The itemization shall include, where applicable:
- 2.7.6.1 A breakdown of the type and cost of each item included within the definition of Reimbursable Expenses;

- 2.7.6.2 A breakdown of the individual expenditures allowable as travel costs in the definition of Reimbursable Expenses;
- 2.7.6.3 The actual invoice cost of Consultant Subcontract Cost plus Consultant Markup, including a copy of that the Consultant's invoice;
- 2.7.6.4 The number of hours expended by Engineer's employees times the Raw Salary times the Raw Salary Multiplier for each Additional Service and upon request by the Director a copy of employee time sheets;
- 2.7.6.5 Reasonable contract personnel cost of personnel and personnel employed through employment agencies, plus Consultant Markup; and
- 2.7.6.6 A reference to the work description in the applicable Notice to Proceed that authorized the item.
- 2.7.7 With each monthly invoice Engineer shall submit a copy of the updated Project Schedule, a brief narrative of the services performed in the preceding month, and a list of the planned activities for the following month. Any request for modification of the approved Project Schedule shall be submitted by Engineer in writing for the Director's consideration.
- 2.7.8 Claims for Additional Services shall be submitted for payment within a maximum of 60 days from the date of completion of the Additional Service.
- 2.7.9 Upon request of the Director, Engineer shall submit reports to the Director for informational purposes, showing all of the information set out in this Section, although such information shall not affect the method by which Engineer is paid.

2.8 **Insurance.** Engineer shall provide and maintain certain insurance and Endorsements in full force and effect at all times during the term of this Contract and any extensions thereto. Such insurance is described as follows.

2.8.1 **Risks and Limits of Liability**

2.8.1.1 Engineer shall maintain the following insurance coverages in the following amounts:

<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	<ul style="list-style-type: none"> • Texas Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> • Bodily Injury by accident \$1,000,000 (each accident) • Bodily Injury by Disease \$1,000,000 (policy limit) • Bodily Injury by Disease \$1,000,000 (each employee)
Commercial General Liability: Including Broad Form Coverage, Bodily Injury and Property Damage (Products and Completed Operations required when Physical Operations performed)	<ul style="list-style-type: none"> • \$1,000,000 Limit each Occurrence and \$2,000,000 aggregate per 12-month period
Automobile Liability	<ul style="list-style-type: none"> • \$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Professional Liability	<ul style="list-style-type: none"> • \$2,000,000 Limit per claim/aggregate

Excess Liability applicable to Commercial General and Automobile Liability	<ul style="list-style-type: none"> \$1,000,000 Limit each occurrence/aggregate
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

- 2.8.2 **Insurance Coverage.** At all times during the term of this Contract and any extensions or renewals, Engineer shall provide and maintain insurance coverage that meets the Contract requirements. Prior to beginning performance under the Contract, at any time upon the Director's request, or each time coverage is renewed or updated, Engineer shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Engineer shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Engineer waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Engineer 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.
- 2.8.3 **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 (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) 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.
- 2.8.4 **Required Coverage.** The City shall be an Additional Insured under this Contract, and all policies except Professional Liability and Worker's Compensation must name the City as an Additional Insured. Engineer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Engineer'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 Contract. If professional liability coverage is written on a "claims made" basis, Engineer 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 Contract with a duration of two years after substantial completion.
- 2.8.5 **Notice. ENGINEER 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, Engineer shall provide other suitable policies in order to maintain the required coverage. If Engineer does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Engineer from any further performance under this Agreement and begin procedures to terminate for default.

- 2.9 **INDEMNIFICATION.** ENGINEER AGREES TO AND SHALL, TO THE EXTENT PERMITTED BY TEXAS LOCAL GOVERNMENT CODE §271.904, 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 ARISING AS A RESULT OF ENGINEER'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONSULTANTS', OR SUBCONTRACTORS' ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS IN CONNECTION WITH ITS PERFORMANCE UNDER THIS AGREEMENT, WHETHER ENGINEER IS IMMUNE FROM LIABILITY OR NOT. ENGINEER SHALL INDEMNIFY AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. THE INDEMNITY SHALL APPLY WHETHER OR NOT THE EVENT IS CAUSED BY THE CONTRIBUTORY NEGLIGENCE OF THE CITY.
- 2.10 **Ownership of Documents:** Engineer shall grant and assign and hereby does grant and assign to the City all right, title, interest and full ownership worldwide in and to any work, invention and all Documents, including Construction Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets, source and object codes and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Engineer, its agents, employees, contractors and subcontractors pursuant to this Contract (collectively, the "Works"), to have and to hold the same unto the City absolutely. This right of ownership shall include the City's ability to modify, sell, or license all computer programs, including all access to programming codes necessary to do so.
- 2.10.1 Engineer agrees that neither it nor any of its agents, employees, contractors or subcontractors shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works. If requested by the Director, the Engineer shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.
- 2.10.2 Engineer shall execute all documents required by the Director to further evidence such assignment and ownership. Engineer shall cooperate with the City in registering, creating or enforcing any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Engineer is requested and rendered pursuant to this Section, the City shall reimburse Engineer for all out-of-pocket expenses incurred by Engineer in rendering such assistance. On termination of this Contract or upon request by the Director, Engineer shall deliver all Works to the City. Engineer shall obtain written agreements in the form specified in Exhibit "H" from its agents, contractors and subcontractors performing work hereunder which bind them to the terms contained in this Section.
- 2.10.3 The Engineer may, however, retain copies of such Documents. The Engineer shall have the right to use such copies internally, but the Engineer may not sell, license or otherwise market such Documents. Upon request by the Director, the Engineer shall deliver such Documents to the City.

2.10.4 Engineer does not represent that the Documents are or are intended to be, suitable for use on other Projects or extensions of this Project, to the extent that the Documents are site-specific. Any modification to the Engineer's work product or unintended use of same will be at the sole risk of the City.

2.11 Consultants

- 2.11.1 Engineer shall not subcontract any part of its Contract without approval by the Director.
- 2.11.2 Engineer shall be responsible for services performed by Consultants to the same extent as if the services were performed by Engineer.
- 2.11.3 Engineer shall replace any Consultant when requested to do so by the Director, who shall state the reasons for such request.
- 2.11.4 Engineer shall provide the Director with a copy of any of its Consultant subcontracts at Director's request.

2.12 Payment of Consultants

- 2.12.1 Engineer shall make timely payments to all persons and entities supplying labor, materials or equipment for the performance of this Contract in accordance with the State of Texas Prompt Payment Act.
- 2.12.2 Engineer agrees to protect, defend, and indemnify the City from any claims or liability arising out of Engineer's failure to make such payments.
- 2.12.3 Disputes relating to payment of MWBE subcontractors shall be submitted to mediation in the same manner as any other disputes under the MWBE subcontract. Failure of Engineer to comply with the decisions of the mediator may, at the sole discretion of the City, be deemed a material breach leading to termination of this Contract.

2.13 **Participation in Bidding and Construction.** Engineer agrees not to participate in the bidding process as a bidder and not to engage in construction of the Project as a contractor or subcontractor. By written agreement, Engineer shall require each Consultant for Project engineering services to be bound by the requirements of this Section.

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

2.15 Minority and Women Business Enterprises Participation

- 2.15.1 It is the City's policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide Percentage Goals for contracting with MWBEs, are incorporated into this Contract.
- 2.15.2 Engineer shall make good faith efforts to award subcontracts or supply agreements in at least **24%** of the value of this Contract to MWBEs. Engineer acknowledges that it has reviewed the requirements

for good faith efforts on file with the City's Office of Business Opportunity ("OBO") and will comply with them. To this end, Engineer shall maintain records showing:

- 2.15.2.1 Subcontracts and supply agreements with Minority Business Enterprises;
 - 2.15.2.2 Subcontracts and supply agreements with Women's Business Enterprises; and
 - 2.15.2.3 Specific efforts to identify and award subcontracts and supply agreements to MWBEs.
- 2.15.3 Engineer shall submit periodic reports of its efforts under this Section to the Director of Office of Business Opportunity in the form and at the times he or she prescribes.
- 2.15.4 Engineer shall require written subcontracts with all MWBE subcontractors and suppliers and shall submit all disputes with MWBE subcontractors to binding mediation in Houston, Texas if directed to do so by the Director of Office of Business Opportunity. If Engineer is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, then the subcontract must also be signed by the attorneys of the respective parties.

2.16 Drug Abuse Detection and Deterrence

- 2.16.1 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. Engineer shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Engineers, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Contract and is on file in the City Secretary's Office.
- 2.16.2 Before the City signs this Contract, Engineer shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
- 2.16.2.1 A copy of its drug-free workplace policy;
 - 2.16.2.2 The Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E"; and
 - 2.16.2.3 A written designation of all safety impact positions or, if applicable, a Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "G".
- 2.16.3 If Engineer files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance of this Contract or on completion of this Contract if performance is less than six months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "F". Engineer shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each six-month period of performance and within 30 days of completion of this Contract. The first six-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Engineer begins work under this Contract.
- 2.16.4 Engineer also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Engineer's employee work force.
- 2.16.5 Engineer shall require that its subcontractors comply with the Executive Order, and Engineer shall secure and maintain the required documents for City inspection.

- 2.17 **Confidentiality.** Engineer and each of its Consultants shall keep all Documents and City work products or data it receives in strict confidence. Engineer shall not divulge such records or the information contained therein except as approved in writing by the Director or as otherwise required by law.
- 2.18 **Licenses and Permits.** Engineer shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Engineer shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license.
- 2.19 **Title VI Assurances.** The requirements and terms of the United States Department of Transportation Title VI program, as revised from time to time, are incorporated into this Contract for all purposes. Engineer has reviewed Exhibit "J" and shall comply with its terms and conditions.
- 2.20 **Pay or Play.** The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this Contract for all purposes. Engineer has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions.
- 2.21 **Anti-Boycott of Israel.** Engineer certifies that Engineer 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.
- 2.22 **Zero Tolerance Policy for Human Trafficking and Related Activities.** 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. Engineer 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 this Agreement's effective date. Engineer shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Engineer or its subcontractors providing services or goods under this Agreement.
- 2.23 **Preservation of Contracting Information.**
- 2.23.1 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract and the Engineer agrees that this Contract can be terminated if the Engineer 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 Contract, then for the duration of this Contract (including the initial term, any renewal terms, and any extensions), Engineer shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Contract 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, Engineer shall provide any Contracting Information related to this Contract that is

in the custody or possession of Engineer. Upon the expiration or termination of this Contract, Engineer shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this Contract that is in the custody or possession of Engineer, or (b) preserve the Contracting Information related to this Contract as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy.

