

THE STATE OF TEXAS

BID # S50-L24020

COUNTY OF HARRIS

ORDINANCE # 2011-1180  
CONTRACT # 4600011273

**I. PARTIES**

**1.0 ADDRESS:**

THIS AGREEMENT FOR **ON-SITE WATER TREATMENT, SLUDGE DEWATERING AND DISPOSAL SERVICES** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), "a Texas Home-Rule City" and **TERRA RENEWAL, LLC** ("Contractor"), 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 Director  
of Public Works & Engineering Department  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251

**Terra Renewal, LLC**

Todd Mathes, Division President  
1100 E. Campbell Rd. Ste. #220  
Richardson, TX 75081  
Phone: 972-996-7549  
Fax: 214-253-4717  
Municipal.sales@terrarenewal.com

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):

**Terra Renewal, LLC**

WITNESS (if not a corporation)

By: Stephanie Bowden

Name: Stephanie Bowden

Title: Contract Manager

By: Todd Mathes

Name: Todd Mathes

Title: Division President

Federal Tax ID Number: **26-1172160**

ATTEST/SEAL:

Christine Russell

City Secretary

CITY OF HOUSTON, TEXAS

Signed by:

Annise D. Parker

Mayor Maddum D. Appel

APPROVED:

Galvin Swiles

City Purchasing Agent

COUNTERSIGNED BY:

Ronald C. Shu

City Controller Lenard Poth

DATE COUNTERSIGNED:

12-29-11

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 12-7-11

D Gray  
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, equipment, transportation and supervision necessary to perform the services described in Exhibit "B" titled Scope of Work/Specifications, Exhibit "BB" titled Equipemt Asset Checklist.

### 2.0 INDEMNITY AND RELEASE:

#### 2.1 RELEASE

PRIME CONTRACTOR/SUPPLIER 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.

#### 2.2 INDEMNIFICATION:

PRIME CONTRACTOR/SUPPLIER 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:

2.2.1 PRIME CONTRACTOR/SUPPLIERS AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 2.1-2.3, "PRIME CONTRACTOR/SUPPLIER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

2.2.2 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER PRIME CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT; AND

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

2.2.4 PRIME CONTRACTOR/SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. PRIME CONTRACTOR/SUPPLIER'S INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE. PRIME CONTRACTOR/SUPPLIER SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

### **2.3 INDEMNIFICATION:**

**CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.**

### **3.0 INDEMNIFICATION PROCEDURES:**

3.1 Notice of Claims. If the City or Prime Contractor/Supplier receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

3.1.1 a description of the indemnification event in reasonable detail,

3.1.2 the basis on which indemnification may be due, and

3.1.3 the anticipated amount of the indemnified loss.

3.2 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 Prime Contractor/Supplier is prejudiced, suffers loss, or incurs expense because of the delay.

3.3 Defense of Claims

3.3.1 Assumption of Defense. Prime Contractor/Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Prime Contractor/Supplier shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Prime Contractor/Supplier must advise the City as to whether or not it will defend the claim. If Prime Contractor/Supplier does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

3.3.2 Continued Participation. If Prime Contractor/Supplier 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. Prime Contractor/Supplier 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 Prime Contractor/Supplier 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.

### **4.0 INSURANCE:**

4.1 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:

- 4.1.1 Commercial General Liability insurance including Contractual Liability insurance:  
\$500,000 per occurrence; \$1,000,000 aggregate
- 4.1.2 Workers' Compensation including Broad Form All States endorsement:  
Statutory amount
- 4.1.3 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.
- 4.1.4 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)
- 4.1.5 Pollution Liability Insurance  
\$1,000,000 combined single limit per occurrence
- 4.2 All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, Contractor shall give written notice to the Director if any of its insurance policies are cancelled, materially changed or non-renewed. 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:
  - 4.2.1 immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
  - 4.2.2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

## 5.0 **WARRANTIES:**

- 5.1 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.
- 5.2 With respect to any parts and goods furnished by it, Contractor warrants:
  - 5.2.1 that all items are free of defects in title, material, and workmanship,
  - 5.2.2 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,
  - 5.2.3 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

5.2.4 that no item or its use infringes any patent, copyright, or proprietary right.

**6.0 LICENSES AND PERMITS:**

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

**7.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE:**

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

**8.0 MWBE COMPLIANCE:**

8.1 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 **20%** of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO"), and will comply with them.

8.2 Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration to be conducted in Houston, Texas, if directed to do so by the OBO Director. MWBE subcontracts must contain the terms set out in Exhibit "D".

**9.0 DRUG ABUSE DETECTION AND DETERRENCE:**

9.1 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.

9.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

9.2.1 a copy of its drug-free workplace policy,

9.2.2 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,

9.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F."

9.3 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.

9.4 Contractor also shall file updated designations of safety impact positions with the CCOOT if additional safety impact positions are added to Contractor's employee work force.

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

#### **10.0 ENVIRONMENTAL LAWS:**

10.1 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.

10.2 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.

#### **11.0 CONTRACTOR'S PERFORMANCE:**

11.1 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.

#### **12.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS:**

12.1 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.

12.2 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.

12.3 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.

### **13.0 CONTRACTOR PAY OR PLAY PROGRAM:**

- 13.1 The requirement and terms of the City of Houston Pay or Play Policy, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement. Exhibit "I".
- 13.2 The Pay or Play Program for various departments will be administered by the City of Houston Affirmative Action Division's designee and for a Department specific contract; the Department's designated contract administrator will administer the Pay or Play Program.

### **14.0 PERFORMANCE BOND:**

- 14.1 The Contractor shall furnish and maintain a performance bond in the amount of **50% of the annual contract amount, 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. However, the surety providing the performance bond for each year of 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 "J".
- 14.2 If the City exercises any option years, the Contractor shall maintain a Performance Bond in the amount equal to 50% of the contract amount for the option year, as determined by the City Purchasing Agent or Director. The bond must be in substantially the form attached as Exhibit "J" 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. 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 (10<sup>th</sup>) day following the day this Bidder receives notification from the City of a possible award.

