

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**ADDENDUM TO ES OPCO LLC DBA VESERIS LLC'S AGREEMENT
(BUYBOARD CONTRACT NO. 709-23)**

THIS ADDENDUM ("Addendum") is entered into by and between Fort Bend County, ("County"), a body corporate and politic under the laws of the State of Texas, and ES OPCO LLC dba Vesperis LLC, ("Vesperis"), a company authorized to conduct business in the State of Texas (hereinafter each referred to as a "party" or collectively as the "parties").

WHEREAS, subject to the changes herein, the parties have executed and accepted Vesperis' Quotation, (the "Agreement"), attached hereto as Exhibit "A" and incorporated fully by reference, for the purchase and shipment of specified London Foggers and associated services (collectively the "Services"); and

WHEREAS, County desires that Vesperis provide Services as will be more specifically described in this Agreement; and

WHEREAS, Vesperis represents that it is qualified and desires to perform such Services; and

WHEREAS, the parties wish to utilize BuyBoard Contract No. 709-23, incorporated fully by reference, for the purchase of the Services; and

WHEREAS, the following changes are incorporated as if a part of the Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

1. **Recitals.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.
2. **Scope of Services.** Subject to this Addendum, Vesperis will render Services to County as described in Exhibit A; and in accordance with the requirements and specifications of BuyBoard Contract No. 709-23. All performance of the Scope of Services by Vesperis including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County. The London Foggers, as described in Exhibit A, will be shipped directly to the below address:

Fort Bend County Road & Bridge
3743 School Street
Needville, Texas 77461

3. **Payment; Non-appropriation; Taxes.** Payment shall be made by County within thirty (30) days of receipt of invoice. Vesperis may submit invoice(s) electronically in a form acceptable to County via: apauditor@fortbendcountytexas.gov. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County. County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request. Interest resulting from late payments by County shall be governed by Chapter 2251, TEXAS GOVERNMENT CODE. County reserves the right to withhold payment pending verification of satisfactory work performed.
4. **Limit of Appropriation.** Vesperis clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of Eighty-One Thousand, Five Hundred Five dollars and 70/100 (\$81,505.70), specifically allocated to fully discharge any and all liabilities County may incur. Vesperis does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Vesperis may become entitled to and the total maximum sum that County may become liable to pay to Vesperis shall not under any conditions, circumstances, or interpretations thereof exceed Eighty-One Thousand, Five Hundred Five dollars and 70/100 (\$81,505.70). In no event will the amount paid by the County for all Services under this Agreement exceed this Limit of Appropriation without an amendment executed by the parties. This Limit of Appropriation is inclusive of all applicable shipping and handling charges.
5. **Public Information Act.** Vesperis expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Vesperis shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement and this Addendum are not proprietary or confidential information.
6. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless Vesperis for any reason are hereby deleted.

7. **Applicable Law; Arbitration; Attorney Fees.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted. County does not agree to pay any and/or all attorney fees incurred by Vesperis in any way associated with the Agreement.
8. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content. For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Vesperis hereby verifies that Vesperis and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
- a. Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
 - b. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Vesperis does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
 - c. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Vesperis does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
 - d. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Vesperis does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in § 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.
9. **Modifications and Waivers.** The parties may not amend or waive this Agreement, except by a written agreement executed by both parties. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. The rights and remedies of the parties set forth in this Agreement are not exclusive

of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

10. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, VESERIS ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
11. **Use of Customer Name.** Vesperis may use County's name without County's prior written consent only in any of Vesperis' customer lists, any other use must be approved in advance by County.
12. **Conflict.** In the event there is a conflict between this Addendum and the Agreement, this Addendum controls. In the event there is a conflict between this Addendum and the terms and conditions of BuyBoard Contract No. 709-23, then the terms and conditions of BuyBoard Contract No. 709-23 controls to the extent of the conflict.
13. **Understanding, Fair Construction.** By execution of this Addendum, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.
14. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.
15. **Electronic and Digital Signatures.** The parties to this Agreement agree that any electronic and/or digital signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.
16. **Compliance with Laws.** Vesperis shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Vesperis shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.
17. **Independent Contractor.** In the performance of work or services hereunder, Vesperis shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Vesperis or, where permitted, of its subcontractors. Vesperis and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

18. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

(Execution Page Follows)

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Addendum and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will. This Addendum is effective upon execution by both parties.

FORT BEND COUNTY

ES OPCO LLC DBA VESERIS LLC

KP George, County Judge

Keith L. Haas

Authorized Agent – Signature

Date

Keith L. Haas

Authorized Agent- Printed Name

ATTEST:

Public Health Specialist

Title

Laura Richard, County Clerk

2 Feb 2024

Date

AUDITOR'S CERTIFICATE

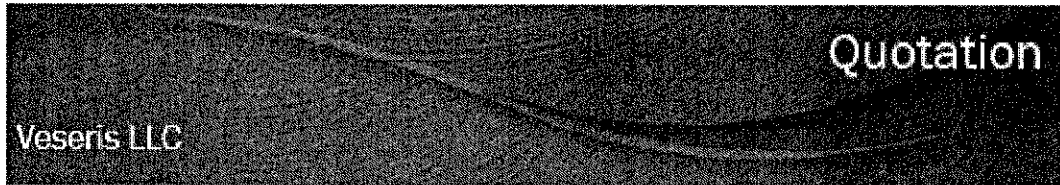
I hereby certify that funds in the amount of \$_____ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

Exhibit A: Vesperis' Quotation

I:\AGREEMENTS\2024 Agreements\Environmental Health\ES OPCO USA LLC (24-EnvHlth-100392)\Addendum to Agreement with ES OPCO LLC dba Vesperis.docx aw

Exhibit A



Company Address
1919 Jacintoport Blvd, Houston, TX 77015

Date 1/29/2024
Quotation # London Fogger 20-20
Customer ID

Quotation For

Michael R Schaffer, MPH, CPO, Director-Environmental Health
Fort Bend County Health and Human Services
4520 Reading Rd, Rosenberg, TX 77471
Phone: 281-238-3589, email: Michael.Schaffer@fortbendcountytx.gov

Quotation valid until: 3/31/2024
Prepared by: Keith Haas, MS, BCE

Comments or Special Instructions

BuyBoard contract 709-23, Price includes London Fogger 20-20 setup, on call service and tech support, calibration and droplet sizing included as a Veseris customer, 1 year warranty, units are shipped without a battery

Salesperson	P. O. Number	Ship Date	F.O.B. Point	Terms
Chris Walker		1/23/2024		

Quantity	Description	Unit Price	Taxable?	Amount
5	London Fogger 20-20 with London Flow	\$ 19,651.00	No	\$ 98,255.00
5	BuyBoard Discount	\$ (3,749.86)	No	\$ (18,749.30)

If you have any questions concerning this quotation, please contact:
Keith L. Haas 713-203-0436

Thank you for your business!

Subtotal	\$ 79,505.70
Tax Rate	0.00%
Sales Tax	\$ -
Shipping	\$ 2,000.00
TOTAL	\$ 81,505.70