- 2.23.2 If Engineer 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 Engineer and may terminate this Contract. To effect final termination, the Director must notify Engineer in writing with a copy of the notice to the CPO. After receiving the notice, Engineer shall, unless the notice directs otherwise, immediately discontinue all services under this Contract, and promptly cancel all orders or subcontracts chargeable to this Contract.

ARTICLE 3

DUTIES OF THE CITY

- 3.1 **Fees, In General.** The City shall pay fees to the Engineer for all services rendered by Engineer in accordance with the terms and conditions of this Contract, subject to the appropriation limits of Article 3 hereof.
- 3.1.1 If services are suspended by the Director for a period exceeding 12 months, Engineer's fees will be subject to renegotiation, subject to the appropriation limits described this Contract.
- 3.1.2 If Engineer receives payment from the City for work performed by any Consultant or for materials provided by any supplier and Engineer withholds or has withheld payment to the Consultant or supplier on account of a deficiency in the quality or quantity of that Consultant's or supplier's work or materials, or if the Director reasonably believes that the work or a portion thereof cannot be completed for the remaining unpaid amount of any applicable limit or lump sum prices, the City may withhold the amount associated with such work or materials from any pending or future payments to the Engineer until the next regular payment to Engineer occurring after the City receives reasonable documentation that the deficiency has been remedied.
- 3.1.3 The City shall not authorize any work on the Project without issuing a Notice to Proceed.
- 3.1.4 All invoices are subject to approval by the Director and are due and payable 30 days after receipt. All payments shall be made by check. Such checks shall be made payable to Engineer and payments shall be addressed to Engineer at its address specified herein for notices. The City agrees that it will not unreasonably delay or withhold payment or approval of any invoice. Neither partial payments made hereunder nor approval of invoices or services by the Director shall be construed as final acceptance or approval of that part of Engineer's services to which such partial payment or approval relates nor shall such payments be construed as relieving Engineer of any of its obligations hereunder with respect thereto.
- 3.2 **Fees for Basic Services:** Subject to all the terms and conditions of this Contract, the City shall pay, and Engineer agrees to accept as full compensation for the Basic Services, the following fees.

- 3.2.1 Phase I - Preliminary Design. Subject to the Limit on Phase I Compensation, the City shall pay a fee for the complete performance of Phase I Basic Services work consisting of:
- 3.2.1.1 Raw Salary Times Raw Salary Multiplier, plus
 - 3.2.1.2 Reimbursable Expenses, plus
 - 3.2.1.3 Consultant Subcontract Cost for services that Engineer subcontracts to a Consultant, plus
 - 3.2.1.4 Reasonable fees paid to contract personnel and personnel employed through employment agencies.
- 3.2.2 Phase II – Final Design Phase Service.. For Phase II services performed for a Construction Package, the City shall pay a Negotiated Lump Sum which will be set out in the Notice to Proceed for such Construction Package. The Director and Engineer shall agree in writing to a Negotiated Lump Sum fee for each Construction Package prior to issuance of the Phase II Notice to Proceed. Engineer guarantees that it shall perform all Phase II services for the Negotiated Lump Sum fees set out in the respective Notices to Proceed.
- 3.2.3 Phase III - Construction Phase Services. For Phase III services performed for a Construction Package, the City shall pay a Negotiated Lump Sum which will be set out in the Notice to Proceed for such Construction Package. The Director and Engineer shall agree in writing to a Negotiated Lump Sum fee for each Construction Package prior to issuance of the Phase III Notice to Proceed. Engineer guarantees that it shall perform all Phase III services for the Negotiated Lump Sum fees set out in the respective Notices to Proceed.
- 3.2.4 At the discretion of the Director, Phase II and III services for a Construction Package may be included in the same Notice to Proceed for a Construction Package. For Phase II and III services performed for a Construction Package, the City shall pay a Negotiated Lump Sum which will be set out in the Notice to Proceed for such Construction Package. The Director and Engineer shall agree in writing to a Negotiated Lump Sum fee for each Phase II and III respectively for each Construction Package prior to issuance of the Notice to Proceed. Engineer guarantees that it shall perform Phase II and III services for the Negotiated Lump Sum fees set out in the respective Notices to Proceed.
- 3.2.5 After Engineer has completed the performance of all of the required services for Phase III, the City shall pay Engineer the total amount owed for that Phase less any amounts previously paid pursuant to the monthly invoices.

3.3 **Fees for Additional Services.** Subject to all the terms and conditions of this Contract, the City shall pay and Engineer agrees to accept, as full compensation for authorized Additional Services, the fees specified in this Section.

- 3.3.1 Survey Additional Services: For Route Topographical Survey only, the City shall pay Engineer a portion of the Negotiated Lump Sum fee according to the terms in the applicable Notice to Proceed or at the rate of **\$4.50** per linear foot for **Minor street**, and **\$4.50** per linear foot for **Major street** of actual Survey performed. If these services are provided by the Engineer's Consultant, the City shall pay Engineer at the above rates plus Consultant markup.

3.3.2 For Drug Detection and Deterrence Additional Services, the City shall pay Engineer a portion of the Negotiated Lump Sum fee according to the terms in the applicable Notice to Proceed in advance or as follows:

3.3.2.1 The cost of invoiced laboratory analyses necessary for personnel producing services under this Contract; and

3.3.2.2 Raw Salary times Raw Salary Multiplier for employees' time not-to-exceed one-hour total for each random test conducted.

3.3.3 For all other Additional Services, the City will pay Engineer a portion of the Negotiated Lump Sum fee according to the terms in the applicable Notice to Proceed.

3.4 **Limit of Appropriation.** Engineer recognizes that under certain provisions of the Charter of the City of Houston, the City may not obligate itself by contract to an extent in excess of an amount appropriated by the City Council and further recognizes that only **\$1,225,000.00** has been appropriated and **\$150,000.00** has been allocated and budgeted by City Council to pay the Cost of Basic Services hereunder and that only **\$282,000.00** has been appropriated and **\$519,500.00** has been allocated and budgeted by the City Council to pay the cost of Additional Services hereunder for a total amount of **\$1,507,000.00** for appropriation and **\$669,500.00** for allocation.

3.4.1 In the event the appropriation for Basic Services is insufficient to compensate Engineer for Basic Services, Engineer shall suspend its Basic Services at such time as the total appropriation for Basic Services is expended, but shall resume such Basic Services, if and when authorized by the Director as provided elsewhere herein, upon transfer of funds by the Director or appropriation of additional funds by the City Council for Basic Services.

3.4.2 In the event the appropriation for Additional Services is insufficient to compensate Engineer for authorized Additional Services in accordance with the payment provisions of Article 3 hereof, Engineer shall suspend its Additional Services at such time as the total appropriation for Additional Services is expended, but shall resume such Additional Services, if and when authorized by the Director as provided elsewhere herein, upon transfer of funds by the Director or appropriation of additional funds by the City Council for Additional Services.

3.4.3 The Director may authorize the transfer of funds between Basic Services and Additional Services when necessary to continue services by issuing a Supplemental Notice to Proceed, provided that the transfer of funds does not exceed 25% of the Negotiated Lump Sum in the original Notice to Proceed and total funds authorized do not exceed the total amount appropriated by City Council.

3.5 **Method of Payment.** The City shall pay on the basis of monthly invoices submitted by Engineer and approved by the Director, showing the services performed and the fee. Invoices from Engineer shall show the hours worked in the preceding month and the corresponding hourly rates for Services. The City shall pay Engineer within 30 days of the receipt and approval of the invoices. The City shall make payments to the Engineer at the address for notices.

3.6 Certain Duties of the City

3.6.1 In addition to its other duties under this Contract, the City shall perform the following services:

- 3.6.1.1 When requested to do so in writing by the Engineer, provide access to information such as existing drawings, maps, field notes, statistics, computations, and other data in the possession of the City which in the Director's opinion will assist the Engineer in the performance of its services hereunder; and
- 3.6.1.2 Examine the Construction Documents submitted by the Engineer and render decisions pertaining thereto within a reasonable time so as to avoid unnecessary delay in the progress of the Engineer's services.

3.7 Partial Payments

3.7.1 For Phase II and III Basic Services the City shall make partial payments of the fees on the basis of monthly invoices submitted by Engineer and approved by the Director. The invoices must show for each Construction Package the following on the standard format provided by the City:

- 3.7.1.1 The percentage of the total services completed in the applicable Phase in the preceding month;
- 3.7.1.2 A summary of the services performed during the period covered by the invoice; and
- 3.7.1.3 The amount due for such services, according to the below Milestones.

3.7.2 The amount of partial payments due for services performed during Phase II shall be a percentage of the total fee due for each Construction Package for Phase II services equal to the percentage of the total Phase II services performed during the period covered by the invoice. The percentage of the total fee due for partial payments for Phase II services shall not exceed the following:

<u>MILESTONE</u>	<u>MAXIMUM PHASE II PAYMENT</u>
1. Research Utilities	N/A
2. Plot Topographic Survey and Utilities	N/A
3. Submit 60% Drawings	N/A
4. Submit 90% Final Drawings and Specifications	N/A
5. Bid-Ready Drawings and Specifications	95%
6. Completion of Phase II Services	100%

3.7.3 The amount of partial payment due for services performed during Phase III shall be a percentage of the lump sum fee equal to the percentage of the total services for that Phase performed during the period covered by the invoice.

3.7.4 The amount of partial payment due for Additional Services shall be a percentage of the lump sum fee equal to the percentage of the total services (for the Phase for which the Additional Service was authorized) performed during the period covered by the invoice.

