



CITY OF HOUSTON INVITATION TO BID

Issued: July 31, 2009

BID OPENING:

Sealed bids, in duplicate, will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002, until 10:30 a.m. **Thursday, August 27, 2009** and all bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby at 11:00 a.m. on that date for the purchase of:

**ONSITE WATER TREATMENT SLUDGE DEWATERING AND DISPOSAL SERVICES
FOR PUBLIC WORKS & ENGINEERING DEPARTMENT
BID INVITATION NO. S50-L23331
NIGP Code: 968-93 & 910-70**

BUYER:

Questions regarding this solicitation document should be addressed to **Art Lopez, Buyer**, at (832) 393-8731, or e-mail to arturo.lopez@cityofhouston.net.

ELECTRONIC BIDDING:

In order to submit a bid for the items associated with this procurement, you must fill in the pricing information on the "PLACE BID" page.

MANDATORY PRE-BID CONFERENCE:

A Pre-Bid Conference will be held for all Prospective Bidders at the Plant 1 Training Room of the East Water Purification Plant, 2300 Federal Rd, Houston, TX 77015, Key Map 496U/Y, at **10:00 a.m. on Wednesday, August 12, 2009**. (NOTE: Valid Picture I.D. is Required in Order to Enter the Facility, NO Exceptions Taken).

WALK-THROUGH SCHEDULE:

Bidders will have the opportunity to tour the East Water Purification Plant facilities immediately following the pre-bid meeting.

All Prospective Bidders are required to be present. It is the bidder's responsibility to ensure that they have secured and thoroughly reviewed the solicitation documents prior to the Pre-Bid Conference. Any revisions to be incorporated into this solicitation document arising from discussions before, during and subsequent to the Pre-Bid Conference will be confirmed in writing by Letter(s) of Clarification prior to the bid due date. Verbal responses will not otherwise alter the specifications, terms and conditions as stated herein.

Bidding forms, specifications, and all necessary information should be downloaded from the Internet at www.houstontx.gov/purchasing. By registering and downloading this solicitation document, all updates to this solicitation document will be automatically forwarded via e-mail to all registered bidders. This information may also be obtained from the Supplier Assistance Desk, Strategic Purchasing Division, 901 Bagby, Concourse Level, Houston, Texas 77002.

The place of the bid opening may be transferred in accordance with Paragraph (b), (5) of Section 15-3 of The Code of Ordinances, Houston, Texas. The bid opening meeting may be rescheduled in accordance with Paragraph (b), (6) of said Section 15-3.

The City reserves the right to reject any or all bids or to accept any bid or combination of bids deemed advantageous to it.

City Employees are prohibited from bidding on this solicitation in accordance with the Code of Ordinances, Section 15 - 1.

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SECTION A: OFFER
SECTION B: SCOPE OF WORK/SPECIFICATIONS
SECTION C: GENERAL TERMS & CONDITIONS

*NOTE 1: Actual page numbers for each Section may change when the solicitation document is downloaded from the Internet or because of Letters of Clarification. Therefore, Bidders must read the bid document in its entirety and comply with all the requirements set forth therein.

*NOTE 2: To be considered for award, please submit the electronic bid form and the forms listed in Section A, including the Official Signature Page, which must be signed by a company official authorized to bind the company.

**SECTION A
OFFICIAL BID FORM**



**ONSITE WATER TREATMENT SLUDGE DEWATERING AND DISPOSAL SERVICES
FOR PUBLIC WORKS & ENGINEERING DEPARTMENT
BID #S50-L23331
NIGP Code: 968-93 & 910-70**

To The Honorable Mayor
and Members of the City Council
of the City of Houston, Texas (the "City"):

The undersigned Bidder hereby offers to contract with the City upon the terms and conditions stated in that certain **"Contract Onsite Water Treatment Sludge Dewatering and Disposal Services for a three-year period with two (2) one-year option periods for Public Works & Engineering Department"**, which was distributed by the City together with the "Notice to Bidders" and is hereby incorporated herein by this reference (the "Contract"). This offer is made at the prices stated on the electronic Bid Form. When issued by the City of Houston, Letters of Clarification shall automatically become part of this bid document and shall supersede any previous specifications or provisions in conflict with the Letters of Clarification. It is the responsibility of the bidder to ensure that it has obtained all such letters. By submitting a bid on this project, bidder shall be deemed to have received all Letters of Clarification and to have incorporated them into its bid.

The City may accept this bid offer by issuance of a Contract covering award of said bid to this Bidder at any time on or before the 180th day following the day this Official Bid Form is opened by the City. This offer shall be irrevocable for 180 days, but shall expire on the 181st day unless the parties mutually agree to an extension of time in writing.

The City of Houston reserves the option, after bids are opened, to increase or decrease the quantities listed, subject to the availability of funds, and/or make award by line item.

If the City accepts the foregoing offer, this Bidder promises to deliver to the City Purchasing Agent of the City, five (5) original counterparts of said Contract duly executed by this Bidder (as "Contractor") in accordance with this paragraph, proof of insurance as outlined in Article II of the Contract, all on or before the tenth (10th) day following the day this Bidder receives from the City the unsigned counterparts shall be executed so as to make it binding upon the Bidder, and all of the applicable requirements stated in the document entitled "Instructions for Execution of Contract Documents," (which was distributed by the City) shall be complied with.

The City reserves the right to accept or reject, in whole or in part, any or all bids received and to make award on the basis of individual items or combination of items, as it is deemed in the best interest of the City.

If the City accepts the foregoing offer, this bidder shall furnish all labor, supervision, materials, supplies, equipment and tools necessary to provide **Onsite Water Treatment Sludge Dewatering and Disposal Services** for the City in accordance with attached Specifications.

Documents/forms must be downloaded from the City's Website
<http://www.houstontx.gov/purchasing/index.html>.