## **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 **\$1,150,000.00** to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

5.3 The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

**NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS**

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

\$ \_\_\_\_\_

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 \$50,000. A Change Order of more than \$50,000 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 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive one-year terms on the same terms and conditions. If the Director of the City Department elects not to renew this Agreement, the City Purchasing Agent shall notify Contractor in writing of non-renewal at least 30 days before the expiration of the then-current term.

##### **4.0 TIME EXTENSIONS:**

4.1 If the 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.

## **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 to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

**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 4 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.

"Contractor Administrator" means the representative of the Department who is responsible for 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.

"CTR" means Contract Technical Representative

"Director" mean the Directors/Chiefs 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.

"Overflow" is defined as a visual observation of the sludge blanket flowing over the weir of the thickener. If this is observed, the COH reserves the right to collect a sample of the overflow stream and test for percent solids. Laboratory results that are equal or are less than 0.02% Suspended Solids (SS), or 200 mg/L of SS will be considered acceptable. Results greater than 0.02% SS or 200 mg/l will be considered unacceptable."

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

"Shutdown" is defined as the Contractor ceasing operation and maintenance functions for a period of time of at least 4 hours or greater.

"User Department Representative (UDR)" means the City's representative of the Director of the Department that administers the day-to-day activities of the Contract. Both CTRs and UDRs evaluates performance, handles scheduling, approves good received and services performed, recommends payment and has the primary responsibility to ensure payment is made upon successful completion of the job.

**EXHIBIT "B"**  
**SCOPE OF WORK/SPECIFICATIONS**

**ONSITE WATER TREATMENT SLUDGE DEWATERING AND DISPOSAL SERVICES**

**1.0 GENERAL:**

- 1.1 The Contractor shall furnish all supervision, labor, parts, tools, materials, equipment, supplies, and transportation necessary to perform all operations and maintenance functions of the sludge dewatering system at the Northeast Water Purification Plant (NEWPP) located at 2121 North Sam Houston Parkway East, Humble, Texas 77396 (Key Map 377W).
  - 1.1.1 Operations and Maintenance of the System (Fee Schedule, Group No. 1, Line Item No. 1 – Unit of Measure is by Monthly Fee). The system includes the following components:
    - 1.1.1.1 Sludge feed pump and transfer pump system and associated equipment.
    - 1.1.1.2 Belt press system and associated equipment.
    - 1.1.1.3 Overflow/recycle basins No 1 and 2.
    - 1.1.1.4 Thickener system and associated equipment.
    - 1.1.1.5 Variable frequency drives associated with the sludge feed pump system.
    - 1.1.1.6 Management of all costs associated with procurement and handling of the polymer and operations and maintenance of the polymer system.
  - 1.1.2 Transportation and Disposal of Sludge (Fee Schedule, Group No. 1, Line Item No. 2 – Unit of Measure is by Dry Ton). The Contractor shall transport and dispose of the dewatered sludge at an approved Texas Commission on Environmental Quality (TCEQ) landfill. The Contractor must be capable of providing all services detailed in this invitation to bid to be considered for this 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 must 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 are not limited by raw water chemistry and turbidity, treatment chemical types and dosages, treated water flow capacity, and equipment failure. There no minimum/maximum quantities of sludge guaranteed under this contract.
- 1.6 The City recommends that the Contractor base its pricing on the same sludge polymer that is being used at the NEWPP (Polydyne Clarifloc A6320). If an alternate dewatering

polymer is subsequently proposed by the Contractor, the Contractor must obtain approval from the Plant Manager/CTR prior to utilizing the new chemical.

1.7 The thickener sludge blanket level shall never exceed 12-feet at any time. The torque shall never exceed 15 (x 1,000) ft-lbs at any time. This requirement supercedes any specifications provided in the O&M manual.

1.7.1 The Contractor shall verbally notify the Plant Manager/Contract Technical Representative (CTR) or designee any time the above requirements (sludge blanket level or torque) are not satisfied, and document the associated information in the monthly operations report per section 3.5.

**1.7.1.1 Penalty and time to cure**

**A. If the Contractor, upon receiving written notice from the Plant Manager/CTR, does not comply with operation levels specified for the thickeners, then a penalty of \$500/day may be applied. The Contractor has 24 hours to cure the deficiency from the time notice is provided before the fine is applied.**

**B. If the Contractor, upon receiving written notice from the Plant Manager/CTR, does not repair a belt press with 48 hours from notice, then a penalty of \$500/day may be applied.**

**C. If the Contractor, upon receiving written notice from the Plant Manager/CTR, does not provide documentation as specified in this contract, then a penalty of \$250/day may be applied. The Contractor has 5 business days to cure deficiency from the time notice is provided before the fine is applied.**

**Assessed penalties may be applied to monthly invoice.**

1.7.2 The Contractor shall be responsible for any accumulation of sediments/sludge in the Overflow/Recycle Pond 1 and 2. When sludge levels are approximately 3-feet below the bottom of one or more of the 4-inch diameter weep holes in the Overflow basins, the City reserves the right to direct Contractor to remove sludge/sediment from the Overflow basins/recycle ponds at the expense of the Contractor. Based on historical operation records, approximately 2 basin clean-outs per year are typical.

1.7.3 The Contractor shall perform daily sludge blanket level readings and torque measurements on each thickener. The measurements shall be recorded once in the morning at the start of the shift, and at the end of the day prior to the Contractor leaving the site. The measurements shall be called-in and hand delivered to the Plant Operator Supervisor in the NEWPP Control Room and included in the Monthly Operations Report. If, at any time the thickener polymer blending unit is used, the Contractor shall notify the Plant Manager/CTR prior to its use.