3.7.5 Definition of above Phase II Milestones for payment

3.7.5.1 Research Utilities

3.7.5.1.1 Engineer obtains and completes review of available record drawings.

- 3.7.5.1.2 Engineer completes the utility plan review, as defined in this Scope of Services.
- 3.7.5.1.3 Engineer completes coordination with other agencies, as defined in this Scope of Services.
- 3.7.5.1.4 Engineer verifies information obtained in this Section against findings from Survey.
- 3.7.5.1.5 Engineer obtains maps and correspondence from applicable private utilities, showing and verifying location of existing private utilities.
- 3.7.5.2 Plot of Topographical Surveys and Utilities. Engineer submits set of plan drawings showing results of topographic survey and location of existing public and private utilities.
- 3.7.5.3 Submit Drawings and Draft Specifications (60% Design Submittal)
 - 3.7.5.3.1 Engineer submits sets of completed construction drawings, including as a minimum:
 - 3.7.5.3.1.1 Cover Sheet;
 - 3.7.5.3.1.2 Index Sheet (list of drawings);
 - 3.7.5.3.1.3 Overall Layout Sheet;
 - 3.7.5.3.1.4 Survey Control Map;
 - 3.7.5.3.1.5 General Notes Sheets (as required);
 - 3.7.5.3.1.6 Plan and profile drawings of existing conditions, existing utilities and proposed improvements;
 - 3.7.5.3.1.7 Details of crossings (RR, HCFCD, TXDOT, etc.), potentially contaminated areas, and proposed real estate acquisitions;
 - 3.7.5.3.1.8 Standard Details;
 - 3.7.5.3.1.9 Traffic Control Plan, Detour Plans and temporary Traffic Signal plans (if required);
 - 3.7.5.3.1.10 Storm Water Pollution Prevention Plan (if required);
 - 3.7.5.3.1.11 Tree and plant protection plan (if required);
 - 3.7.5.3.1.12 For Paving and Drainage Projects, also include:
 - 3.7.5.3.1.12.1 Typical roadway section/cross section;
 - 3.7.5.3.1.12.2 Proposed Traffic Signal Plans;
 - 3.7.5.3.1.12.3 Proposed Paving Marking and Signage Plans;
 - 3.7.5.3.1.12.4 Street Lighting Plans;
 - 3.7.5.3.1.12.5 Drainage Area Maps; and
 - 3.7.5.3.1.12.6 Houston Storm, and other Hydraulic and Hydrology Sewer Computations.

- 3.7.5.3.1.13 For Facilities Projects, also include process flow diagrams, piping diagrams, hydraulic profile diagrams, and instrumentation diagrams, as applicable;
- 3.7.5.3.1.14 For Water & Wastewater Projects, also include design calculations for the proposed improvements and system head curves for pumps; and
- 3.7.5.3.1.15 Engineer submits sheet-by-sheet quantity takeoff, flagman hour calculation, and documentation to support the construction duration specified.
- 3.7.5.3.1.16 Engineer shall submit documentation of Right-of-Entry, Encroachments, and Specialty features notices.
- 3.7.5.3.2 Engineer submits sets of draft construction specifications including as a minimum:
 - 3.7.5.3.2.1 Table of Contents;
 - 3.7.5.3.2.2 Document 00410 (Bid Form) with all bid items, including quantities, and other detailed construction cost estimates supporting Document 00410;
 - 3.7.5.3.2.3 Section 01110 (Summary of Work);
 - 3.7.5.3.2.4 Completed technical specifications (Division 01 through 16, as required); and
 - 3.7.5.3.2.5 All supplemental and non-standard technical specifications included in Divisions 02 through 16 identified.
- 3.7.5.3.3 Engineer submits documentation that drawings were submitted to private utilities for final review. Engineer makes initial coordination effort with private utilities regarding potential conflicts for the Project.
- 3.7.5.3.4 Engineer submits design review checklist (as available).
- 3.7.5.4 Submit Final Drawings and Specifications (90% Design Submittal)
 - 3.7.5.4.1 Engineer submits completed sets of construction drawings, with all review comments resolved, including all comment logs with responses.
 - 3.7.5.4.2 Engineer submits completed construction specifications, with all review comments resolved.
 - 3.7.5.4.3 Engineer submits a completed Document 00410 (Bid Form) with all bid items, including quantities, and other detailed construction cost estimates supporting Document 00410 Master List.
 - 3.7.5.4.3.1 Engineer shall perform quality assurance and quality control on Document 00410. Engineer shall provide

evidence of their internal review and mark-up as preparation for the submittal of Document 00410. The Engineer shall submit a check print of the internal review, initialed by the author and the reviewer. Each unit price item shall be highlighted indicating that it has been checked. This submittal is not considered complete until the Engineer's submittal of associated quality assurance and quality control documents, along with any associated redlines, is provided.

- 3.7.5.4.4 Engineer submits sheet-by-sheet quantity takeoff, flagman hour calculation, and documentation to support the construction duration specified.
 - 3.7.5.4.4.1 Engineer shall provide evidence of their internal review, a third-party review, and a third party mark-up as preparation for the Engineer's submittal of the sheet by sheet takeoff. The Engineer shall submit a check print of the internal review, initialed by the author and the reviewer. Each unit price item shall be highlighted indicating that it has been checked. This submittal is not considered complete until the Engineer's submittal of associated quality assurance and quality control documents, along with any associated redlines, is provided.
- 3.7.5.4.5 Engineer provides documentation of permit submittal or permit approvals, as applicable, from TXDOT, HCFCD, Railroads, U.S. Army Corps of Engineers, and Harris County Public Infrastructure Department.
- 3.7.5.4.6 Engineer provides document submittals of plans to City for Building Permit Application (including Floodplain Management Office) and to Texas Department of Licensing and Regulations for ADA requirements, if applicable.
- 3.7.5.4.7 For Wastewater projects and other projects as applicable, Engineer submits Draft Engineering Design Report (DEDR) in conformance with TCEQ requirements.
- 3.7.5.4.8 The Engineer shall provide a PDF with quality assurance and quality control markups for all quantity calculations, and all design calculations.
- 3.7.5.4.9 The Engineer shall provide an internal quality assurance and quality control marked-up plan set with each submittal.

3.7.5.5 Submit Bid-Ready Drawings and Specifications

3.7.5.5.1 Engineer submits bid-ready construction documents, signed and sealed construction drawings with all required signatures, and completed construction specifications, including signed letter of Quantity Take Off.

3.7.5.5.2 Engineer provides documentation that application for City Building Permits (including Floodplain Administration) has been approved to Texas Department of Licensing and Regulations for ADA requirements, if applicable.

3.7.5.5.3 For Wastewater projects or other projects as applicable, Engineer submits Final Engineering Design Report (FEDR) in conformance with TCEQ requirements.

3.7.5.5.4 Engineer submits Final ESA I and II (as applicable), and Final Geotechnical reports, including Trench Safety Letter if required.

ARTICLE 4
TERMINATION

4.1 Termination by the City for Convenience

4.1.1 The Director may terminate Engineer's performance under this Contract at any time by giving seven days written notice to Engineer. As soon as possible, but not later than the effective date of such notice, Engineer shall, unless the notice directs otherwise, immediately discontinue all services in connection with this Contract and shall proceed to promptly cancel all existing orders and Consultant subcontracts insofar as such orders or subcontracts are chargeable to this Contract. Within seven days after the effective date of notice of termination, Engineer shall deliver copies of all Documents to the Director and submit an invoice showing in detail services performed under this Contract to the date of termination. The City shall then pay the prescribed fees to Engineer for services actually performed under this Contract up to the date of termination less such payment on account of charges previously made, in the same manner as prescribed in Article 3 of this Contract. Any installments or lump sum fees shall be prorated in accordance with the progress of the Work at the effective date of termination. Engineer may, if necessary, submit invoices for vendor and Consultant charges reasonably necessary for the Project which are incurred prior to the effective date of termination and received by Engineer after its initial termination invoice.

4.1.2 Engineer understands and acknowledges that if the City determines not to proceed with this Contract, according to the terms of this article, the Director shall provide Engineer with a written notice of his intent to terminate this Contract and this Contract shall terminate upon Engineer's receipt of such written notice.

4.2 Termination by the City for Cause. City may terminate this Contract in the event of a material default by Engineer and a failure by Engineer to cure such default after receiving notice thereof, as provided in this

Section. Default by Engineer shall occur if Engineer fails to observe or perform any of its duties under this Contract, if Engineer dies (if an individual), or for some other reason is unable to render services hereunder. Should such a default occur, the Director will deliver a written notice to Engineer describing such default and the proposed date of termination. Such date may not be sooner than the seventh day following receipt of the notice. The Director, at his or her sole option, may extend the proposed date of termination to a later date. If Engineer cures such default to the Director's reasonable satisfaction prior to the proposed date of termination, then the proposed termination shall be ineffective. If Engineer fails to cure such default prior to the proposed date of termination, then City may terminate its performance under this Contract as of such date, and Engineer shall deliver all Documents to the Director within seven days of the effective date of the termination. If the City's cost of obtaining completion of the work by other engineers, in combination with other direct costs sustained by the City as a result of the default, exceeds the remaining contract amounts unpaid to Engineer, the City shall not be obligated to make any further payment to Engineer. This provision does not relieve Engineer of any other obligation Engineer may have to the City.

- 4.3 **Termination by Engineer for Cause.** Engineer may terminate its performance only upon default of the City. Should such default occur, Engineer shall have the right to terminate all or part of its duties under this Contract as of the 14th day following the receipt by the City of a notice from Engineer describing such default and intended termination, provided: (1) such termination shall be ineffective if within the 14 day period the City cures the default; and (2) such termination may be stayed beyond such 14 day period, at the sole option of Engineer, pending cure of the default.