Additional Required Forms to be Included with this Bid:

In addition to the Electronic Bid Form and the Official Signature Page, the Forms listed in Table 1 **must be completed and submitted to the Office of the City Secretary on or before the date and time the bid is due:**

TABLE 1 - REQUIRED FORMS
Affidavit of Ownership.doc
Fair Campaign Ordinance.doc
Statement of Residency.doc
Conflict of Interest Questionnaire.doc
Contractors Questionnaire Document (pg 5)
Pay or Play Form 1a Acknowledgement

Table 2 lists other documents and forms that should be viewed/downloaded from the City's website, but are not required to be submitted with the bid. The City will request these forms, as applicable, to be completed and submitted to the City by the recommended/successful bidder:

TABLE 2 - DOCUMENTS & FORMS
Drug Forms.doc
EEOC.doc
Formal Instructions for Bid Terms.doc
M/WBE.doc
Sample Insurance Over \$50,000.pdf
Pay or Play Form 2 Certification
Performance Bond

Questions concerning the Bid should be submitted in writing to: City of Houston, Strategic Purchasing Division, 901 Bagby, Room B506, Houston, TX 77002, Attn: Arturo Lopez or via fax: 832-393-8759 or via email (preferred method) to arturo.lopez@cityofhouston.net no later than 4:00 PM, Friday, August 14, 2009.

PRICING:

East Water Purification Plant:

The Contractor shall provide the unit prices for the dewatering, transporting and disposal of water treatment sludge at the EWPP. The dewatered sludge will be disposed of at the on-site permitted land application site. The pricing proposal is separated into two (2) options.

The first option is to operate and maintain dewatering equipment, process the sludge onsite, transport, and dispose of the sludge assuming the Contractor will use the existing City's owned centrifuges at the EWPP 3 for on-site process of water treatment sludge from both EWPP 1&2 and EWPP 3. Water treatment sludge from the EWPP 1&2 will be pumped to the EWPP 3 thickeners via the existing sludge piping system.

The second option is to operate and maintain dewatering equipment, process the sludge onsite, transport, and dispose of the sludge assuming the Contractor will use the existing City's owned centrifuges for on-site process of water treatment sludge from EWPP 3 only. In addition, the Contractor shall provide a dewatering system (belt filter presses) for water treatment sludge from the EWPP 1&2. The monthly cost for the dewatering system shall include the mobilization/demobilization and installation of the system.

Southeast Water Purification Plant:

The Contractor shall provide the unit prices to operate and maintain equipment, process the sludge onsite, transport, and dispose of the water treatment sludge at the SEWPP. The dewatered sludge will be dispose of

the on-site permitted landfill (monofill).

The Contractor is required to provide and install a dewatering system (belt filter presses) to process the water treatment sludge from the SEWPP onsite. The monthly cost for the dewatering system shall include the mobilization/demobilization and installation of the system.

Should an alternative method is selected, the Contractor shall provide the unit cost in appropriate line item and indicate that "NO INTEREST" in the other line items. The alternative method is to haul off the water treatment sludge in form of wet slurry using watertight containers.

Northeast Water Purification Plant

The Contractor shall provide the unit prices to operate and maintain equipment, process the sludge onsite, transport, and dispose of the water treatment sludge at the NEWPP.

The Contractor will use the existing City's owned belt filter presses at the NEWPP for processing the sludge onsite.

The Contractor shall be solely responsibility for the method of disposal of sludge and disposal fee(s). Contractor is responsible for finding and arranging for disposal site(s). Contractor, at its own expenses, shall obtain and analyze sludge samples to ascertain the quality and characteristics of dewatered sludge for disposal, if required by disposal site(s).

Should an alternative method is selected; the Contractor shall provide the unit cost in appropriate line item and indicate that "NO INTEREST" in the other line items. The alternative method is to haul off the water treatment sludge in form of wet slurry using watertight containers.

PERFORMANCE BOND:

The successful Contractor shall be required to provide a Performance Bond or a Clean Irrevocable Letter of Credit in the amount of **\$400,000.00 per awarded facility** to be renewed annually. The Contract term is three-years with two one-year options to renew for a total five-year term.

The bond will be renewed for each one-year term upon extension of the Contract. Further, subsequent to Contract award extension and upon the City's written notification, to the Contractor, of its intent to exercise a one-year contract option year, the Contractor shall provide to the City, within ten (10) calendar days of receipt of such notification, a Performance Bond or Clean Irrevocable Letter of Credit in the amount of 100% of the total contract option year amount.

The Performance Bond shall be in the same form as that distributed by the City, and attached hereto, all duly executed by this bidder (as "Principal") and by a Corporate Surety Company licensed to do business in the State of Texas, and shown in the most recent edition of United States Treasury Circular 570 as having an "underwriting limitation" at least as great as that amount of the Performance Bond.

The Clean Irrevocable Letter of Credit must be submitted on the form provided herein and signed by an officer of the institution with the appropriate authority to issue said document.

The Contractor must deliver the Performance Bond or Clean Irrevocable Letter of Credit to the City Purchasing Agent of the City on or before the tenth (10th) day following the day this Bidder receives notification from the City of a possible award.

CONTRACTOR'S QUESTIONNAIRE

In order to receive bid award consideration, the bidder must be able to demonstrate that they are currently providing or have had at least one contract, for **Onsite Water Treatment Sludge Dewatering and Disposal Services** that is similar in size and scope to this contract. **Bidder must have references documenting that it has performed Onsite Water Treatment Sludge Dewatering and Disposal Services.** The reference(s) should be included in the space provided below. Please attach another piece of paper if necessary. If references are not included with the bid, the bidder shall be required to provide such references to the City of Houston within five working days from receipt of a written request from the City of Houston to do so. **Bidder's capability and experience shall be a factor in determining the Contractor's responsibility.**

1. Name: _____

Address: _____

City & State: _____

Name & Phone Number of Contact: _____ Years of Services: _____

2. Name: _____

Address: _____

City & State: _____

Name & Phone Number of Contact: _____ Years of Services: _____

3. Name: _____

Address: _____

City & State: _____

Name & Phone Number of Contact: _____ Years of Services: _____

SITE INSPECTION:

"The City of Houston reserves the right to inspect the bidder's current place of business to evaluate equipment condition and capabilities, staff experience, training and capabilities, and storage capabilities as they relate to the performance of this contract."