**2.0 SITE DESCRIPTION:**

2.1 The Contractor shall provide operation, maintenance, transport, and disposal services to the following water treatment plants:

2.1.1 Northeast Water Purification Plant

2.2 Northeast Water Purification Plant (NEWPP):

- 2.2.1 The NEWPP is located at 12121 North Sam Houston Parkway East, Humble, Texas 77396 (Key Map 377W).
- 2.2.2 The daily average treated water flow rate for the NEWPP is 60 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.
- 2.2.3 After the sludge is dewatered, the sludge is currently hauled off in form of a truck-able dry cake and disposed of at an off-site commercial landfill.
- 2.2.4 The Contractor shall have sole responsibility for the method of disposal of sludge. The Contractor is responsible for finding and arranging for disposal site(s). The 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 Manager/CTR will be the designated point of contact for the contract. All coordination for the project shall be made through the Plant Manager/CTR or his designee.
- 3.2 The Contractor shall designate a Project Manager for this contract by submitting in writing a letter to the Plant Manager/CTR. 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. The Contractor shall be available to provide service on a 24-hour per day/7-day per week basis to meet the specifications of the sludge dewatering services per this Contract. 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 shall be responsible for all operations and maintenance functions of the existing on-site dewatering systems at the NEWPP.
  - 3.4.1 The Contractor shall provide qualified personnel to operate the systems. The Contractor will ensure that all personnel are trained and meet the minimum regulatory requirements established by TCEQ.

3.4.2 The Cothe City's dewatering system per manufacturer's recommendations specified in the Operations and Maintenance (O&M) manuals. The City will provide copies of all O&M manuals related to the NEWPP sludge dewatering system.

3.5 Documentation Required:

3.5.1 Maintenance Reports:

The Contractor shall provide montly maintenance reports upon submittal of the monthly invoice. The report shall include at a minimum, the following items, and may include more at the direction of the City:

3.5.1.2 Date of Preventative Maintenance (PM) or Corrective Maintenance (CM) performed.

3.5.1.3 Required frequency of PM.

3.5.1.4 Name of person performing PM/CM.

3.5.1.5 Time/hours associated with PM/CM.

3.5.1.6 Detailed description of the PM that is performed (i.e. products used, how they are used, procedures followed)

3.5.1.7 PM and CM scheduled for next reporting period.

3.5.2 Operations Report:

At a minimum, the Contractor shall furnish an operations report to the Plant Manager/ CTR or designee, upon submittal of the monthly invoice. The report shall include, but not be limited to the following:

3.5.2.1 All data required for federal, state, and local reports,

3.5.2.2 actual costs and percent of total invoice applicable for MWBE goal,

3.5.2.3 breakdown summary for all costs including, but not limited to, transportation, disposal, chemicals, maintenance of equipment, and operations of system,

3.5.2.4 monthly usage of sludge polymers,

3.5.2.5 daily sludge blanket readings and torque levels for each thickener,

3.5.2.6 number and size of trucks/bins hauled each day,

3.5.2.7 percent solids of sludge in each container that is disposed,

3.5.2.8 volume of solids disposed in wet tons and dry tons,

3.5.2.9 any operational issues during the reporting period that may include, but will not be limited to overflows of thickener weirs, exceedences of torque limits or sludge blanket levels,

3.5.2.10 analytical testing reports, if any, and

3.5.2.11 disposal manifests.

3.5.2.12 Daily operations status of each major piece of equipment (i.e. thickeners, belt presses, sludge transfer pumps, and sludge feed pumps.

3.6 Repairs: The Contractor is strickly and soley responsible for the cost of operating and maintaining Contractor equipment. However, regarding City-owned equipment the following aspects apply:

a. Any single repair or replacement that is less than \$3,000 (i.e. cost of part or parts only) shall be paid for by the Contractor. All labor, supervision, consumables, equipment, tools, etc. required to perform this repair shall be paid for by the Contractor.

- b. Any single repair or replacement that is greater than \$3,000 (*i.e. cost of part or parts only*) shall be paid for by the City in accordance with the Contract Fee Schedule), unless it is damaged due to the Contractor's actions or lack of actions. The City will pay all costs exceeding \$3,000, including, parts, labor, supervision, consumables, equipment, tools, etc. If the City elects to use the Contractor for repairs described herein, the work will be considered "Special City Directed Service and will be paid for in accordance with the Contract Fee Schedule.

For all work exceeding \$3,000, a minimum of 3 bids shall be obtained by the Contractor. If three bids cannot be obtained, the Contractor shall provide documentation that a reasonable effort was made to attain 3 bids. The City also reserves the right to retain other entities to make the repair if the proposal is not acceptable to the City.

Any repair or replacement in excess of \$3,000 per item shall require authorization from the Plant Manager/CTR or designee. The Contractor shall determine the extent and estimated cost of corrective repairs. A written recommendation for repair shall be submitted to the Plant Manager/CTR or designee for approval. The 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 Manager/CTR or designee before commencing. If repair cost is greater than \$5,000, three written quotes shall be obtained from independent third-party vendors.

#### **ADDITIONAL/SPECIAL CITY DIRECTED SERVICES**

- 3.7 For Special City Directed Services, the City will pay the entire cost of the directed service, including the Contractor's mark-up as submitted by the Contractor in the Contract Fee Schedule. may include the following tasks and shall be performed at the discretion of the City:

1. *Additional Services Group No. 2 – Line Item No. 1 - Sludge removal services at other locations of the facility, such as recycle ponds and/or sedimentation basins.*
2. *Additional Services Group No. 2 – Line Item No. 2 - Repairs to City-Owned equipment that exceed the \$3,000 threshold as described in Section 3.6.b.*
3. *Additional Services Group No. 2 – Line Item No. 3 - Capital improvements that improve the operability and reliability of the system. An annual and joint inspection will be performed by the City and Contractor to assess the condition of the sludge dewatering system. One week after the inspection is complete; the Contractor will provide a list of items that is recommended for repair or improvement.*

The City reserves the right to use or not use monies appropriated under the Additional Services listed above. The City also reserves the right to utilize a different Contractor to complete the work listed under Additional Services.

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 responsible for the method of disposal of sludge and disposal fee(s). Contractor is responsible for finding and arranging for disposal site(s). The 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).