ARTICLE 5

MISCELLANEOUS PROVISIONS

- 5.1 **Independent Contractor.** The relationship of Engineer to the City shall be that of an independent contractor.
- 5.2 **Business Structure and Assignments.** Engineer shall not assign this Contract at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Chapter 9 of the Texas Business & Commerce Code. In the case of such an assignment, Engineer shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee. Engineer shall not delegate any portion of its performance under this Contract without the Director's prior written consent.
- 5.3 **Parties in Interest.** This Contract shall not bestow any rights upon any third party, but rather, shall bind and benefit the City and Engineer only.
- 5.4 **Non-waiver.** Failure of either Party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by any appropriate remedy, strict compliance with

any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

- 5.5 **Governing Law and Venue.** 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.
- 5.6 **Notices.** All notices required or permitted hereunder shall be in writing and shall be deemed received when actually received or if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the other party at the address prescribed in the preamble hereof or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.
- 5.7 **Captions.** The captions at the beginning of the articles and sections of this Contract are guides and labels to assist in locating and reading such articles and sections and, therefore, will be given no effect in construing this Contract and shall not be restrictive of or be used to interpret the subject matter of any article, section, or part of this Contract.
- 5.8 **Acceptances and Approvals.** Any acceptance or approval by the City, or its agents or employees shall not constitute nor be deemed to be a release of the responsibility and liability of Engineer, its employees, agents, Consultants, or suppliers for the accuracy, competency, and completeness for any Documents prepared or services performed pursuant to the terms and conditions of this Contract, nor shall acceptance or approval be deemed to be an assumption of such responsibility or liability by the City, or its agents and employees, for any defect, error or omission in any Documents prepared or services performed by Engineer, its employees, agents, Consultants or suppliers pursuant to this Contract.
- 5.9 **Inspections and Audits.** Representatives of the City shall have the right to examine and review all books, records, and billing documents which are directly related to performance or payment under this Contract. Engineer shall maintain such books, records, and billings for three years after the cessation of its other duties under this Contract. This right of audit extends to the records of Engineer's Consultants, and Engineer's agreements with its Consultants shall provide this right to the City.
- 5.10 **Construction Budget.** If a construction budget for this Project is indicated in an exhibit to this Contract, Engineer will use its best efforts to design the Project so that it is likely that the Project may be constructed within that budget. At any point Engineer becomes reasonably aware that the construction budget will likely be exceeded, Engineer will notify City of its awareness of that likelihood.
- 5.11 **Site Conditions.** Engineer understands that it is in the interest of the City that the construction of the Project being designed by the Engineer under this Contract shall proceed in a prompt and efficient manner. Engineer

will make a reasonable effort to identify and note on its construction documents interferences that will be encountered on the site of the construction by the construction contractor.

- 5.12 **Ambiguities.** In the event of any ambiguity in any of the terms of this Contract, it shall not be construed for or against any Party because of such Party's involvement in the preparation or drafting of this Contract.
- 5.13 **Entire Agreement.** This Contract merges the prior negotiations and understandings of the Parties hereto and embodies the entire agreement of the Parties, and there are no other agreements, assurances, conditions, covenants (expressed or implied) or other terms with respect to the subject matter hereof, whether written or verbal.
- 5.14 **Survival.** Engineer shall remain obligated to the City under all clauses of this Contract that expressly or by their nature extend beyond the expiration or termination of the term of this Contract, including but not limited to the Ownership of Documents provisions of Article 2 of this Contract.
- 5.15 **ENGINEER'S DEBT: IF ENGINEER, AT ANY TIME DURING THE TERM OF THIS CONTRACT, 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 ENGINEER HAS INCURRED A DEBT, THE CONTROLLER SHALL IMMEDIATELY NOTIFY ENGINEER IN WRITING. IF ENGINEER 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 ENGINEER UNDER THIS CONTRACT, AND ENGINEER WAIVES ANY RECOURSE THEREFOR. ENGINEER 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 CONTRACT.**

SIGNATURE

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):

DocuSigned by:
By Rebecca Lindley
Name: Rebecca Lindley
Title: Corporate Secretary

Federal Tax Identification No. 474473226

ENGINEER:
AURORA TECHNICAL SERVICES, LLC
By: Rafael Ortega
Name: RAFAEL ORTEGA, P.E.
Title: PRESIDENT

ATTEST/SEAL:

CITY:
THE CITY OF HOUSTON, TEXAS
Signed by:

City Secretary

Mayor

APPROVED:

DocuSigned by:
Carol Haddock
Houston Public Works

COUNTERSIGNED BY:

City Controller

APPROVED AS TO FORM:

Aurelio
Assistant City Attorney
L.D. File No. 0802000116001

DATE COUNTERSIGNED:

EXHIBIT "A"

ADDITIONAL TERMS

LARGE DIAMETER WATERLINE TECHNICAL SERVICES - PACKAGE 1

WBS No. S-000020-0071-3

GENERAL

1.1 Additional Definitions used in this Contract

- 1.1.1 **Negotiated Lump Sum:** An amount consistent with the terms of this Contract that City shall pay Engineer for the complete performance of services, not to exceed the estimated total of the following:
- 1.1.1.1 Raw Salary times Raw Salary Multiplier for services performed directly by Engineer and Engineer's employees, plus
 - 1.1.1.2 Reimbursable Expenses, plus
 - 1.1.1.3 Consultant Subcontract Costs plus Engineer's Consultant Markup, plus
 - 1.1.1.4 Reasonable fees paid to contract personnel and personnel employed through employment agencies plus Engineer's Consultant Markup.
- 1.1.2 **Negotiated Work Order:** Individual Project assignments issued by the Director under this Contract. Each Negotiated Work Order shall define the specific requirements of the work to be performed, including Basic and Additional Services, for any Phase of this Contract.

1.2 General Description of Project

- 1.2.1 The Project generally is described as follows:

The Project involves multiple Negotiated Work Orders involving various engineering support activities pertaining to the City's large diameter water main system to assist in operating, maintaining and improving water transmission infrastructure. Effort may include but not limited to preparing construction packages, technical support, condition assessment, hydraulic modeling, and emergency transmission main shut down and repairs. In response to a Negotiated Work Order issued by the City of Houston, the Engineer shall provide engineering services requested in such Negotiated Work Order. The individual scope of work, defining the specific requirements of the work to be performed, shall be attached to each Negotiated Work Order issued to the Engineer.

- 1.2.2 Each individual Negotiated Work Order will direct the Engineer to perform one or both of the following Tasks:

1.2.2.1 Task A:

1.2.2.1.1

Develop a contract document (no drawings) for bidding purposes. This document is hereafter referred to as the "base document". The purpose of this base document is to provide a legal and procedural framework for obtaining the services of a contractor, who will assist DWO in transmission main shut down, evaluation and repairs, and to

procure or install various large diameter appurtenances for the City via work orders. This base document must include:

- 1.2.2.1.1.1 Water transmission mains (24-inch and larger) and appurtenances;
- 1.2.2.1.1.2 Miscellaneous construction items;
- 1.2.2.1.1.3 A provision for the time period for the contractor's services; and
- 1.2.2.1.1.4 Procedures for supplementing the base document designs for each specific project.

1.2.2.1.2 In addition to the above, prepare required addenda to revise the contract document prior to the City accepting bids, assist the City in securing bids, attend pre-bid conferences, assist the City in evaluating the bid proposals, prepare bid tabulations and provide a recommendation for the award of the contract.

1.2.2.2 Task B:

1.2.2.2.1 Provide engineering services when the Director requests technical support relating to water transmission main (24-inch and larger). These services may include the preparation of construction drawings or sketches and appropriate documents, development or evaluation of technical specifications and details, issuance of technical memorandums, or review of new technology or products or similar analysis, support of City's modeling efforts, condition assessment support including field observations or other tasks requested of Engineer for a specific assignment.

1.3 **Contract Term.** This Contract is effective on the Countersignature Date and expires upon the completion of the last Negotiated Work Order issued within 3 years from the Countersignature Date. If the Director, at his or her sole discretion, makes a written request for renewal to Engineer at least 30 days before expiration of the then-current terms, and if sufficient funds are allocated, then, upon expiration of the then-current term, this Agreement is renewed for 1 year(s) upon the same terms and conditions. This Contract may only be renewed for 2 additional term(s) beyond the initial term.

DUTIES OF ENGINEER

2.1 Additional General Duties

2.1.1 Within two weeks of issuance of each Negotiated Work Order, Engineer shall provide the Director a written schedule of completion of the Basic Services required under the Negotiated Work Order, which must be approved by the Director.

DUTIES OF THE CITY

3.1 **Fees for Basic or Additional Services:** the City shall pay and Engineer agrees to accept the fees specified in this Section.

3.1.1 For Task A services, the fee will be based on Time and Materials not to exceed the amount

established in the Notice to Proceed for each Negotiated Work Order.

3.1.2 For Task B services, the fees will be based on one of the following:

3.1.2.1 For Route Topographical Survey, the City shall pay Engineer at the rates set out in the following chart:

Length of Topographic Requirement (per assignment)			
Right of Way Width	Less than 300'	300' to 500'	More than 500'
Less than 80'	\$6.60 / L.F.	\$5.74 / L.F.	\$5.17 / L.F.
80' and More	\$7.15 / L.F.	\$6.23 / L.F.	\$5.70 / L.F.

3.1.2.2 Projects equal to or greater than 5,000 LF may require Basic or Additional Services, as set out in the Notice to Proceed for each Negotiated Work Order:

3.1.2.2.1 A negotiated lump sum which will be set out in the Notice to Proceed for each Negotiated Work Order. The Director and Engineer shall agree in writing to a Negotiated Lump Sum fee for Basic and Additional services necessary to complete each Construction Negotiated Work Order prior to issuance of the Notice to Proceed. Engineer guarantees that it shall perform all services for the Negotiated Lump Sum fees set out in the respective Notices to Proceed.

3.1.3 For Basic Services or Other Additional Services set forth in Article 2, the City will pay:

3.1.3.1 Raw Salary times Raw Salary Multiplier plus Reimbursable Expenses for Basic or Additional Services that are performed directly by Engineer or its employees;

3.1.3.2 Consultant Subcontract Cost plus Consultant Markup for Basic or Additional Services that Engineer subcontracts to a Consultant; or

3.1.3.3 Temporary personnel agency costs plus Consultant Mark-up x Overhead and Profit Factor where temporary employee works in Engineer's office.

EXHIBIT A-1

SCOPE OF WORK

LARGE DIAMETER WATER LINE TECHNICAL SERVICES FOR DWO – PACKAGE 1

WBS No. S-00020-0071-3

SERVICE

CONTRACT ARTICLE

Work Order PES for DWO On-Call Project – Package 1

Basic Services:

Phase II – Final Design.....2.2

- This item will be authorized for the creation of the contract documents for Construction Award for a LDWL On-Call Contractor.

Design During Phase III.....2.3

- This item will be authorized for all of the effort associated with design solutions for emergency repairs, which will occur after the construction contractor is on-board, which is Phase III.

Phase III – Construction Phase Services.....2.4

- This item will be authorized for typical EOR support during Phase III such as submittals and RFQs.

Standard Additional Services:

Drug Detection and Deterrence.....2.16

- This item will be authorized as per the contract.

Other Additional Services

- This item will be authorized in the event of unforeseen scope.

Added Additional Services:

Corrosion Protection Services

- This item will be authorized to provide a NACE certified Cathodic Protection or Corrosion Specialist on the occasions that the emergency work requires it.

Hydraulic Modeling and Shutdown Planning

- This item will be authorized if City's Planning requests that any modeling related to shutdown of LDWL for emergency repair be handled within the contract.