QUALITY AND WORKMANSHIP:

The bidder must be able to demonstrate upon request that it has satisfactorily performed services similar to the services specified herein. The bidder will provide records of warranty and repair services upon request by City. The City of Houston shall be the sole judge as to whether the services performed are similar to the scope of services contained herein and whether the bidder is capable of performing such services.

**SECTION B
SCOPE OF WORK**

ONSITE WATER TREATMENT SLUDGE DEWATERING AND DISPOSAL SERVICES

1.0 GENERAL:

- 1.1 The Public Works and Engineering Department is seeking proposals from experienced and qualified Contractor to operate and maintain the on-site water treatment sludge dewatering system and to transport and dispose of the dewatered sludge at three (3) City's surface water treatment facilities. The Contractor must be capable of providing all services detailed in this request for proposal to be considered for award.
- 1.2 The services must meet or exceed all requirements of the Environmental Protection Agency (EPA) and the Texas Commission on Environmental Quality (TCEQ), as well as local regulations governing these activities.
- 1.3 All transportation and disposal operations shall be performed in compliance with all applicable statutes and regulations which shall include, but not be limited to, federal, state, county, and local regulations. Disposal site(s) shall be permitted or registered with certificates current. Waste haulers/transporters, where used, shall have current registrations and stickers on trucks.
- 1.4 Contractor shall perform Work in a manner which minimizes disruption of the normal operation of the water treatment plants and maintain continuous operation of existing facilities. The City will not tolerate inaction or action by the Contractor that could jeopardize the operation of the plant.
- 1.5 The amount of sludge the Contractor may be asked to handle may vary depending on various factors which include, but not limited, raw water turbidity, chemical dosages, treated water flow capacity, and equipment failure. There is no minimum/maximum quantities of sludge guaranteed under this contract.
- 1.6 The City reserves the right to select elements from different individual proposals and to combine and consolidate them in any way that best serves the City's interest. The City reserves the right to reduce the scope of the work and evaluate only the remaining elements from all proposals. The City reserves the right to reject specific elements contained in all proposals and to complete the evaluation process based only on the remaining items.

2.0 SITE DESCRIPTION:

- 2.1 The prospective Contractor shall provide operation, maintenance, transport, and disposal services to the following water treatment plants:
 - 2.1.1 East Water Purification Plant
 - 2.1.2 Southeast Water Purification Plant
 - 2.1.3 Northeast Water Purification Plant
- 2.2 East Water Purification Plant (EWPP):
 - 2.2.1 The EWPP is located at 2300 Federal Road, Houston, Texas 77015 (Key Map 496U/Y). The facility includes three surface water treatment plants. Plants 1 and 2 (designated as EWPP 1&2) operate together as a single plant with a combined entry point to the distribution system. Plant 3 (designated as EWPP 3) is located in the northern portion of the property. These plants are separated by Huntington Bayou.

- 2.2.2 The daily average treated water flow rates for EWPP 1&2 and EWPP 3 are 110 and 97 million gallons per day (MGD) in Year 2008, respectively. Daily treated water flow rates for the EWPP may increase to an average combined rate of 280 MGD during the contract term.
- 2.2.3 Based on the current average flow rates, the annual water treatment sludge produced is approximately 12,300 dry tons per year for the EWPP 1&2 and 14,600 dry tons per year for the EWPP 3.
- 2.2.4 Currently, the water treatment sludge is processed by gravity thickeners and dewatered by centrifuges (City's own equipment) at the EWPP 3 and belt filter presses (provided by current Contractor) at the EWPP 1&2.
- 2.2.5 The dewatered sludge is hauled off in form of a truckable dry cake and disposed of at an on-site land application area.
- 2.2.6 The EWPP has an approximately 46.6-acre on-site land application area permitted by the TCEQ. The Contractor shall supply all labor and equipment necessary to haul and dispose of the dewatered sludge in the land application area in accordance with the TCEQ permit requirements.
- 2.2.7 The Contractor shall also provide labor and equipment (i.e. bulldozer, compactor) to maintain (such as promote drainage, compacting, and leveling) the land application area as required by the TCEQ permit.

2.3 Southeast Water Purification Plant (SEWPP):

- 2.3.1 The SEWPP is located at 3100 Genoa Red Bluff, Houston, Texas 77034 (Key Map 577M).
- 2.3.2 The daily average treated water flow rate for the SEWPP is **77** MGD, and the annual water treatment sludge produced is approximately 4,200 dry tons per year. Daily treated water flow rate for the SEWPP may increase to an average flow rate of 200 MGD during the contract term.
- 2.3.3 Currently, the water treatment sludge is processed by gravity thickeners and dewatered through belt filter presses (provided by current Contractor) at the SEWPP.
- 2.3.4 The dewatered sludge is hauled off in form of a truckable dry cake and disposed of at an on-site landfill (monofill).
- 2.3.5 The SEWPP has a 25-acre landfill permitted by the TCEQ. The Contractor shall supply all labor and equipment necessary to haul and dispose of the dewatered sludge in the landfill area in accordance with the TCEQ permit requirements.
- 2.3.6 The Contractor shall also provide labor and equipment (i.e. bulldozer, compactor) to maintain (such as promote drainage, compacting, and leveling) the on-site monofill as required by the TCEQ permit.

2.4 Northeast Water Purification Plant (NEWPP):

- 2.4.1 The NEWPP is located at 12121 North Sam Houston Parkway East, Humble, Texas 77346 (Key Map 377W).
- 2.4.2 The daily average treated water flow rate for the NEWPP is **30** MGD, and the annual water treatment sludge produced is approximately **4,600** dry tons per year. Daily treated water flow rate for the NEWPP may increase to an average flow rate of 80 MGD during the contract term.