- 3.8 The Contractor shall procure, supply and pay for all sludge polymer costs to be used for on-site dewatering service. The Contractor shall manage the disposal of unused polymer, and return polymer containers to the appropriate location. The Contractor shall provide containment for the totes staged on site.

- 3.9 The Contractor shall keep the sludge in the thickeners and torque readings at levels defined in paragraph 1.8 in order to minimize disruption of the plant operations at all times, including weekends, and holidays.
- 3.10 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. All containers shall be covered with tarpaulins prior to leaving plants and en route to disposal site(s).
- 3.11 The Contractor shall sample each container for percent solids to determine the dry tonnage of hauled sludge at no additional cost to the City. The sample shall be analyzed in accordance with the City of Houston (COH) standard, Document ID #240, version 1.02. A copy is provided as an attachment to this document. Prior to commencing the work, the Contractor shall provide laboratory information to the Plant Manager/CTR 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. The Contractor shall be required to weigh, fill and empty all containers at the disposal facility and include documentation with submittal of invoice.
- 3.12 The Contractor shall perform all analyses as required by TCEQ for the disposal alternative selected. 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 agencies. The City reserves the right to obtain copies of these analyses upon request.
- 3.13 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.
- 3.14 At a minimum, the Contractor shall furnish a monthly progress report to the Plant Manager/CTR or designee, by the 15<sup>th</sup> day of the following month. The report shall include, but not limited to:
- 3.14.1 All data required for federal, state and local reports,
  - 3.14.2 monthly usages and MSDS sheets of sludge polymers,
  - 3.14.3 number of trucks/bins hauled,
  - 3.14.4 volume of dry solids hauled in tons,
  - 3.14.5 analytical testing reports, if any,
  - 3.14.6 disposal manifests and
  - 3.14.7 documentation of maintenance records on dewatered system.
- 3.15 The Contractor shall provide other reports as reasonably stipulated by the Plant Manager/CTR or designee, on a routine or as needed basis. The City shall not be charged an additional fee for these services.
- 3.16 The Contractor shall insure that copies of back-up documents and manifests are properly completed, fully and legibly executed with correct information and dates.
- 3.17 The 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.
- 3.18 The Contractor shall be responsible for containing all spillage of product that includes dewatered solids, fuel and lubricants, and sludge polymers.

- 3.19 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 Manager/CTR or his designee.
- 3.20 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. The Contractor shall not disturb vegetated areas to the point where the soil may be exposed to erosion.
- 3.21 The Contractor shall not adjust or tamper with the caustic feed system in thickeners at any time. When the Contractor is not on-site, the NEWPP Plant Shift Supervisor will notify (call and/or email) the Contractor before flows from the sedimentation basins are diverted to an alternate thickener. When the Contractor is on-site, the Contractor shall notify (call) the Control Room before flows from the sedimentation basins are diverted to an alternate thickener.

**4.0 CONTRACT COMPLIANCE:**

- 5.1 The City reserves the right to monitor this contract for compliance to ensure legal obligations are fulfilled and that acceptable level of services are provided.
- 5.2 Monitoring may take the form of, but not necessarily limited to:
  - 5.2.1 Site visits
  - 5.2.2 Testing and sampling of goods and services
  - 5.2.3 Review of deliveries received for accuracy and timeliness
  - 5.2.4 Review of permits, certifications and/or licenses
  - 5.2.5 Review of contractor's invoices for accuracy
- 5.3 The responsibility for monitoring compliance rests with the Contract Compliance Section, Management Support Branch of the Office of the Director, Department of Public Works and Engineering.

**5.0 POST AWARD MEETING:**

- 6.1 Once the contract has been approved by City Council, the City reserves the right to schedule a Post-Award meeting with the Contractor and City end users. The meeting will include representatives from the Strategic Purchasing Division, Public Works and Engineering Department Contact Management, Accounts Payable, and others as deemed appropriate.

**6.0 ESTIMATED QUANTITIES NOT GUARANTEED:**

The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of services provided during the term of this contract. The quantities may vary depending upon the actual needs of the user department. The quantities specified herein are good faith estimates of usage during the term of this contract. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into based on the City purchasing/requiring all the quantities specified herein.

**7.0 ADDITIONS & DELETIONS:**

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 Contract Fees and Costs 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 therefor will then be the Contractor's normal and customary charges or rates for the equipment, supplies, locations and/or services classified in the Contract Fees and Costs schedule.

**8.0 INTERLOCAL AGREEMENTS:**

Under the same terms and conditions hereunder, the Contract may be expanded to other government entities through inter-local agreements between the City of Houston and the respective government entity that encompass all or part of the products/services provided under this contract. Separate contracts will be drawn to reflect the needs of each participating entity.

**9.0 WARRANTY OF SERVICES:**

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

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

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

10.3 If the Contractor is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise correct or replace with similar services and charge to the Contractor the cost occasioned to the City thereby, or make an equitable adjustment in the contract price.

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

**EXHIBIT "BB"  
EQUIPMENT ASSET CHECKLIST**

NO.	EQUIPMENT NO.	ASSET NO.	DESCRIPTION	RESPONSIBILITY MATRIX	
				OPERATIONS	MAINTENANCE
1	09BP01	603092	BELT PRESS 1 BELT PRS	Contractor	Contractor
2	09BP202	603099	BELT PRESS 2 BELT PRS	Contractor	Contractor
3	09BP203	603100	BELT PRESS 3 BELT PRS	Contractor	Contractor
4	09SC01	603101	BELT PRESS 1 AND 2 CONVEYOR / AUGER	Contractor	Contractor
5	09SC62	603102	BELT PRESS 3 CONVEYOR / AUGER	Contractor	Contractor
6	09ME205	603140	POLYMER BLENDING UNIT 1 POLYBLND	Contractor	Contractor
7	09ME206	603104	POLYMER BLENDING UNIT 2 POLYBLND	Contractor	Contractor
8	09ME207	603103	POLYMER BLENDING UNIT 3 POLYBLND	Contractor	Contractor
9	09P06	-	WASH WATER PUMP BP1	Contractor	Contractor
10	09P206	-	WASH WATER PUMP BP3	Contractor	Contractor
11	09P207	-	WASH WATER PUMP BP2	Contractor	Contractor
12	09SP05	602828	SUMP PUMP	Contractor	Contractor
13	09SP06	602829	SUMP PUMP	Contractor	Contractor
14	09SP205	602837	SUMP PUMP	Contractor	Contractor
15	09SP206	602836	SUMP PUMP	Contractor	Contractor
16	09ME04	603153	THICKENER POLYMER BLENDING UNIT *	Contractor	Contractor
17	10BAS01	603281	RECYCLE BASIN 1	Contractor	Contractor
18	10BAS02	603288	RECYCLE BASIN 2	Contractor	Contractor
19	09FIT1002	602571	SLUDGE PUMP 1 DISCHARGE FLWMETR	COH	COH