Transient Analysis Modeling Support

- This item will be authorized if City's Planning requests that any modeling related to transient analysis of LDWL for emergency repair be handled within the contract.

Subsurface Utility Engineering

- This item will be authorized if the emergency repair is believed to be in close proximity to critical infrastructure.

Public Information and Assistance

- This item will be authorized if the emergency repair requires an atypical and extensive amount of interaction with the public.

O&M Services

Basic Services:

Staff Augmentation

- This item will be authorized for providing staff from either the Engineer or consultants of the contract, to be assigned at 611 Walker, and work on tasks as assigned by the City's Planning Group.

Standard Additional Services:

Survey Services

- This item will be authorized in the event that the Easement Access Verification scope necessitates re-negotiating with an underlying fee owner for increased rights to own and operate the City's existing water lines. This item may include a Metes and Bounds survey of the existing water line easement or related courthouse research.

Other Additional Services

- This item will be authorized in the event of unforeseen scope.

Added Additional Services:

Hydraulic Modeling and Shutdown Planning

- This item will be authorized if City's Planning requests that any modeling related to shutdown be handled within the contract.

Transient Analysis Modeling Support

- This item will be authorized if City's Planning requests that any modeling related to transient analysis be handled within the contract.

Water System Modeling Support

- This item will be authorized if City's Planning requests that any system modeling be handled within the contract.

Easement Access Verification

- This item will be authorized to read through existing easement documents (provided by the City), identify potential access issues in the City's rights to operate and maintain the water line, and provide suggested revisions to the easement language.
- This item will also be authorized to support the Real Estate Intake Package process, in the event that the City elects to move forward with re-negotiating with the underlying fee owner for increased rights.

Field Coordination and Support to City Staff

- This item will be authorized in the event that the DWO requires atypical and extensive amount of field coordination or support that is not associated with any other budgeted scope within the contract.

Record Drawing and GIS Verification

- This item will be authorized to compare As-Builts and Submittal information to the City geodatabase, specifically as it relates to plan numbers, pipe material, age of water line, water line size, geometry, and related information.

Condition Assessment and Prioritization

- This item will be authorized to assist DWO in performing condition assessments of existing LDWLs, prioritizing their rehab/replacement and providing support to the City's utilization of specialty non-destructive testing (NDT) contractors and vendors including material testing of failed pipes.

CIP Planning Assistance

- This item will be authorized to assist DWO in developing, prioritizing and budgeting for the CIP.

Subsurface Utility Engineering

- This item will be authorized in the event that proposed work is believed to be in close proximity to critical infrastructure.

Public Information and Assistance

- This item will be authorized in the event that DWO requires an atypical and extensive amount of interaction with the public that is not associated with any other budgeted scope within the contract.

Technology Assessment and Trainings

- This item will be authorized for assisting DWO with assessment of different technologies that can support O&M of water lines and providing related training to City personnel.

Updates to IDM, Standard Specifications, and Details

- This item will be authorized for assisting DWO with reviewing proposed updates or to develop revisions to the IDM, Standard Specifications, and Details.

Technical Memoranda and SOPs

- This item will be authorized for assisting DWO with creating requested Technical Memoranda and Standard Operating Procedure documents.

Review and Coordination with Other Projects

- This item will be authorized for assisting DWO with plan reviews and coordination with City and Non-City projects that may impact DWO-maintained LDWLs.

EXHIBIT "B"
PROJECT SCHEDULE
N/A

EXHIBIT "C"

MAXIMUM RAW SALARIES

<u>Classification</u>	<u>Raw Salary Rates</u>
Senior Project Manager	\$85.00/Hr.
Senior Technical Professional	\$75.00/Hr.
Senior/Supervising Engineer	\$69.00/Hr.
Project Manager	\$64.00/Hr.
Professional Engineer	\$57.00/Hr.
Graduate Engineer	\$49.00/Hr.
Senior Designer	\$42.00/Hr.
Designer	\$37.00/Hr.
CADD Technician	\$32.00/Hr.
Project Administrator/Project Controls	\$43.00/Hr.
Construction Manager	\$70.00/Hr.
Senior Inspector	\$37.00/Hr.
Construction Inspector	\$29.00/Hr.

EXHIBIT "D"
CERTIFICATE OF INSURANCE

Please visit <http://purchasing.houstontx.gov/guide.shtml>, and find "Insurance & Indemnification" for the most current insurance certificates and requirements.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/17/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	Garey Gruber Insurance Agency 9894 Bissonnet Suite 590 Houston, TX 77036	CONTACT NAME: Garey Gruber PHONE (A/C, No, Ext): (281) 741-2653 E-MAIL ADDRESS: garey@gruberagency.net FAX (A/C, No): (281) 741-9373
INSURED	Aurora Technical Services, LLC Rafael Ortega 2121 Sage Rd Suite 150 Houston, TX 77056	INSURER(S) AFFORDING COVERAGE INSURER A: The Hartford INSURER B: Progressive County Mutual INSURER C: Argonaut Insurance Company INSURER D: The Hartford INSURER E: INSURER F:
		NAIC # 19682 29203 19801 19682

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

NSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
1	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	61SBABB6270	7/14/2020	7/14/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
3	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	02573336-5	7/14/2020	7/14/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
1	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED <input type="checkbox"/> RETENTION \$	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	61SBABB6270	7/14/2020	7/14/2021	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
2	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) if yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/>	<input checked="" type="checkbox"/>	61 WBC AG8WTW	7/15/2020	7/15/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
3	Professional Liability			121 AE 0004271	06/26/2020	06/26/2021	Each Occurance 2,000,000 Aggregate Limit 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Engineering Consulting

In respects to General Liability and Auto Liability, The City of Houston is included as Additional Insured with waiver of subrogation and in respects to Workers Comp they are included with Waiver of Subrogation. Applies to: Large Dia Water Line Tech Services for DWO-Package 1;WBS No. S-00020-0071-3

CERTIFICATE HOLDER

CANCELLATION

Project Manager
City of Houston - HPW
611 Walker - 21st Floor
Houston, TX 77002
Attn: Gabriel Mussio, P.E.

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Spectrum

BUSINESS LIABILITY COVERAGE FORM

QUICK REFERENCE
BUSINESS LIABILITY COVERAGE FORM
READ YOUR POLICY CAREFULLY

BUSINESS LIABILITY COVERAGE FORM	Beginning on Page
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BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section C. - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section G. - Liability And Medical Expenses Definitions.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section D. - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

- (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (b) The "bodily injury" or "property damage" occurs during the policy period; and

- (c) Prior to the policy period, no insured listed under Paragraph 1. of Section C. - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section C. - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

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- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".
- e. **Incidental Medical Malpractice**

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
 - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
 - (b) You are not engaged in the business or occupation of providing such services.
- (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES

Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
- (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
- provided that:
- (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:
- (1) All expenses we incur.
 - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
 - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
 - (5) All costs taxed against the insured in the "suit".
 - (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
 - (a) Agrees in writing to:
 - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
 - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (b) Provides us with written authorization to:
 - (i) Obtain records and other information related to the "suit"; and
 - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph 1.b.(b) of Section B. – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

- (1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
 - (2) "Personal and advertising injury"
- for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

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- (b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or

- (b) Performing duties related to the conduct of the insured's business, or

- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible;

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or

released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

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g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

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- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;

(9) Any:

(a) Body piercing (not including ear piercing);

(b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and

(c) Similar services;

(10) Services in the practice of pharmacy; and

(11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

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o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

- (8) Arising out of an offense committed by an insured whose business is:

(a) Advertising, broadcasting, publishing or telecasting;

(b) Designing or determining content of web sites for others; or

(c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **a.**, **b.** and **c.** under the definition of "personal and advertising injury" in Section **G.** – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

- (12) Arising out of:

(a) An "advertisement" for others on your web site;

(b) Placing a link to a web site of others on your web site;

(c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or

(d) Computer code, software or programming used to enable:

(i) Your web site; or

(ii) The presentation or functionality of an "advertisement" or other content on your web site;

- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

- (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning Or Explosion

Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section D. - Liability And Medical Expenses Limits Of Insurance.

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2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a.** An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b.** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c.** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- e.** A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

- (1)** "Bodily injury" or "personal and advertising injury":

- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b)** To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph **(1)(a)** above;
- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or
- (d)** Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

- (2)** "Property damage" to property:

- (a)** Owned, occupied or used by,

- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

- b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed

before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit



The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

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contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf.
- (a) In connection with your premises; or
 - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
- This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf.
- (a) In the performance of your ongoing operations;
 - (b) In connection with your premises owned by or rented to you; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to 2.a. or 2.b above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to 2.b. above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

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This Paragraph f. applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section A. — Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. — Coverages.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.


c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.


If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

 If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

 If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).
- b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision - Permits

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- b. The insurance afforded to the vendor is subject to the following additional exclusions:

- (1) This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

- (b) Any express warranty unauthorized by you;

- (c) Any physical or chemical change in the product made intentionally by the vendor;

- (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a. Their financial control of you; or
- b. Premises they own, maintain or control while you lease or occupy these premises.

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This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations for the additional insured(s); or
- (2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

- a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or
- b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above;
- c. All other parts of the world if the injury or damage arises out of:

- (1) Goods or products made or sold by you in the territory described in a. above;
- (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
- (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

- 7. "Electronic data" means information, facts or programs:
 - a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section D. – Liability and Medical Expenses Limits of Insurance.
- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph f. does not include that part of any contract or agreement:

BUSINESS LIABILITY COVERAGE FORM

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
- (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;

BUSINESS LIABILITY COVERAGE FORM

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral, written or electronic publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
 - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
18. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
19. "Products-completed operations hazard";
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.

- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.

20. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.

As used in this definition, "electronic data" is not tangible property.

21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

23. "Volunteer worker" means a person who:
- a. Is not your "employee";

BUSINESS LIABILITY COVERAGE FORM

- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- (2) The providing of or failure to provide warnings or instructions.

- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

25. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing of or failure to provide warnings or instructions.

Form 2366 (02/11)

Blanket Additional Insured Endorsement

This endorsement modifies insurance provided by the Commercial Auto Policy, Motor Truck Cargo Legal Liability Coverage Endorsement, and/or Commercial General Liability Coverage Endorsement, as appears on the **declarations page**. All terms and conditions of the policy apply unless modified by this endorsement.