- 2.4.3 Currently, the water treatment sludge is processed through gravity thickeners and dewatered using belt filter presses (City's own equipment) at the NEWPP. Three filter belt presses which consisted of two Komline-Sanderson systems (each rated for 1,300 lbs/hour) and one Ashbrook system (rated at 1,500 lbs/hour) are being used at this facility.
- 2.4.4 After the sludge is dewatered, the sludge is hauled off in form of a truckable dry cake and disposed of at an off-site commercial landfill.
- 2.4.5 The Contractor shall have sole responsibility for the method of disposal of sludge. Contractor is responsible for finding and arranging for disposal site(s). Contractor, at its own expense, shall obtain and analyze sludge samples to ascertain the quality and characteristics of dewatered sludge for disposal, if required by disposal site(s).

3.0 SCOPE OF SERVICES:

- 3.1 The Plant Operations Manager will be the designated point of contact for the contract. All coordination for the project shall be made through the Plant Operations Manager or his designee.
- 3.2 The Contractor shall designate a Project Manager for this contract by submitting in writing a letter to the Plant Operations Manager. This letter shall be delivered within **10** days of notification of award by the City Council.
 - 3.2.1 The Project Manager must be **LOCALLY** available at all times during the contract term.
 - 3.2.2 The Project Manager shall have full authority to represent the Contractor in making decisions and in the execution of the services to be performed under the contract.
 - 3.2.3 The Project Manager must be knowledgeable in operation and maintenance of dewatering process and equipment.
- 3.3 The City's water purification plants are operated 24-hours a day, 7-day a week. It is anticipated that operation hours for the dewatering services will be between the hours of **7:00 AM** and **7:00 PM**, Monday through Friday. However, the Contractor shall be available to provide service at designated site on a 24-hour per day/7-day per week basis upon request. The Plant Operations Manager, or his designee, will determine if service outside normal working hours is required at the site. The City shall not be charged an additional fee for the services outside of the normal working hours, including weekends or holidays. The Contractor shall make provisions to complete any and all scheduled work as quickly as possible after a delay caused by inclement weather, or other conditions.
- 3.4 The Contractor will be allowed to use the existing on-site dewatering systems at the EWPP 3 and NEWPP. The Contractor shall provide qualified personnel to operate the systems. The Contractor shall also provide all routine and preventive maintenance works on the City's dewatering system per manufacturer's recommendations specified in the Operations and Maintenance (O&M) manuals. The Contractor shall provide a monthly routine and preventative maintenance logs to the Plant Operations Manager or his designee no later than seven (7) calendar days before the last day of the month for the maintenances to be performed in the following month. All labor, supervision, consumables, equipment, tools, etc. required to perform this maintenance, will be paid for by the Contractor. Special part in excess of \$2,500 will be paid by the City unless it is damaged due to Contractor's actions or lack of actions.
- 3.5 Any repair or replacement in excess of \$2,500 per item shall require authorization from the Plant Operations Manager or his designee. The Contractor shall determine the extent and estimated cost of corrective repairs. A written recommendation for repair shall be submitted to the Plant Operations Manager or his designee for approval. City will reimburse for the repairing costs if the Contractor demonstrates the damage is not preventable. All repairs will require written

authorization from the Plant Operations Manager or his designee before commencing. If repair cost is greater than \$5,000, three written quotes shall be obtained from independent third-party vendors.

- 3.6 The Contractor shall specify, supply and pay for the sludge polymer to be used for on-site dewatering service. If the dewatered material to be disposed of at the on-site monofill, the dewatered material shall have a solids content at least 18% solids or higher on a consistent basis. The City will NOT pay for any loads which solids content are less than 18%.
- 3.7 Contractor shall keep the sludge in the thickeners and torque readings at an appropriate level that minimizes disruption of the normal operation of the plants at all times, including weekends.
- 3.8 The Contractor shall provide a sufficient number of watertight containers and transporting vehicles at the plants to enable continuous operation of the described on-site water treatment sludge dewatering, hauling, and disposal service. This requirement shall also apply to the time period that on-site scales are not available for use. All containers shall be covered with tarpaulins prior to leaving plants and en route to disposal site(s).
- 3.9 The Contractor will require weighing filled and emptied containers at one of the City's scales located at the EWPP and SEWPP or at a certified public scale. The Contractor will be responsible for any fee charged at a public scale.
- 3.10 The Contractor shall sample each container for percent solids to determine the dry tonnage of hauled sludge. The sample shall be analyzed in accordance with an approved standard (ASTM or equivalent). Prior to commencing the work, the Contractor shall provide a copy of that standard to the Plant Operations Manager or his designee for approval. The City reserves the rights to obtain a split sample for verification purposes. The sample results analyzed by the City will supersede the Contractor's.
- 3.11 The Contractor shall perform a dewatered sludge sample analysis at least once per year. All parameters as required by "TCEQ Instructions and Procedural Information for the Registration of the Land Application of Water Treatment Sludge" shall be analyzed. During the contract term, the Contractor shall also perform additional sampling, if required, at no additional cost to the City to comply with any changes made by federal, state, and local regulatory agency.
- 3.12 The Contractor must be equipped to exchange information electronically with the City in a format that is compatible with Microsoft Office software. It shall be solely the Contractor's responsibility to facilitate this electronic exchange. The Contractor shall bear all costs for providing this interface with the City.
- 3.13 At a minimum, Contractor shall furnish a monthly progress report to the Plant Operation Manager, or his designee, by the 15th day of the following month. The report shall include, but not limited to:
 - 3.13.1 all data required for federal, state, and local reports,
 - 3.13.2 monthly usage and MSDS sheets of sludge polymers,
 - 3.13.3 number of trucks/bins hauled
 - 3.13.4 volume of dry solids hauled in tons,
 - 3.13.5 analytical testing reports, if any,
 - 3.13.6 disposal manifests, and
 - 3.13.7 documentation of maintenance records on dewatered system.
- 3.14 Contractor shall provide other reports as reasonably stipulated by the Plant Operations

Manager, or his designee, on a routine or as needed basis. The City shall not be charged an additional fee for these services.