20	09FIT1003	602820	SLUDGE PUMP 2 DISCHARGE FLWMETR	COH	COH
21	09FIT2002	602822	SLUDGE PUMP 3 DISCHARGE FLWMETR	COH	COH
22	09FIT2003	602823	SLUDGE PUMP 4 DISCHARGE FLWMETR	COH	COH
23	09FIT1000	602814	THICKENER 1 INLET FLOWMETER	COH	COH
24	09FIT1001	603454	THICKENER 2 INLET FLOWMETER	COH	COH
25	09FIT2001	602815	THICKENER 3 INLET FLOWMETER	COH	COH
26	09P01	602827	SLUDGE TRANSFER PUMP 1 (East Pit)	Contractor	Contractor
27	09P02	602824	SLUDGE TRANSFER PUMP 2 (East Pit)	Contractor	Contractor
28	09P03	602826	THICKENED SLUDGE FEED PUMP (West Pit)	Contractor	Contractor
29	-	-	VFD Controls for P03	Contractor	Contractor
30	09P04	602825	THICKENED SLUDGE FEED PUMP (West Pit)	Contractor	Contractor
31	-	-	VFD Controls for P04	Contractor	Contractor
32	09P201	602831	THICKENED SLUDGE TRANSFER PUMP	Contractor	Contractor
33	09P202	602834	THICKENED SLUDGE TRANSFER PUMP	Contractor	Contractor
34	09P203	602830	THICKENED SLUDGE FEED PUMP (East Pit)	Contractor	Contractor
35	-	-	VFD Controls for P203	Contractor	Contractor
36	09P204	602835	THICKENED SLUDGE FEED PUMP (East Pit)	Contractor	Contractor
37	-	-	VFD Controls for P204	Contractor	Contractor
38	09PH01	602816	THICKENER 1 PH METER PH	COH	COH
39	09PH02	602817	THICKENER 2 PH METER PH	COH	COH
40	09PH03	602818	THICKENER 3 PH METER PH	COH	COH
41	09RAKE01	602838	THICKENER 1 RAKE	Contractor	Contractor
42	09RAKE02	602839	THICKENER 2 RAKE	Contractor	Contractor

43	09RAKE03	602840	THICKENER 3 RAKE	Contractor	Contractor
44	09ME01	602841	THICKENER 1	Contractor	Contractor
45	09ME02	602842	THICKENER 2	Contractor	Contractor
46	09ME03	602965	THICKENER 3	Contractor	Contractor
47	09V01	602967	THICKENER 1 INLET VALVE	Contractor	Contractor
48	09V02	602968	THICKENER 2 INLET VALVE	Contractor	Contractor
49	09V203	603080	THICKENER 3 INLET VALVE	Contractor	Contractor
50	-	-	CAUSTIC FEED SYSTEM TO THICKENERS	COH	COH
51	-	-	31 FT. MULTILIFT CONVEYOR, STAND, ELEC. PARTS	Contractor	Contractor
52	-	-	21 FT. MULTILIFT CONVEYOR, STAND, ELEC. PARTS	Contractor	Contractor
53	-	-	CATWALK SYSTEM	Contractor	Contractor
54	-	-	12 CAMERA SYSTEM, FLAT SCREENS, DVR'S	Contractor	Contractor
55	-	-	% SOLID SCALES	Contractor	Contractor
56	-	-	OVEN	Contractor	Contractor
57	-	-	8" + 6" PVC FILTRATE PIPING DRAINAGE SYSTEM	Contractor	Contractor
58	-	-	OPERATORS/OFFICE/LAB STORAGE BUILDING	Contractor	Contractor
59	-	-	TRANSFORMER	Contractor	Contractor
60	-	-	PARKING ALIGNMENT CURBS	Contractor	Contractor

\* Polymer costs are paid for by Contractor

**EXHIBIT "C"**  
**EQUAL EMPLOYMENT OPPORTUNITY**

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

**EXHIBIT "D"**  
**CITY OF HOUSTON CERTIFIED M/WBE SUBCONTRACT TERMS**

Contractor shall insure that all subcontracts with M/WBE subcontractors and suppliers are clearly labeled "**THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT**" and contain the following terms:

1. **Chief Solutions, Inc.** (M/WBE subcontractors) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director")
2. **Chief Solutions, Inc.** (M/WBE subcontractors) shall permit representatives of the City of Houston, at all reasonable times, to perform 1) audits of the books and records of the subcontractor, and 2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
3. Within five (5) business days of execution of this subcontract, Contractor (prime contractor) and Subcontractors shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
4. As conclude by the parties to this subcontract, and as evidenced by their signatures hereto, any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 – "the Act"). Arbitration shall be conducted according to the following procedures:
  - a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute ahs arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
  - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as other wise required by the City's contract with American Arbitration Association on file in the Office of the City's Affirmative Action Division.
  - c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
  - d. In the event the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

These provisions apply to goal-oriented contracts. A goal oriented contract means any contract for the supply of goods or non-personal or non-professional services in excess of \$100,000.00 for which competitive bids are required by law; not within the scope of the MBE/WBE program of the United States Environmental Protection Agency on the United States Department of Transportation; and ;, which the City Purchasing Agent has determined to have significant M/WBE subcontracting potential in fields which there are an adequate number on known MBEs and/or WBE's to compete for City contract.