If **you** pay the fee for this Blanket Additional Insured Endorsement, **we** agree with **you** that any person or organization with whom **you** have executed a written agreement prior to any **loss** is added as an additional **insured** with respect to such liability coverage as is afforded by the policy, but this insurance applies to such additional **insured** only as a person or organization liable for **your** operations and then only to the extent of that liability. This endorsement does not apply to acts, omissions, products, work, or operations of the additional **insured**.

Regardless of the provisions of paragraph a. and b. of the "Other Insurance" clause of this policy, if the person or organization with whom **you** have executed a written agreement has other insurance under which it is the first named **insured** and that insurance also applies, then this insurance is primary to and non-contributory with that other insurance when the written contract or agreement between **you** and that person or organization, signed and executed by **you** before the **bodily injury or property damage** occurs and in effect during the policy period, requires this insurance to be primary and non-contributory.

In no way does this endorsement waive the "Other Insurance" clause of the policy, nor make this policy primary to third parties hired by the **insured** to perform work for the **insured** or on the **insured's** behalf.

ALL OTHER TERMS, LIMITS, AND PROVISIONS OF THE POLICY REMAIN UNCHANGED.

Form 2367 (06/10)

Blanket Waiver of Subrogation Endorsement

This endorsement modifies insurance provided by the Commercial Auto Policy, Motor Truck Cargo Legal Liability Coverage Endorsement, and/or Commercial General Liability Coverage Endorsement, as appears on the **declarations page**. All terms and conditions of the policy apply unless modified by this endorsement.

If you pay the fee for this Blanket Waiver of Subrogation Endorsement, we agree to waive any and all subrogation claims against any person or organization with whom a written waiver agreement has been executed by the named insured, as required by written contract, prior to the occurrence of any loss.

ALL OTHER TERMS, LIMITS AND PROVISIONS OF THE POLICY REMAIN UNCHANGED.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**TEXAS WAIVER OF OUR RIGHT TO
RECOVER FROM OTHERS ENDORSEMENT**

Policy Number: 61 WBC AG8WTW

Effective Date: 07/15/20

Named Insured and Address: Aurora Technical Services, LLC.
221 SAGE RD STE 150
HOUSTON TX 77056

Endorsement Number:

Effective hour is the same as stated on the Information Page of the policy.

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with

respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. () Special Waiver
Name of person or organization
- (X) Blanket Waiver
Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.
2. Operations:
All Texas Operations
3. Premium:
The premium charge for this endorsement shall be 2 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.
4. Advance Premium:

EXHIBIT "E"

DRUG POLICY COMPLIANCE AGREEMENT

I, Rafael Ortega, P.E. President as an owner or officer of
(Name) (Print/Type) (Title)
Aurora Technical Services, LLC (Engineer)
(Name of Company)

have authority to bind Engineer 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 Engineer 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 Engineer 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 Engineers (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 Engineer 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.

5/31/2020

Date

Rafael Ortega, P.E.

Engineer Name

Rafael Ortega

Signature

President

Title

EXHIBIT "F"

DRUG POLICY COMPLIANCE DECLARATION

I, Rafael Ortega, P.E. President as an owner or officer of
 (Name) (Print/Type) (Title)
Aurora Technical Services, LLC (Engineer)
 (Name of Company)

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

This reporting period covers the preceding six months from November 2019 to May, 2020.

RO
 Initials
DS
RO
 Initials
DS
RO
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DS
RO
 Initials

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

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

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

Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is 0.

From 1/1/2019 to 5/1/2020 the following test has occurred
 (Start date) (End date)

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested	<u>3</u>	<u>0</u>	<u>0</u>	<u>3</u>
Number Employees Positive	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Percent Employees Positive	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

DS
RO
 Initials
DS
RO
 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.

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

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

5/31/2020

(Date)

Rafael Ortega, P.E.

(Typed or Printed Name)

Rafael Ortega

(Signature)

President

(Title)

EXHIBIT "G"

ENGINEER'S CERTIFICATION
OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT

I, Rafael Ortega, P.E. President
(Name) (Title)
as an owner or officer of Aurora Technical Services, LLC (Engineer)
(Name of Company)

have authority to bind the Engineer with respect to its bid, and hereby certify that Engineer has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved in performing Professional Engineering Services for Large Diameter Waterline Technical Services - Package 1
(Project)

Engineer agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

5/31/2020

(Date)

Rafael Ortega, P.E.

(Typed or Printed Name)

DocuSigned by:

Rafael Ortega

(Signature)

President

(Title)

EXHIBIT "H"

SUBCONTRACTOR'S ASSIGNMENT OF COPYRIGHT

1. Engineer has entered into a Contract with the **CITY OF HOUSTON, TEXAS** ("City") to provide professional engineering services as well as related support and consulting services ("Services").
2. Subcontractor is or will be providing services for Engineer related to its Contract with the City.
3. In the course of Subcontractor's work for Engineer related to the provision of Services to the City, Contract Documents and other work products will be produced by Subcontractor for the benefit of the City for which Subcontractor will be compensated by Engineer.
4. Contract Documents include but are not limited to reports, charts, analyses, maps, letters, tabulations, computer programs, exhibits, notes, models, photographs, the original transparencies of all drawings, all graphic and written information prepared or assembled by Subcontractor and all other work products obtained or prepared by Subcontractor as part of its services for Engineer.
5. For and in consideration of the foregoing, the Subcontractor shall grant and assign and hereby does grant and assign to the City all right, title, interest and full ownership worldwide in and to any work, invention and all Contract Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Subcontractor, its agents and employees pursuant to its contract with Engineer (collectively "Works"), to have and to hold the same unto the City absolutely.
6. The Subcontractor agrees that neither it nor any of its agents and employees shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works. If requested by the Engineer, the Subcontractor shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.
7. The Subcontractor shall execute all documents required by the Engineer and the Director of the Department of Public Works and Engineering of the City ("Director") to further evidence such assignment and ownership. The Subcontractor shall cooperate with the Engineer and the City in registering, creating or enforcing any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Subcontractor is requested and rendered pursuant to this Section, the City shall reimburse the Subcontractor for all out-of-pocket expenses incurred by the Subcontractor in rendering such assistance, subject to the availability of funds. On termination of the Subcontractor's contract with Engineer or upon request by the Director, the Subcontractor shall deliver all Works to the City. The Subcontractor agrees that its agents and employees performing work hereunder are bound by the terms of this Exhibit.

IN WITNESS WHEREOF, Subcontractor has executed this Assignment as of this 1st day of June, 2006.

Subcontractor
Designed by:

Sherif Mohamed

By: Sherif Mohamed, P.E./United Engineers, Inc.
Title: Principal Engineer

EXHIBIT "H"

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2. Subcontractor is or will be providing services for Engineer related to its Contract with the City.
3. In the course of Subcontractor's work for Engineer related to the provision of Services to the City, Contract Documents and other work products will be produced by Subcontractor for the benefit of the City for which Subcontractor will be compensated by Engineer.
4. Contract Documents include but are not limited to reports, charts, analyses, maps, letters, tabulations, computer programs, exhibits, notes, models, photographs, the original transparencies of all drawings, all graphic and written information prepared or assembled by Subcontractor and all other work products obtained or prepared by Subcontractor as part of its services for Engineer.
5. For and in consideration of the foregoing, the Subcontractor shall grant and assign and hereby does grant and assign to the City all right, title, interest and full ownership worldwide in and to any work, invention and all Contract Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Subcontractor, its agents and employees pursuant to its contract with Engineer (collectively "Works"), to have and to hold the same unto the City absolutely.
6. The Subcontractor agrees that neither it nor any of its agents and employees shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works. If requested by the Engineer, the Subcontractor shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.
7. The Subcontractor shall execute all documents required by the Engineer and the Director of the Department of Public Works and Engineering of the City ("Director") to further evidence such assignment and ownership. The Subcontractor shall cooperate with the Engineer and the City in registering, creating or enforcing any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Subcontractor is requested and rendered pursuant to this Section, the City shall reimburse the Subcontractor for all out-of-pocket expenses incurred by the Subcontractor in rendering such assistance, subject to the availability of funds. On termination of the Subcontractor's contract with Engineer or upon request by the Director, the Subcontractor shall deliver all Works to the City. The Subcontractor agrees that its agents and employees performing work hereunder are bound by the terms of this Exhibit.

may IN WITNESS WHEREOF, Subcontractor has executed this Assignment as of this 31st day of _____, 20____.

Subcontractor

Shakeen Chowdhury

By: Shakeen Chowdhury, P.E., R.P.L.S./KUO & associates, Inc.
Title: President

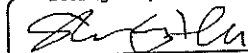
EXHIBIT "H"

SUBCONTRACTOR'S ASSIGNMENT OF COPYRIGHT

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3. In the course of Subcontractor's work for Engineer related to the provision of Services to the City, Contract Documents and other work products will be produced by Subcontractor for the benefit of the City for which Subcontractor will be compensated by Engineer.
4. Contract Documents include but are not limited to reports, charts, analyses, maps, letters, tabulations, computer programs, exhibits, notes, models, photographs, the original transparencies of all drawings, all graphic and written information prepared or assembled by Subcontractor and all other work products obtained or prepared by Subcontractor as part of its services for Engineer.
5. For and in consideration of the foregoing, the Subcontractor shall grant and assign and hereby does grant and assign to the City all right, title, interest and full ownership worldwide in and to any work, invention and all Contract Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Subcontractor, its agents and employees pursuant to its contract with Engineer (collectively "Works"), to have and to hold the same unto the City absolutely.
6. The Subcontractor agrees that neither it nor any of its agents and employees shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works. If requested by the Engineer, the Subcontractor shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.
7. The Subcontractor shall execute all documents required by the Engineer and the Director of the Department of Public Works and Engineering of the City ("Director") to further evidence such assignment and ownership. The Subcontractor shall cooperate with the Engineer and the City in registering, creating or enforcing any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Subcontractor is requested and rendered pursuant to this Section, the City shall reimburse the Subcontractor for all out-of-pocket expenses incurred by the Subcontractor in rendering such assistance, subject to the availability of funds. On termination of the Subcontractor's contract with Engineer or upon request by the Director, the Subcontractor shall deliver all Works to the City. The Subcontractor agrees that its agents and employees performing work hereunder are bound by the terms of this Exhibit.

IN WITNESS WHEREOF, Subcontractor has executed this Assignment as of this 31st day of May, 2006.