- 3.15 Contractor shall insure that copies of back-up documents and manifests are properly completed, fully and legibly executed with correct information and dates.
- 3.16 Contractor shall remove debris and rubbish from the work site as frequently as necessary to avoid safety hazards and unsightliness, and at the end of each workday.
- 3.17 Contractor shall be responsible for containing all spillage of product that includes dewatered solids, fuel and lubricants, and sludge polymers.
- 3.18 The Contractor shall be responsible to insure that all spills or damages caused by spills are corrected immediately at his own expense. Correction of spills or damages shall be executed in a manner approved by the Plant Operations Manager or his designee.
- 3.19 The Contractor shall ensure its employee and/or subcontractors comply with the regulations governing the issuance of a Storm Water Discharge Permit by the EPA/TCEQ. The permit, in general, requires the City to eliminate or remedy any erosion of soil into the waterways and prevent any contaminants from reaching the waterways. Contractor shall not disturb vegetated areas to the point where the soil may be exposed to erosion.
- 3.20 For the SEWPP and NEWPP, the Contractor may haul off the water treatment sludge in form of wet slurry using watertight containers as an alternative method. The wet slurry shall be transported and disposed off the TCEQ permitted landfill or land application site. Should the alternative method is selected; the Contractor is responsible to provide pumps, hoses, and other appurtenances for transferring slurry to watertight containers.

4.0 LICENSES, CERTIFICATIONS AND PERMITS:

- 4.1 The Contractor is required to comply with all federal, state, local, and municipal laws, ordinances, rules and regulations pertaining to the hauling and disposal of water treatment sludge.
- 4.2 The Contractor shall be registered with the TCEQ for hauling of sludge within the State of Texas.
- 4.3 The Contractor shall be responsible for acquiring, at its own expense, all licenses, registrations, permits, and authorizations necessary for the hauling and disposal of water treatment sludge.
- 4.4 Contractor shall provide all maintenance on the trailers and/or roll-off containers and shall ensure that all required licenses and inspections are current.
- 4.5 Contractor shall provide current copies of all permits to the Plant Operations Manager, or his designee, within 10 days of notification of award by the City Council.
- 4.6 Contractor shall be responsible for securing overweight permit and associated costs, if necessary.

5.0 SAFETY AND SECURITY REQUIREMENTS:

- 5.1 The Contractor shall be completely familiar with, and shall comply with all local, City, State and Federal OSHA regulations and requirements as applicable for all services performed under this Contract.
- 5.2 The Contractor shall be responsible and liable for the safety, injury, and health of its employees while performing service work.

- 5.3 The Contractor shall strictly abide by all security and safety regulations issued by the City. The City shall provide the Contractor copies of all updates or changes to the City's security and safety regulations. The Contractor shall implement these updates or changes upon notification.
- 5.4 The Contractor shall develop a spill response plan and be available to respond in no more than eight (8) hours to all liquid sludge or sludge polymer spills and provide thorough cleanup and removal of spilled material.
- 5.5 The Contractor shall provide Material Safety Data Sheet (MSDS) of the sludge polymers and chemicals to be used at the facility.
- 5.6 Company-owned and/or leased vehicles entering City facilities must have company's logo displayed on both sides of the vehicle. The logo must not be smaller than 12" x 12" in size and must be easily read from a distance of not less than 100 feet.
- 5.7 The Contractor's employees and/or subcontractor(s) shall wear photo identification badges and possess a valid State identification card when entering the plant. Contractor must control the distribution of their company photo identification badges so only current active employees have an issued badge.
- 5.8 Contractor shall not block roads or streets without permission from the Plant Operation Manager or his designee. When Contractor obstructs a road or street, Contractor shall provide approved barricades and warning devices. The Contractor shall solely be responsible for furnishing, erecting and maintaining suitable barricades, warning signs, flares, barriers, cones, lights, flags, signals, flagmen, and other traffic control devices as are or may be necessary to adequately protect the Work and warn, advise and safeguard others over the entire length of the project, including, but not limited to, sections of the project which the Contractor closes to traffic. All barricades, signs and other types of devices necessary for traffic control and to protect the Work shall be in accordance with the "Texas Manual on Uniform Traffic Control Devices".

6.0 CONTRACTOR'S LIABILITIES:

- 6.1 In addition to any insurance which is required, the Contractor understands that it will be liable to the City for any damage caused to City property or any individual injury or accident caused by Contractor or its subcontractors, employees, or agents which may occur in the course of performing the onsite dewatering and disposal services at City facilities.
- 6.2 Contractor is responsible for any equipment damaging City property. Contractor must replace or repair any City property damaged by its or its subcontractor's, employee's or agent's negligence, at no additional cost to the City, to equal or better condition.

7.0 USE OF LOW SULFUR DIESEL FUEL:

- 7.1 Contractor, Subcontractors, and Suppliers shall use Low Sulfur Diesel Fuel (500 ppm or the applicable standard set by State or Federal Law and/or rules and regulations of the Texas Commission on Environmental Quality, or the Environmental Protection Agency, whichever is less in sulfur content) in all diesel operating vehicles and motorized equipment utilized in performing the Work. Contractor, Subcontractors, and Suppliers shall not use a high sulfur type diesel fuel in diesel operating vehicles or motorized equipment used in performing the Work. Off-road Low Sulfur Diesel Fuel may be used in lieu of the on-road Low Sulfur Diesel Fuel. Upon request, Contractor shall provide proof that Contractor, Subcontractors, and Suppliers are using Low Sulfur Diesel Fuel.

