

AMENDMENT NO. 7 TO THE CONTRACT  
BETWEEN  
THE CITY OF NEW ORLEANS  
AND  
TAKE 5 OIL CHANGE, LLC

**THIS SEVENTH AMENDMENT** (the "**Amendment**") is made and entered into this 22nd day of November 2022, by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the "**City**"), and Take 5 Oil Change, LLC, represented by Joseph Strahl, Senior Director-Local Fleet Sales (the "**Contractor**"). The City and the Contractor are sometimes each referred to as a "**Party**," and collectively, as the "**Parties**." The Amendment is effective as of November 22, 2022.

**RECITALS**

**WHEREAS**, on August 13, 2014, the City and the Contractor entered into a Contract for the Contractor to provide oil change and automotive maintenance services for City vehicles (the "**Agreement**") in accordance with Invitation to Bid No. 2297-01626, issued on April 4, 2014 (the "**ITB**"); and

**WHEREAS**, on August 13, 2015, the City and the Contractor amended the Agreement for the first time to extend the term of the Agreement and to modify the Agreement's terms and conditions for continuity of services ("**Amendment One**"); and

**WHEREAS**, on August 13, 2016, the City and the Contractor amended the Agreement for the second time to extend the term of the Agreement for continuity of services ("**Amendment Two**"); and

**WHEREAS**, on August 13, 2017, the City and the Contractor amended the Agreement for the third time to extend the term of the Agreement for continuity of services ("**Amendment Three**"); and

**WHEREAS**, on August 13, 2018, the City and the Contractor amended the Agreement for the fourth time to extend the term of the Agreement for continuity of services ("**Amendment Four**"); and

**WHEREAS**, on August 13, 2019, the City and the Contractor amended the Agreement for the fifth time to extend the term of the Agreement and to modify the Agreement's terms and conditions for continuity of services ("**Amendment Five**"); and

**WHEREAS**, on November 22, 2021, the City and the Contractor amended the Agreement for the sixth time to extend the term of the Agreement and to modify the Agreement's terms and conditions for continuity of services ("**Amendment Six**"); and

**WHEREAS**, the City and the Contractor, each having the authority to do so, desire to enter into this Amendment to extend the term of the Agreement on a month-to-month basis and to modify the Agreement's terms and conditions for continuity of services; and

NOW THEREFORE, for good and valuable consideration, the City and the Contractor amend the Agreement as follows:

1. **Extension.** The term is extended on a month-to-month basis, not to exceed twelve (12) months, beginning from the Effective Date through November 21, 2023.
2. **Price.** The City and Contractor reaffirm the price proposal submitted by the Contractor in response to the City's Invitation to Bid No. 2297-01626.
3. **Additional Miscellaneous Provisions.** The following terms and conditions are added to the Agreement:

#### **ARTICLE IV - DECLARED DISASTER**

A. **Declaration.** During the declaration of an emergency by federal, state, and/or local government, the Contractor shall provide support to the City on an as-needed and task-order-driven basis. Because of the uncertainty of the scale and/or type of emergency, the services to be provided by the Contractor will vary and may need to be adjusted as needs are identified. The Contractor may be requested to provide a range of services. Said services may need to be rendered on a continual basis during the declaration of an emergency.

B. **Task Order - Notification and Personnel.** Prior to or during the declaration of an emergency, the City will notify the Contractor via task order if the City requires the Contractor's support. Upon activation by task order, the Contractor will provide the City with contact information of personnel assigned to the task order; and coordinate with the City to identify any personnel available to meet the City's needs.

C. **Purchase Order.** Once services are identified, the City will issue a purchase order to the Contractor. The City will issue a subsequent purchase order in case of additional need for services or may issue a modified purchase order if changes are made to the initial purchase order.

D. **Timely Documentation.** The Contractor will ensure that the City is provided with timely and accurate reports and other documentation, as requested.

#### **ARTICLE V- PERFORMANCE MEASURES**

A. **Factors.** The City will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

B. **Failure to Perform.** If the Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

## **ARTICLE VI - NON-DISCRIMINATION**

A. **Equal Employment Opportunity.** In all hiring or employment made possible by or resulting from this Agreement, the Contractor (1) will not discriminate against any employee nor applicant for employment because of race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

B. **Non-Discrimination.** In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of the Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state, and local laws relating to non-discrimination, including, without limitation, Title VII of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. **Incorporation into Subcontracts.** The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with these provisions.