Subcontractor:



By: Shou Ting Hu, M.S., P.E./ Aviles Engineering Corporation
Title: President

EXHIBIT "H"

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1. Engineer has entered into a Contract with the **CITY OF HOUSTON, TEXAS** ("City") to provide professional engineering services as well as related support and consulting services ("Services").
2. Subcontractor is or will be providing services for Engineer related to its Contract with the City.
3. In the course of Subcontractor's work for Engineer related to the provision of Services to the City, Contract Documents and other work products will be produced by Subcontractor for the benefit of the City for which Subcontractor will be compensated by Engineer.
4. Contract Documents include but are not limited to reports, charts, analyses, maps, letters, tabulations, computer programs, exhibits, notes, models, photographs, the original transparencies of all drawings, all graphic and written information prepared or assembled by Subcontractor and all other work products obtained or prepared by Subcontractor as part of its services for Engineer.
5. For and in consideration of the foregoing, the Subcontractor shall grant and assign and hereby does grant and assign to the City all right, title, interest and full ownership worldwide in and to any work, invention and all Contract Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Subcontractor, its agents and employees pursuant to its contract with Engineer (collectively "Works"), to have and to hold the same unto the City absolutely.
6. The Subcontractor agrees that neither it nor any of its agents and employees shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works. If requested by the Engineer, the Subcontractor shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.
7. The Subcontractor shall execute all documents required by the Engineer and the Director of the Department of Public Works and Engineering of the City ("Director") to further evidence such assignment and ownership. The Subcontractor shall cooperate with the Engineer and the City in registering, creating or enforcing any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Subcontractor is requested and rendered pursuant to this Section, the City shall reimburse the Subcontractor for all out-of-pocket expenses incurred by the Subcontractor in rendering such assistance, subject to the availability of funds. On termination of the Subcontractor's contract with Engineer or upon request by the Director, the Subcontractor shall deliver all Works to the City. The Subcontractor agrees that its agents and employees performing work hereunder are bound by the terms of this Exhibit.

IN WITNESS WHEREOF, Subcontractor has executed this Assignment as of this 31 day of May, 2006.

Subcontractor
Designated by:

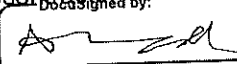
By: 
Amir Zahid, PhD, P.E./infraTech Engineers & Innovators, LLC
Title: President & CEO

EXHIBIT "H"

SUBCONTRACTOR'S ASSIGNMENT OF COPYRIGHT

1. Engineer has entered into a Contract with the **CITY OF HOUSTON, TEXAS** ("City") to provide professional engineering services as well as related support and consulting services ("Services").
2. Subcontractor is or will be providing services for Engineer related to its Contract with the City.
3. In the course of Subcontractor's work for Engineer related to the provision of Services to the City, Contract Documents and other work products will be produced by Subcontractor for the benefit of the City for which Subcontractor will be compensated by Engineer.
4. Contract Documents include but are not limited to reports, charts, analyses, maps, letters, tabulations, computer programs, exhibits, notes, models, photographs, the original transparencies of all drawings, all graphic and written information prepared or assembled by Subcontractor and all other work products obtained or prepared by Subcontractor as part of its services for Engineer.
5. For and in consideration of the foregoing, the Subcontractor shall grant and assign and hereby does grant and assign to the City all right, title, interest and full ownership worldwide in and to any work, invention and all Contract Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Subcontractor, its agents and employees pursuant to its contract with Engineer (collectively "Works"), to have and to hold the same unto the City absolutely.
6. The Subcontractor agrees that neither it nor any of its agents and employees shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works. If requested by the Engineer, the Subcontractor shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.
7. The Subcontractor shall execute all documents required by the Engineer and the Director of the Department of Public Works and Engineering of the City ("Director") to further evidence such assignment and ownership. The Subcontractor shall cooperate with the Engineer and the City in registering, creating or enforcing any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Subcontractor is requested and rendered pursuant to this Section, the City shall reimburse the Subcontractor for all out-of-pocket expenses incurred by the Subcontractor in rendering such assistance, subject to the availability of funds. On termination of the Subcontractor's contract with Engineer or upon request by the Director, the Subcontractor shall deliver all Works to the City. The Subcontractor agrees that its agents and employees performing work hereunder are bound by the terms of this Exhibit.

IN WITNESS WHEREOF, Subcontractor has executed this Assignment as of this 31 day of May, 2006.

Subcontractor
Designed by:

Craig Koehl
By: Craig Koehl, C.N. Koehl Urban Forestry, Inc.
Title: Urban Forestry Consultant

EXHIBIT "H"

SUBCONTRACTOR'S ASSIGNMENT OF COPYRIGHT

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4. Contract Documents include but are not limited to reports, charts, analyses, maps, letters, tabulations, computer programs, exhibits, notes, models, photographs, the original transparencies of all drawings, all graphic and written information prepared or assembled by Subcontractor and all other work products obtained or prepared by Subcontractor as part of its services for Engineer.
5. For and in consideration of the foregoing, the Subcontractor shall grant and assign and hereby does grant and assign to the City all right, title, interest and full ownership worldwide in and to any work, invention and all Contract Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Subcontractor, its agents and employees pursuant to its contract with Engineer (collectively "Works"), to have and to hold the same unto the City absolutely.
6. The Subcontractor agrees that neither it nor any of its agents and employees shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works. If requested by the Engineer, the Subcontractor shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.
7. The Subcontractor shall execute all documents required by the Engineer and the Director of the Department of Public Works and Engineering of the City ("Director") to further evidence such assignment and ownership. The Subcontractor shall cooperate with the Engineer and the City in registering, creating or enforcing any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Subcontractor is requested and rendered pursuant to this Section, the City shall reimburse the Subcontractor for all out-of-pocket expenses incurred by the Subcontractor in rendering such assistance, subject to the availability of funds. On termination of the Subcontractor's contract with Engineer or upon request by the Director, the Subcontractor shall deliver all Works to the City. The Subcontractor agrees that its agents and employees performing work hereunder are bound by the terms of this Exhibit.

IN WITNESS WHEREOF, Subcontractor has executed this Assignment as of this 31 day of May, 20 .

Subcontractor

Represented by:

Jeff Taylor

By: Jeff Taylor / Reese and Nichols, Inc.

Title: Vice President/Principal

EXHIBIT "H"

SUBCONTRACTOR'S ASSIGNMENT OF COPYRIGHT

1. Engineer has entered into a Contract with the **CITY OF HOUSTON, TEXAS** ("City") to provide professional engineering services as well as related support and consulting services ("Services").
2. Subcontractor is or will be providing services for Engineer related to its Contract with the City.
3. In the course of Subcontractor's work for Engineer related to the provision of Services to the City, Contract Documents and other work products will be produced by Subcontractor for the benefit of the City for which Subcontractor will be compensated by Engineer.
4. Contract Documents include but are not limited to reports, charts, analyses, maps, letters, tabulations, computer programs, exhibits, notes, models, photographs, the original transparencies of all drawings, all graphic and written information prepared or assembled by Subcontractor and all other work products obtained or prepared by Subcontractor as part of its services for Engineer.
5. For and in consideration of the foregoing, the Subcontractor shall grant and assign and hereby does grant and assign to the City all right, title, interest and full ownership worldwide in and to any work, invention and all Contract Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Subcontractor, its agents and employees pursuant to its contract with Engineer (collectively "Works"), to have and to hold the same unto the City absolutely.
6. The Subcontractor agrees that neither it nor any of its agents and employees shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works. If requested by the Engineer, the Subcontractor shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.
7. The Subcontractor shall execute all documents required by the Engineer and the Director of the Department of Public Works and Engineering of the City ("Director") to further evidence such assignment and ownership. The Subcontractor shall cooperate with the Engineer and the City in registering, creating or enforcing any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Subcontractor is requested and rendered pursuant to this Section, the City shall reimburse the Subcontractor for all out-of-pocket expenses incurred by the Subcontractor in rendering such assistance, subject to the availability of funds. On termination of the Subcontractor's contract with Engineer or upon request by the Director, the Subcontractor shall deliver all Works to the City. The Subcontractor agrees that its agents and employees performing work hereunder are bound by the terms of this Exhibit.

IN WITNESS WHEREOF, Subcontractor has executed this Assignment as of this 31 day of May, 2006.

Subcontractor
DocuSigned by:

Randy Palachek
By: Randy Palachek/Parsons Water & Infrastructure, Inc.
Title: Vice President

EXHIBIT "H"

SUBCONTRACTOR'S ASSIGNMENT OF COPYRIGHT

1. Engineer has entered into a Contract with the **CITY OF HOUSTON, TEXAS** ("City") to provide professional engineering services as well as related support and consulting services ("Services").
2. Subcontractor is or will be providing services for Engineer related to its Contract with the City.
3. In the course of Subcontractor's work for Engineer related to the provision of Services to the City, Contract Documents and other work products will be produced by Subcontractor for the benefit of the City for which Subcontractor will be compensated by Engineer.
4. Contract Documents include but are not limited to reports, charts, analyses, maps, letters, tabulations, computer programs, exhibits, notes, models, photographs, the original transparencies of all drawings, all graphic and written information prepared or assembled by Subcontractor and all other work products obtained or prepared by Subcontractor as part of its services for Engineer.
5. For and in consideration of the foregoing, the Subcontractor shall grant and assign and hereby does grant and assign to the City all right, title, interest and full ownership worldwide in and to any work, invention and all Contract Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Subcontractor, its agents and employees pursuant to its contract with Engineer (collectively "Works"), to have and to hold the same unto the City absolutely.
6. The Subcontractor agrees that neither it nor any of its agents and employees shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works. If requested by the Engineer, the Subcontractor shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.
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IN WITNESS WHEREOF, Subcontractor has executed this Assignment as of this 30th day of May, 2006.

Subcontractor
Authorized by:

Camille Sowells
By: Camille Sowells, PE, BCEE/CP&Y, Inc.
Title: Vice President

EXHIBIT "I"

**FORM POP 2
CERTIFICATION OF COMPLIANCE WITH
PAY OR PLAY PROGRAM**

Available at <http://www.houstontx.gov/obo/popforms.html>



**City of Houston
Certification of Compliance with
Pay or Play Program**



Contractor Name: Aurora Technical Services, LLC \$ \$ 3,485,500
(Contractor/Subcontractor) (Amount of Contract)

Contractor Address: 2121 Sage Road, Suite 150, Houston TX 77056

Project No.: [GFS/CIP/AIP/File No.] S-000020-0071-3

Project Name: [Legal Project Name] Large Diameter Water Line Technical Services for DWO

POP Liaison Name: R e b e c c a L h d e y

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534 and Executive Order 1-7, Contractor/Subcontractor agrees to abide by the terms of this Program. This certification is required of all contractors for contracts subject to the program. You must agree EITHER to PAY or to PLAY for all covered employees. The Contractor/Subcontractor may also Pay on behalf of some covered employees and Play on behalf of other covered employees.