The M/WBE policy of the City of Houston will be discussed during the pre-bid. For information assistance, and/or to receive a copy of the City's Affirmative action policy and/or ordinance contact the Affirmative Action Division at (713) 837-9000, 611 Walker, 20<sup>th</sup> Floor, Houston, Texas.

**EXHIBIT "D"**  
**CITY OF HOUSTON CERTIFIED M/WBE SUBCONTRACT TERMS**

Contractor shall insure that all subcontracts with M/WBE subcontractors and suppliers are clearly labeled "**THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT**" and contain the following terms:

5. **Environmental Machines & Services, Inc.** (M/WBE subcontractors) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director")
6. **Environmental Machines & Services, Inc.** (M/WBE subcontractors) shall permit representatives of the City of Houston, at all reasonable times, to perform 1) audits of the books and records of the subcontractor, and 2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
7. Within five (5) business days of execution of this subcontract, Contractor (prime contractor) and Subcontractors shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
8. As conclude by the parties to this subcontract, and as evidenced by their signatures hereto, any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 – "the Act"). Arbitration shall be conducted according to the following procedures:
  - e. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
  - f. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with American Arbitration Association on file in the Office of the City's Affirmative Action Division.
  - g. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
  - h. In the event the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

These provisions apply to goal-oriented contracts. A goal oriented contract means any contract for the supply of goods or non-personal or non-professional services in excess of \$100,000.00 for which competitive bids are required by law; not within the scope of the MBE/WBE program of the United States Environmental Protection Agency on the United States Department of Transportation; and ;, which the City Purchasing Agent has determined to have significant M/WBE subcontracting potential in fields which there are an adequate number on known MBEs and/or WBE's to compete for City contract.

The M/WBE policy of the City of Houston will be discussed during the pre-bid. For information assistance, and/or to receive a copy of the City's Affirmative action policy and/or ordinance contact the Affirmative Action Division at (713) 837-9000, 611 Walker, 20<sup>th</sup> Floor, Houston, Texas.



**EXHIBIT "E"**  
**DRUG POLICY COMPLIANCE AGREEMENT**

I, Todd Mathes Division President as an owner or officer of  
(Name) (Print/Type) (Title)  
Terra Renewal West LLC (Contractor)  
(Name of Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

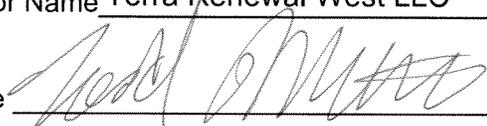
1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

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

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date 10/24/2011

Contractor Name Terra Renewal West LLC

Signature 

Title Division President

N/A

**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

N/A

**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**

I, \_\_\_\_\_ as an owner or officer of  
 \_\_\_\_\_  
 (Name) (Print/Type) (Title)  
 Terra Renewal West LLC (Contractor or Vendor)  
 \_\_\_\_\_  
 (Name of Company)

have personal knowledge and full authority to make the following declarations: **N/A**

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

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

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

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

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

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

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested				
Number Employees Positive				
Percent Employees Positive				

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

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

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

\_\_\_\_\_ 10/24/2011  
 (Date)

\_\_\_\_\_ Todd Mathes  
 (Typed or Printed Name)  
 \_\_\_\_\_  
 (Signature)  
 Division President  
 \_\_\_\_\_  
 (Title)

**EXHIBIT "H"  
FEES AND COSTS**

BID ITEM	DESCRIPTION	UNIT	UNIT PRICE
<b>Year One / Group One / Northeast Water Purification Plant Operational Costs</b>			
1	The Contractor shall perform all operations and maintenance functions of the sludge dewatering system, in strict accordance with the scope of work/specifications. The price bid shall be a fixed monthly fee.	MON	\$3,529.00
2	The Contractor shall haul and dispose truckable cake to off-site facility(ies) in strict accordance with the scope of work/specifications. The unit price must include all costs associated with transporting, disposal and tipping fees. The unit price bid must be based on DRY TON.	TON	\$219.18
<b>Year One / Group Two / Northeast Water Purification Plant / Special City Directed Services</b>			<b>Percentage Discount- Mark-Up</b>
1	Sludge removal and disposal at other areas of the facility. (From Original Invoice)	Mark-Up	10%
2	Repair of equipment that exceeds the \$3000. threshold.for all dewatering operations. (From Original Invoice)	Mark-Up	5%
3	Capital Improvements, (From Original Invoice)	Mark-Up	5%
<b>Year Two / Group One / Northeast Water Purification Plant Operational Costs</b>			
1	The Contractor shall perform all operations and maintenance functions of the sludge dewatering system, in strict accordance with the scope of work/specifications. The price bid shall be a fixed monthly fee.	MON	\$3,529.00
2	The Contractor shall haul and dispose truckable cake to off-site facility(ies) in strict accordance with the scope of work/specifications. The unit price must include all costs associated with transporting, disposal and tipping fees. The unit price bid must be based on DRY TON.	TON	\$224.35
<b>Year Two / Group Two / Northeast Water Purification Plant / Special City Directed Services</b>			<b>Percentage Discount- Mark-Up</b>
1	Sludge removal and disposal at other areas of the facility. (From Original Invoice)	Mark-Up	10%
2	Repair of equipment that exceeds the \$3000. threshold.for all dewatering operations. (From Original Invoice)	Mark-Up	5%
3	Capital Improvements, (From Original Invoice)	Mark-Up	5%
<b>Year Three / Group One / Northeast Water Purification Plant Operational Costs</b>			
1	The Contractor shall perform all operations and maintenance functions of the sludge dewatering system, in strict accordance with the scope of work/specifications. The price bid shall be a fixed monthly fee.	MON	\$3,529.00