D. **Termination for Breach.** The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

## **ARTICLE VII - FORCE MAJEURE**

A. **Event.** An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by the City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of the City, provided such event was not caused by the negligence nor misconduct of the City, by the failure of the City to comply with applicable laws, or by the breach of this Agreement.

B. Notice. To seek the benefit of this Article, the City must provide notice in writing to the Contractor stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended.

C. Effect.

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:
  - a. Suspend this Agreement for a duration to be set by the City, not to exceed ninety (90) days. During such time of suspension, the Parties will not be liable nor responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
  - b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to the Contractor and without any further compensation due.
2. Notwithstanding Section (C)(1) above, the obligations relating to making payments when due (for services or materials already provided), and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

#### ARTICLE VIII – HIRENOLA PROGRAM

The Contractor agrees to abide by City Code Sections 70-496, *et seq.*, to demonstrate good faith efforts to fully carry out the applicable requirements of the HireNOLA Program as defined in the City Code. If the Contractor fails to comply with the requirements of the HireNOLA Program during the term of the Agreement, said failure may result in termination of the Agreement or pursuit of other remedies.

4. Payment. Unless otherwise agreed by the City, payment terms are NET 30 days upon providing that the services described under this Agreement have been rendered and/or accepted, and upon the City's receipt of a properly submitted invoice via the City's supplier portal.

5. Invoices. The Contractor must submit invoices monthly to the City electronically, via its supplier portal, for goods or services provided under this Agreement no later than ten (10) calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. All invoices must be signed by an authorized representative of the Contractor under penalty of perjury, attesting to the validity and accuracy of the invoice. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices. At a minimum, each invoice must include the following information:

- a. Name of Contractor

- b. Date of Invoice
- c. Invoice Number
- d. Contract or BRASS Number issued by the City (i.e., K#)
- e. Name of the City Department to be invoiced (i.e., Equipment Maintenance Division)
- f. Description of Completed Services
- g. FEMA or HUD project number, if applicable

6. **Ownership Interest Disclosure.** The Contractor shall provide a sworn affidavit listing all persons, natural or artificial, with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the purposes hereof, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the City may, after thirty (30) days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until the required affidavits are submitted.

7. **Subcontractor Reporting.** The Contractor shall provide a list of all persons, natural or artificial, who are retained by the Contractor at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the City. In regard to any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the City, the Contractor must provide notice to the City within thirty (30) days of retaining said subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after thirty (30) days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until the required lists and notices are submitted.

8. **Convicted Felon Statement.** The Contractor swears that it complies with City Code Section 2-8(c). No Contractor principal, member, nor officer has, within the preceding five (5) years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

9. **Non-Solicitation Statement.** The Contractor swears that it has not employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Amendment. The Contractor has not paid nor agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Amendment.

10. **Prior Terms Binding.** Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.

11. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Amendment, but all of which, when taken together, shall constitute one and the same agreement.

12. **Electronic Signature and Delivery.** The Parties agree that a manually signed copy of this Amendment and any other document(s) attached to this Amendment delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an originally signed copy of this Amendment. No legally binding obligation shall be

created with respect to a Party until such Party has delivered or caused to be delivered a manually signed copy of this Amendment.

**[SIGNATURES CONTAINED ON THE NEXT PAGE]**

**[The remainder of this page is intentionally left blank.]**

IN WITNESS WHEREOF, the City and the Contractor, through their duly authorized representatives, execute this Amendment.

CITY OF NEW ORLEANS

BY: 

LATOYA CANTRELL, MAYOR

Executed on this 26<sup>th</sup> of July, 2023.

FORM AND LEGALITY APPROVED:  
LAW DEPARTMENT

BY: 

PRINTED NAME: Andrew Gregorian

TAKE 5 OIL CHANGE, LLC

BY: 

JOSEPH STRAHL, SENIOR DIRECTOR-LOCAL FLEET SALES

FEDERAL TAX I.D.