8.0 ADDITIONS AND DELETIONS:

- 8.1 The City, by written notice from the City Purchasing Agent to the Contractor, at any time during the term of this contract, may add or delete like or similar equipment, supplies, locations and/or

services to the list of equipment, supplies, locations, and/or services to be provided. Any such written notice shall take effect on the date stated in the notice from the City. Similar equipment, supplies, services, or locations added to the contract shall be in accordance with the contract specification/scope of services, and the charges or rates for items added shall be the same as specified in the fee schedule. In the event that the additional equipment, supplies, locations and/or services are not identical to the item(s) already under contract, the charges therefore will then be the Contractor's normal and customary charges or rates for the equipment, supplies, locations and/or services classified in the fee schedule.

9.0 WARRANTY OF SERVICES:

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

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

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

9.3 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.

11.0 ESTIMATED QUANTITIES NOT GUARANTEED:

9.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of Onsite Water Treatment Sludge Dewatering and Disposal Services during the term of this contract. The quantities may vary depending upon the actual needs of the Public Works & Engineering 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 with third parties based on the City purchasing/requiring all the quantities specified herein.

**SECTION C
GENERAL TERMS & CONDITIONS**

THE STATE OF TEXAS

BID # _____

ORDINANCE # _____

COUNTY OF HARRIS

CONTRACT # _____

I. PARTIES

1.0 ADDRESS:

THIS AGREEMENT FOR ONSITE WATER TREATMENT SLUDGE DEWATERING AND DISPOSAL SERVICES ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and _____ ("Contractor or Vendor"), a corporation doing business in Texas.

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

City

City Purchasing Agent for the Director
of Public Works & Engineering Departments
City of Houston
P.O. Box 1562
Houston, Texas 77251

Contractor

Phone: _____
Fax: _____

The Parties agree as follows:

2.0 TABLE OF CONTENTS:

2.1 This Agreement consists of the following sections:

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3.0 PARTS INCORPORATED:

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

4.0 CONTROLLING PARTS:

4.1 If a conflict among the sections or exhibits arises the Exhibits control over the Sections.

5.0 DEFINITIONS:

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

6.0 SIGNATURES:

6.1 The Parties have executed this Agreement in multiple copies, each of which is an original.

ATTEST/SEAL (if a corporation): _____

WITNESS (if not a corporation):

By: _____

Name:

Title:

By: _____

Name:

Title:

Federal Tax ID Number: _____

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

City Purchasing Agent

City Controller

DATE COUNTERSIGNED:

This Contract 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.

Date

Legal Assistant

II. DUTIES OF CONTRACTOR

1.0 **SCOPE OF SERVICES:**

- 1.1 In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit "B."

2.0 **RELEASE:**

- 2.1 **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.**

3.0 **INDEMNIFICATION:**

- 3.1 **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, ATTORNEY'S 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:**

3.1.1 **CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 3.1.1-3.1.3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**

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

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

- 3.2 **CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS CONTRACT AND FOR FOUR YEARS AFTER THE CONTRACT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.**

4.0 **INDEMNIFICATION PROCEDURES:**

- 4.1 **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 10 days. The notice must include the following:

4.1.1 a description of the indemnification event in reasonable detail,

- 4.1.2 the basis on which indemnification may be due and the anticipated amount of the indemnified loss.
- 4.2 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 10 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.
- 4.3 **Defense of Claims**
 - 4.3.1 **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. Contractor shall then control the defense and any negotiations to settle the claim. 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.
 - 4.3.2 **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. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

5.0 INSURANCE:

- 5.1 Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in 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. Contractor shall maintain the following insurance coverages in the following amounts:
 - 5.1.1 Commercial General Liability insurance including Contractual Liability insurance:
\$500,000 per occurrence; \$1,000,000 aggregate
 - 5.1.2 Workers' Compensation including Broad Form All States endorsement:
Statutory amount
 - 5.1.3 Automobile Liability insurance
\$1,000,000 combined single limit per occurrence
Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period unless otherwise indicated.
 - 5.1.4 Employer's Liability
Bodily injury by accident \$100,000 (each accident)
Bodily injury by disease \$100,000 (policy limit)
Bodily injury by disease \$100,000 (each employee)
- 5.2 All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, and that it shall give 30 days written notice to

the City before they may be canceled. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:

- 5.2.1 immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
- 5.2.2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

6.0 WARRANTIES:

- 6.1 Contractor represents and 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.
- 6.2 With respect to any parts and goods furnished by it, Contractor warrants:
 - 6.2.1 that all items are free of defects in title, material, and workmanship,
 - 6.2.2 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,
 - 6.2.3 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
 - 6.2.4 that no item or its use infringes any patent, copyright, or proprietary right.

7.0 LICENSES AND PERMITS:

- 7.1 Contractor shall obtain and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation.

8.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE:

- 8.1 Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C."

9.0 MWBE COMPLIANCE:

- 9.1 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 **6%** 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 Affirmative Action Division and will comply with them.
- 9.2 Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration in Houston, Texas if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "D." If Contractor 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.

10.0 DRUG ABUSE DETECTION AND DETERRENCE:

- 10.1 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.
- 10.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
 - 10.2.1 a copy of its drug-free workplace policy,
 - 10.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E," together with a written designation of all safety impact positions and,
 - 10.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F."
- 10.3 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 "G." 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.
- 10.4 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.
- 10.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

11.0 ENVIRONMENTAL LAWS:

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

12.0 PERFORMANCE BOND:

- 12.1 The Contractor shall furnish and maintain a performance bond in the amount of **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00), per awarded facility renewable annually**, which will be for a period not to exceed one year. If the City exercises its option to extend the agreement beyond the initial term of three years and the Contractor mutually agrees, the Contractor shall furnish a performance bond for each renewal year, per awarded facility. However, the surety providing the performance bond for the initial term of the agreement shall be under no obligation to provide the performance bond for any renewal year. The bond shall be conditioned upon the Contractor's full and timely performance of this agreement and must be issued by a corporate surety authorized to write surety bonds in the State of Texas and in the form set out in Exhibit "I".
- 12.2 If the City exercises any option years, Contractor shall maintain a Performance Bond in the amount equal to **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)** of the contract amount, per awarded facility, for the option year, as determined by the City Purchasing Agent or Director. The bond must be in substantially the form attached as Exhibit "I" and issued by a corporate surety authorized and admitted to write surety bonds in Texas. If the amount of the bond exceeds \$100,000, the surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of \$100,000 by a reinsurer listed on the U.S. Treasury list.