2	The Contractor shall haul and dispose truckable cake to off-site facility(ies) in strict accordance with the scope of work/specifications. The unit price must include all costs associated with transporting, disposal and tipping fees. The unit price bid must be based on DRY TON.	TON	\$229.67
<b>Year Three / Group Two / Northeast Water Purification Plant / Special City Directed Services</b>			<b>Percentage Discount-Mark-Up</b>
1	Sludge removal and disposal at other areas of the facility. (From Original Invoice)	Mark-Up	10%
2	Repair of equipment that exceeds the \$3000. threshold.for all dewatering operations. (From Original Invoice)	Mark-Up	5%
3	Capital Improvements, (From Original Invoice)	Mark-Up	5%
<b>Year Four - Option Yr. 1 / Group One / Northeast Water Purification Plant Operational Costs</b>			
1	The Contractor shall perform all operations and maintenance functions of the sludge dewatering system, in strict accordance with the scope of work/specifications. The price bid shall be a fixed monthly fee.	MON	\$3,529.00
2	The Contractor shall haul and dispose truckable cake to off-site facility(ies) in strict accordance with the scope of work/specifications. The unit price must include all costs associated with transporting, disposal and tipping fees. The unit price bid must be based on DRY TON.	TON	\$231.99
<b>Year Four - Option Yr. 1 / Group Two / Northeast Water Purification Plant / Special City Directed Services</b>			<b>Percentage Discount-Mark-Up</b>
1	Sludge removal and disposal at other areas of the facility. (From Original Invoice)	Mark-Up	10%
2	Repair of equipment that exceeds the \$3000. threshold.for all dewatering operations. (From Original Invoice)	Mark-Up	5%
3	Capital Improvements, (From Original Invoice)	Mark-Up	5%
<b>Year Five - Option Yr. 2 / Group One / Northeast Water Purificaion Plant Operational Costs</b>			
1	The Contractor shall perform all operations and maintenance functions of the sludge dewatering system, in strict accordance with the scope of work/specifications. The price bid shall be a fixed monthly fee.	MON	\$3,529.00
2	The Contractor shall haul and dispose truckable cake to off-site facility(ies) in strict accordance with the scope of work/specifications. The unit price must include all costs associated with transporting, disposal and tipping fees. The unit price bid must be based on DRY TON.	TON	\$234.36
<b>Year Five - Option Yr. 2 / Group Two / Northeast Water Purification Plant / Special City Directed Services</b>			<b>Percentage Discount-Mark-Up</b>
1	Sludge removal and disposal at other areas of the facility. (From Original Invoice)	Mark-Up	10%
2	Repair of equipment that exceeds the \$3000. threshold.for all dewatering operations. (From Original Invoice)	Mark-Up	5%
3	Capital Improvements, (From Original Invoice)	Mark-Up	5%

**EXHIBIT "I"**  
**PAY OR PLAY PROGRAM**  
*(See next page)*



FORM POP 2 (DOCUMENT 00630)

CERTIFICATION OF AGREEMENT TO COMPLY WITH PAY OR PLAY PROGRAM

Contractor Name: Terra Renewal LLC \$7,053,670.00 (Amount of Contract)

Contractor Address: 1100 E Campbell Rd, Suite 220 Richardson, TX 75081

Project No.: S50-L24020 On Site Water Treatment, Sludge Removal and Disposal Services for the Public
Project Name: Works and Engineering Department

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534, Contractor agrees to abide by the terms of this Program. This certification is required of all contractors for contracts subject to the program. You must agree EITHER to PAY or to PLAY for each covered employee, including those of subcontractors subject to the program.

- Contractor agrees to Pay \$1.00 per hour for work performed by covered employees...
Contractor agrees to offer health benefits to each covered employee...
Contractor agrees to pay on behalf of some covered employees and contract labor and play on behalf of other covered employees...
If contract labor is utilized the Contractor agrees to report hours worked by the contract laborer and Pay \$1.00 per hour for work performed.
Contractor will comply with all provisions of the Pay or Play Program and will furnish all information and reports requested to determine compliance with program provisions.
For Prime Contractors Only: Contractor will file compliance reports with the City, which will include activity for subcontractors subject to the program...

Table with 3 columns: Following Information is Mandatory, Prime Contractor, Sub-Contractor. Rows include Total No. Of Employees on City Job, No. Of Employees "Playing", No. Of Employees "Paying", and No. Of Employees "Exempt".

I hereby certify that the above information is true and correct.
CONTRACTOR (Signature) DATE
Todd Mathes / Division President
NAME AND TITLE (Print or type)



**EXHIBIT "J"**  
**PERFORMANCE BOND**  
*(See next page)*

PERFORMANCE BOND

THE STATE OF TEXAS §  
COUNTY OF HARRIS §

Terra Renewal LLC, ("Principal") and Argonaut Insurance Company, ("Surety"), shall pay to the City of Houston, Texas ("City"), the sum of \$685,288.00 in accordance with the terms and conditions stated below:

On or about this date, the Principal executed a Argonaut Insurance Agreement in writing with the City for On-Site Water Treatment, Sludge Dewatering and Disposal Services ("Agreement"), which is incorporated into this Bond.

The conditions of this obligation are that if the Principal performs its obligations under the terms of the Agreement and this Bond in all respects, then this obligation is void and has no further force and effect; otherwise this obligation remains in effect and the sum of \$685,288.00 is payable to the City on demand.

The Surety relieves the City and its representatives from the exercise of any diligence whatever in securing the Principal's compliance with the terms of the Agreement, and the Surety waives any notice to it of the Principal's default or delay in the performance of the Agreement. The Surety shall take notice of and is held to have knowledge of all acts or omissions of the Principal, its agents, and representatives in all matters pertaining to the Agreement.

The City and its representatives may at any time, without notice to the Surety, make any changes in the terms and conditions of the Agreement, or extend it, and may add to or deduct from the Principal's obligations under the Agreement. Such changes, if made, do not in any way relieve, release, condition, or limit the obligation in this Bond and undertaking or release the Surety therefrom.