The Contractor/Subcontractor will comply with all provisions of the Pay or Play Program and will furnish all information and reports requested to determine compliance with program requirements of the Pay or Play Program (See Executive Order 1-7 for the terms of the Pay or Play program) The criteria of the program is as follows:

The Contractor/Subcontractor agrees to "Pay" \$1.00 per hour for work performed by covered employees under the contract with the City. If independent contract labor is utilized the Contractor/Subcontractor agrees to report hours worked by the independent contract laborer and pay \$1.00 per hour for work performed.

Otherwise the Contractor/Subcontractor agrees to "Play" by providing health benefits to each covered employee. The health benefits must meet the following criteria:

1. The employer will contribute no less than \$150 per employee per month toward the total premium cost for single coverage only; and
2. The employee contribution, if any amount, will be no greater than 50% of the total premium cost and no more than \$150 per month.
3. Pursuant to E.O. 1-7 section 4.04 a contractor is deemed to have complied with respect to a covered employee who is not provided health benefits if the employee refuses the benefits and the employee's contribution to the premium is no more than \$40 per month.

Please select whether you choose to:	Pay	Play	Both
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The Contractor/Subcontractor will file compliance reports with the City, which will include activity for covered employees subject to the program, in the form and to the extent requested by the administering department. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

Note: The Contractor is responsible to the City for the compliance of covered employees of covered subcontractors and only forms that are accurate and complete will be accepted.

*Estimated Number of:	Prime Contractor	Sub-Contractor
Total Employees on City Job	16	N/A
Covered Employees	16	N/A
Non-Covered Employees	0	N/A
Exempt Employees	0	N/A

***Required**

I hereby certify that the above information is true and correct.

Contractor (Signature)

Rafael Ortega - President

Name and Title (Print or type)

Date

2.24.2020



**City of Houston
Certification of Compliance with
Pay or Play Program**



Contractor Name: Uni tel Engineer s,Inc. \$ 385,000.00
(Contractor/Subcontractor) (Amount of Contract)

Contractor Address: 9301 Southwest Freeway, Suite 500, Houston, TX 77074

Project No.: [GFS/CIP/AIP/File No.] S-000020-0071-3

Project Name: [Legal Project Name] Large Diameter Water Line Technical Services for DWO

POP Liaison Name: _____

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534 and Executive Order 1-7, Contractor/Subcontractor agrees to abide by the terms of this Program. This certification is required of all contractors for contracts subject to the program. You must agree EITHER to PAY or to PLAY for all covered employees. The Contractor/Subcontractor may also Pay on behalf of some covered employees and Play on behalf of other covered employees.

The Contractor/Subcontractor will comply with all provisions of the Pay or Play Program and will furnish all information and reports requested to determine compliance with program requirements of the Pay or Play Program (See Executive Order 1-7 for the terms of the Pay or Play program) The criteria of the program is as follows:

The Contractor/Subcontractor agrees to "Pay" \$1.00 per hour for work performed by covered employees under the contract with the City. If independent contract labor is utilized the Contractor/Subcontractor agrees to report hours worked by the independent contract laborer and pay \$1.00 per hour for work performed.

Otherwise the Contractor/Subcontractor agrees to "Play" by providing health benefits to each covered employee. The health benefits must meet the following criteria:

1. The employer will contribute no less than \$150 per employee per month toward the total premium cost for single coverage only; and
2. The employee contribution, if any amount, will be no greater than 50% of the total premium cost and no more than \$150 per month.
3. Pursuant to E.O. 1-7 section 4.04 a contractor is deemed to have complied with respect to a covered employee who is not provided health benefits if the employee refuses the benefits and the employee's contribution to the premium is no more than \$40 per month.

Please select whether you choose to:	Pay	Play	Both
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The Contractor/Subcontractor will file compliance reports with the City, which will include activity for covered employees subject to the program, in the form and to the extent requested by the administering department. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

Note: The Contractor is responsible to the City for the compliance of covered employees of covered subcontractors and only forms that are accurate and complete will be accepted.

*Estimated Number of:	Prime Contractor	Sub-Contractor
Total Employees on City Job	N/A	13
Covered Employees	N/A	13
Non-Covered Employees	N/A	0
Exempt Employees	N/A	0

*Required

I hereby certify that the above information is true and correct.

Sherif Mohamed
Contractor (Signature)

Sherif Mohamed, President

Name and Title (Print or type)

02/20/2020

Date



City of Houston
Certification of Compliance with
Pay or Play Program

Form POP-2



Contractor Name: Kuo & Associates, Inc. \$ 350,000
(Contractor/Subcontractor) (Amount of Contract)

Contractor Address: 10300 Westoffice Drive, Suite 800, Houston, TX 77042

Project No.: [GFS/CIP/AIP/File No.] S-000020-0071-3

Project Name: [Legal Project Name] Large Diameter Water Line Technical Services for DWO

POP Liaison Name: Shaheen Chowdhury

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534 and Executive Order 1-7, Contractor/Subcontractor agrees to abide by the terms of this Program. This certification is required of all contractors for contracts subject to the program. You must agree EITHER to PAY or to PLAY for all covered employees. The Contractor/Subcontractor may also Pay on behalf of some covered employees and Play on behalf of other covered employees.

The Contractor/Subcontractor will comply with all provisions of the Pay or Play Program and will furnish all information and reports requested to determine compliance with program requirements of the Pay or Play Program (See Executive Order 1-7 for the terms of the Pay or Play program) The criteria of the program is as follows:

The Contractor/Subcontractor agrees to "Pay" \$1.00 per hour for work performed by covered employees under the contract with the City. If independent contract labor is utilized the Contractor/Subcontractor agrees to report hours worked by the independent contract laborer and pay \$1.00 per hour for work performed.

Otherwise the Contractor/Subcontractor agrees to "Play" by providing health benefits to each covered employee. The health benefits must meet the following criteria:

1. The employer will contribute no less than \$150 per employee per month toward the total premium cost for single coverage only; and
2. The employee contribution, if any amount, will be no greater than 50% of the total premium cost and no more than \$150 per month.
3. Pursuant to E.O. 1-7 section 4.04 a contractor is deemed to have complied with respect to a covered employee who is not provided health benefits if the employee refuses the benefits and the employee's contribution to the premium is no more than \$40 per month.

Please select whether you choose to:	Pay	Play	Both
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The Contractor/Subcontractor will file compliance reports with the City, which will include activity for covered employees subject to the program, in the form and to the extent requested by the administering department. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

Note: The Contractor is responsible to the City for the compliance of covered employees of covered subcontractors and only forms that are accurate and complete will be accepted.

Estimated Number of	Prime Contractor	Sub-Contractor
Total Employees on City Job	N/A	15
Covered Employees	N/A	15
Non-Covered Employees	N/A	0
Exempt Employees	N/A	0

*Required

I hereby certify that the above information is true and correct.

Shaheen Chowdhury
Contractor (Signature)
Shaheen Chowdhury, President
Name and Title (Print or type)

02/21/20
Date



City of Houston
Certification of Compliance with
Pay or Play Program

Form POP-2



Contractor Name: Freese and Nichols, Inc. \$ 250,000.00
(Contractor/Subcontractor) (Amount of Contract)

Contractor Address: 10497 Town and Country Way, Suite 500, Houston, TX 77024

Project No.: [GFS/CIP/AIP/File No.] S-000020-0071-3

Project Name: [Legal Project Name] Large Diameter Water Line Technical Services for DWO

POP Liaison Name: _____

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534 and Executive Order 1-7, Contractor/Subcontractor agrees to abide by the terms of this Program. This certification is required of all contractors for contracts subject to the program. You must agree EITHER to PAY or to PLAY for all covered employees. The Contractor/Subcontractor may also Pay on behalf of some covered employees and Play on behalf of other covered employees.

The Contractor/Subcontractor will comply with all provisions of the Pay or Play Program and will furnish all information and reports requested to determine compliance with program requirements of the Pay or Play Program (See Executive Order 1-7 for the terms of the Pay or Play program) The criteria of the program is as follows:

The Contractor/Subcontractor agrees to "Pay" \$1.00 per hour for work performed by covered employees under the contract with the City. If independent contract labor is utilized the Contractor/Subcontractor agrees to report hours worked by the independent contract laborer and pay \$1.00 per hour for work performed.

Otherwise the Contractor/Subcontractor agrees to "Play" by providing health benefits to each covered employee. The health benefits must meet the following criteria:

1. The employer will contribute no less than \$150 per employee per month toward the total premium cost for single coverage only; and
2. The employee contribution, if any amount, will be no greater than 50% of the total premium cost and no more than \$150 per month.
3. Pursuant to E.O. 1-7 section 4.04 a contractor is deemed to have complied with respect to a covered employee who is not provided health benefits if the employee refuses the benefits and the employee's contribution to the premium is no more than \$40 per month.

Please select whether you choose to:	Pay	Play	Both
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The Contractor/Subcontractor will file compliance reports with the City, which will include activity for covered employees subject to the program, in the form and to the extent requested by the administering department. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

Note: The Contractor is responsible to the City for the compliance of covered employees of covered subcontractors and only forms that are accurate and complete will be accepted.

*Estimated Number of:	Prime Contractor	Sub-Contractor
Total Employees on City Job	N/A	7
Covered Employees	N/A	7
Non-Covered Employees	N/A	0
Exempt Employees	N/A	2

***Required**

I hereby certify that the above information is true and correct.

Contractor (Signature) Jeff Taylor

Date

2/19/2020

Name and Title (Print or type) Jeff Taylor, Vice President

EXHIBIT "J"

CERTIFICATION OF AGREEMENT TO COMPLY WITH STANDARD DOT TITLE VI ASSURANCES APPENDIX A LANGUAGE

During the performance of this Contract, the Engineer, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- (1) Compliance with Regulations: The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) Information and Reports: The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the Recipient, or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the Recipient shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:
 - (a) withholding of payments to the Contractor under the Contract until the Contractor complies; and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Recipient or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Recipient to enter into such litigation to protect the interests of the Recipient, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.