13.0 CONTRACTOR'S PERFORMANCE:

- 13.1 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.

14.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS:

- 14.1 Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees.
- 14.2 Failure of Contractor to pay its employees as required by law shall constitute a default under this contract for which the Contractor and its surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.
- 14.3 Contractor shall defend and indemnify the City from any claims or liability arising out of Contractor's failure to pay its subcontractors as required by law. Contractor shall submit disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

III. DUTIES OF CITY

1.0 PAYMENT TERMS:

- 1.1 The City shall pay and Contractor shall accept fees at the unit prices provided in Exhibit H for all services rendered and the Deliverables furnished by Contractor. The fees must only be paid from Allocated Funds, as provided below.

1.2 Any quantities of services or Deliverables shown in any part of this contract or its exhibits are estimated only and are not any guarantee that the City will not purchase more or less of those services or Deliverables. The City will pay only for the services or Deliverables actually ordered and only at the unit prices set out.

2.0 TAXES:

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.

3.0 METHOD OF PAYMENT:

3.1 The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director, showing the specific tasks completed in the preceding month and the corresponding prices. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS:

4.1 If the City disputes any items 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 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.

5.0 LIMIT OF APPROPRIATION:

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.

5.2 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 \$_____ 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:

5.3 The City makes a supplemental allocation by sending a notice signed by the Director and the City Controller to Contractor and where appropriated, approved by motion, or ordinance of City Council in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of notice]
SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Agreement").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$_____, upon the request of the below-signed Director, 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 aggregate of all sums allocated for the purpose of such Agreement, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is \$_____.

SIGNED:
(Signature of the City Controller)
City Controller of the City

REQUESTED:
(Signature of the Director)
Director

5.4 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.

6.0 CHANGES:

6.1 At any time during the Agreement Term, the City Purchasing Agent or Director 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.

6.2 The City Purchasing Agent or 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 City Purchasing Agent or Director]

6.3 The City Purchasing Agent or Director may issue more than one Change Order, subject to the following limitations:

- 6.3.1 Council expressly authorizes the City Purchasing Agent or Director to approve a Change Order of up to \$25,000. A Change Order of more than \$25,000 over the approved contract amount must be approved by the City Council.
- 6.3.2 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.
- 6.3.3 The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- 6.4 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 City Purchasing Agent's or Director's decision regarding a time extension is final.
- 6.5 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.
- 6.6 Change Orders are subject to the Allocated Funds provisions of this Agreement.

IV. TERM AND TERMINATION

1.0 CONTRACT TERM:

- 1.1 This Agreement is effective on the Countersignature Date and expires three (3) years after the date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement.

2.0 NOTICE TO PROCEED:

- 2.1 Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the City Purchasing Agent.

3.0 RENEWALS:

- 3.1 If sufficient funds are allocated, the City Purchasing Agent, at his or her sole discretion, may make a request to Contractor to renew this Agreement for up to two additional 1-year option periods, upon at least 30 days' written notice before expiration of the initial term, or first option period, as applicable. Any renewal, pursuant to this Section, shall be upon the same terms and conditions of the Agreement.

4.0 TIME EXTENSIONS:

- 4.1 If Department requests an extension of time to complete its performance, then the City Purchasing Agent 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).

5.0 TERMINATION FOR CONVENIENCE BY THE CITY:

- 5.1 The City Purchasing Agent or Director may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies, which exist now or in the future.
- 5.2 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 Section III unless the fees exceed the allocated funds remaining under this Agreement.
- 5.3 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.

6.0 TERMINATION FOR CAUSE BY CITY:

- 6.1 If Contractor defaults under this Agreement, the City Purchasing Agent or 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:
 - 6.1.1 Contractor fails to perform any of its duties under this Agreement;
 - 6.1.2 Contractor becomes insolvent;
 - 6.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors;
or
 - 6.1.4 a receiver or trustee is appointed for Contractor.
- 6.2 If a default occurs, the City Purchasing Agent or Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent or Director at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's or 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 City Purchasing Agent or Director may terminate this Agreement on the termination date, at no further obligation of the City.
- 6.3 To effect final termination, the City Purchasing Agent or Director must notify Contractor in writing. 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.

7.0 TERMINATION FOR CAUSE BY CONTRACTOR:

- 7.1 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.

7.2 The date must be at least 30 days after the Director receives 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.

8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS:

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

9.0 SURETY BOND RENEWALS:

9.1 It is understood that a surety bond will be provided at least 30 days before end of contract term for the proper amount for the new contract term. Each bond will denote the contract term being guaranteed. Renewal of the contract by the method noted above does not obligate the existing surety company to provide a bond for the new contract term. Failure of the existing surety company to provide a bond for the new term does not constitute a default under the old contract or bond, but failure of the Contractor to obtain a substitute surety bond shall constitute a default against the Contractor; however, the City will not take action against the previous surety company.

V. MISCELLANEOUS

1.0 INDEPENDENT CONTRACTOR:

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

2.0 FORCE MAJEURE:

2.1 Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. 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.

2.2 This relief is not applicable unless the affected party does the following:

2.2.1 uses due diligence to remove the Force Majeure as quickly as possible; and

2.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.

2.3 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 Agreement by the City.

2.4 If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director may terminate this Agreement by giving 30 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 AT THE TIME OF THE TERMINATION.

3.0 SEVERABILITY:

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 either party.

4.0 ENTIRE AGREEMENT:

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.

5.0 WRITTEN AMENDMENT:

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 duly 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.