SURETY AND PRINCIPAL AGREE TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, AND REPRESENTATIVES FROM ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, DAMAGES, FINES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY FAILURE ON THE PART OF THE PRINCIPAL, ITS AGENTS, AND REPRESENTATIVES, TO FULLY PERFORM UNDER THE AGREEMENT, INCLUDING ANY CHANGES OR EXTENSIONS TO IT.

If the City brings any suit or other proceeding at law on the Agreement or this Bond, or both, the Principal and the Surety shall pay to the City the additional sum of 10 percent of whatever amount the City recovers, which sum of 10 percent is agreed by all parties to be indemnity to the City for the expense of and time consumed by its City Attorney, his or her assistants, and office staff, and other costs and damages to the City. The amount of 10 percent is fixed and liquidated by the parties because the exact damage to the City would be difficult to ascertain.

This Bond and all obligations created under it shall be performable in Harris County, Texas, and all are non-cancelable. This Bond must be automatically renewed annually on the anniversary of the effective date of the Bond for the term of the Agreement and any extensions, unless the Surety gives the Principal and the City 30 days written notice before the renewal date that the Surety will not renew this Bond, in which case the Principal shall provide the City with a replacement bond (in the same form as this Bond) before the renewal date. The provisions of V.T.C.A., Government Code Section 2253, as amended, control even though the Statute may not be applicable.

All notices required or permitted by this Bond 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 on the signature page of this Bond or at such other address as the receiving party designates by proper notice to the sending party.

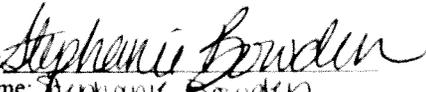
This Bond is effective on \_\_\_\_\_ and is binding on the Principal and the Surety, their heirs, executors, administrators, successors and assigns, jointly and severally.

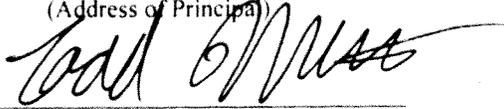
EXECUTED in multiple originals this 14th day of November, 16 2011.

ATTEST/SEAL: (if a corporation)  
WITNESS: (if not corporation)

Terra Renewal LLC  
(Name of Principal)

1100 E. Campbell Rd. Ste. #220, Richardson, TX 75081  
(Address of Principal)

By:   
Name: Stephanie Bowden  
Title: Contract manager  
Date: 11/7/11

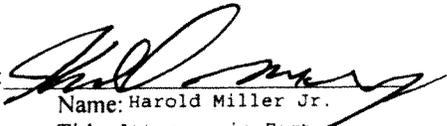
By:   
Name: Todd Mathis  
Title: Division President  
Date: 11/7/11

ATTEST/SEAL  
SURETY WITNESS:

Argonaut Insurance Company  
(Name of Surety)

10101 Reunion Place, Suite 500, San Antonio, TX 78216  
(Address of Surety)

By:   
Name: Jodie Sellers  
Title: Witness  
Date: November 14, 2011

By:   
Name: Harold Miller Jr.  
Title: Attorney-in-Fact  
Date: November 14, 2011

REVIEWED:

\_\_\_\_\_  
Assistant City Attorney  
P. O. Box 1562  
Houston, TX 77251

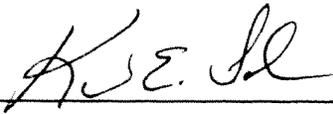
SURETY ACKNOWLEDGMENT (ATTY-IN-FACT)

State of Illinois

County of DuPage

I, Karen E. Socha, Notary Public of DuPage, County, in the State of Illinois, do hereby certify that Harold Miller Jr Attorney-in-Fact, of the Argonaut Insurance Company who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered said instrument, for and on behalf of the Argonaut Insurance Company for the uses and purposes therein set forth.

Given under my hand and notarial seal at my office in the City of Itasca in said County, this 14th day of November , 2011.

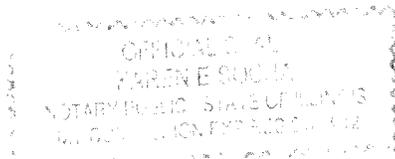


Notary Public

Karen E. Socha

My Commission expires:

1/13/2012



Argonaut Insurance Company  
225 W. Washington, 6th Floor  
Chicago, IL 60606

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the Argonaut Insurance Company, a Corporation duly organized and existing under the laws of the State of Illinois and having its principal office in the County of Cook, Illinois does hereby nominate, constitute and appoint:

William T. Krumm, Sharon A. Foulk, Patricia A. Joseph, Harold Miller Jr., M. Moody, Betty L. Tolentino, Michael R. Pesch, Jodie Sellers, Matthew V. Buol

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on its behalf as surety, and as its act and deed any and all bonds, contracts, agreements of indemnity and other undertakings in surety ship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of: \$15,000,000.00

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolution adopted by the Board of Directors of Argonaut Insurance Company:

"RESOLVED, That the President, Senior Vice President, Vice President, Assistant Vice President, Secretary, Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the Company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the Argonaut Insurance Company, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Argonaut Insurance Company has caused its official seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the 15th day of September, 2008.

Argonaut Insurance Company

*ME Arledge*

By: \_\_\_\_\_

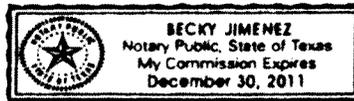
Michael E. Arledge President

STATE OF TEXAS  
COUNTY OF BEXAR SS:

On this 15th day of September, 2008 A.D., before me, a Notary Public of the State of Texas, in and for the County of Bexar, duly commissioned and qualified, came THE ABOVE OFFICER OF THE COMPANY, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of same, and being by me duly sworn, deposed and said that he is the officer of the said Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation, and that Resolution adopted by the Board of Directors of said Company, referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Bexar, the day and year first above written.

ARGONAUT POWER OF ATTORNEY



*Becky Jimenez*

(Notary Public)

I, the undersigned Officer of the Argonaut Insurance Company, Illinois Corporation, do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the Seal of said Company, on the 14th day of November 2011

*Joshua C. Betz*  
Joshua C. Betz Assistant Vice President