6.0 APPLICABLE LAWS:

6.1 This Agreement 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.

6.2 Venue for any litigation relating to this Agreement is Harris County, Texas.

7.0 NOTICES:

7.1 All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

8.0 NON-WAIVER:

8.1 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.

8.2 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.

9.0 INSPECTIONS AND AUDITS:

9.1 City representatives may perform, or have performed, (1) audits of Contractor's books and

records, and (2) 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 3 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

10.0 ENFORCEMENT:

10.1 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.

11.0 AMBIGUITIES:

11.1 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.

12.0 SURVIVAL:

12.1 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.

13.0 PARTIES IN INTEREST:

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

14.0 SUCCESSORS AND ASSIGNS:

14.1 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.

15.0 BUSINESS STRUCTURE AND ASSIGNMENTS:

15.1 Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent's or 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 (c) 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.

15.2 Contractor shall not delegate any portion of its performance under this Agreement without the City Purchasing Agent's or Director's prior written consent.

16.0 REMEDIES CUMULATIVE:

16.1 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.

17.0 CONTRACTOR DEBT:

17.1 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, 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.

EXHIBIT "A"

DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Agreement" means this contract between the Parties, including all exhibits, change orders, and any written amendments authorized by City Council and Contractor.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"City Purchasing Agent" is defined as the person or duly authorized successor, authorized in writing to act for the City. The term includes, except as otherwise provided in this Contract, the authorized representative of the City Purchasing Agent acting within the limits of delegated authority.

"Plant Manager" means the plant manager for the Southeast Water Purification Plant, who is the representative of the Department in charge of the administration for the Contract.

"Contract Award Notice" means the official notification substantiated by the Notice to Proceed issued by the City Purchasing Agent to the Contractor.

"Contract Charges" means charges that accrue during a given month as defined in Article III.

"Contract Term" is defined in Article IV.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date this agreement is countersigned by the City Controller.

"Director" means the Directors of each of the Departments or the City Purchasing Agent for the City, or the person he or she designates.

"Effective Date" is defined as date contract is countersigned by the City Controller.

"Governing Body" means the Mayor and City Council of the City of Houston.

"Hazardous Materials" is defined in Article II (Environmental Laws).

"Notice to Proceed" means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance.

"Parties" mean all the entities set out in the Preamble who are bound by this Agreement.

EXHIBIT "B"
(CITY WILL INSERT SCOPE OF SERVICES HERE)

EXHIBIT "C"
EQUAL EMPLOYMENT OPPORTUNITY

EXHIBIT "D"
MWBE SUBCONTRACT TERMS

EXHIBIT "E"
DRUG POLICY COMPLIANCE AGREEMENT

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

I, _____
(Name)(Print/Type) **(Title)**

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

Date

Contractor Name

Signature

Title

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

I, _____
(NAME)(PRINT/TYPE)

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

DATE

CONTRACTOR NAME

SIGNATURE

TITLE

EXHIBIT "G"
DRUG POLICY COMPLIANCE DECLARATION

EXHIBIT "H"
FEEES AND COSTS
(CITY WILL INSERT FEES & COST HERE)

EXHIBIT "I"
PERFORMANCE BOND

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS

THAT WE, _____ as principal, hereinafter called "Contractor" and the other subscriber hereto as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston, a municipal corporation in the sum of _____ DOLLARS. (\$ _____) for the payment of which sum, well and truly to be made to the City of Houston, and its successors, the said Contractor and surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the said Contractor has on or about this day entered into a contract in writing with the City of Houston, Texas, entitled _____ which is made a part of this instrument as fully and completely as if set in full herein.

NOW, THEREFORE, if the said Contractor shall faithfully and strictly perform as set out in said contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and shall comply strictly with each and every provision of said contract and with this bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect.

It is further understood and agreed that the Surety does hereby relieve the said City of Houston or its representatives from the exercise of any diligence whatever in securing compliance on the part of the said Contractor with the terms of the said contract, and the Surety hereby waives any notice to it of any default, or delay by the Contractor in the performance of his contract and agrees that it, the said Surety, shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the said Contractor in all matters pertaining to said contract.

It is further expressly agreed by said Surety that the City of Houston or its representatives are at liberty at any time, without notice to the Surety, to make any changes in said contract and in the work to be done thereunder, as provided in said contract, and in the terms and conditions thereof, or to make any changes in, addition to, or deduction from the work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this bond and undertaking, or release said Surety therefrom.

It is expressly agreed and understood that the Contractor and surety will fully indemnify and save harmless the City of Houston from any liability, loss, cost, expense or damage arising out of or in connection with the work done by the Contractor under said Contract.

In the event that the City of Houston shall bring any suit or other proceeding at law on this bond, the Contractor and Surety agree to pay to the said City the sum of ten percent (10%) of whatever amount may be recovered by the City in said suit or legal proceeding, which sum of ten percent (10%) is agreed by all parties to be payment to the City of Houston for the expense of or time consumed by its City Attorney, his assistants and office force and other cost and damage occasioned to the City. This said amount of ten percent (10%) is fixed and liquidated by the parties, it being agreed by them that the exact damage to the City would be difficult to ascertain.

This bond and all obligations created hereunder shall be performable in Harris County, Texas.

IN TESTIMONY WHEREOF, witness our hands this _____ day of _____, A.D. 20_____.

ATTEST: (Corporate Seal)

(Principal)

By: _____
Name: (Typed)
Title:

By: _____
Name: (Typed)
Title:

ATTEST/WITNESS: (Corporate Seal)

(Full Name of Surety)

By: _____
Name: (Typed)
Title:

By: _____
Name: (Typed)
Title:

The foregoing bond is approved and accepted this _____ day of _____, A.D. 20_____.

REVIEWED:

Legal Assistant

EXHIBIT "J"
PAY OR PLAY PROGRAM

EXHIBIT "K"
PERMIT TO PROCESS WASTEWATER TREATMENT PLANT SLUDGE