

THE STATE OF TEXAS

BID # S29-L22377

COUNTY OF HARRIS

ORDINANCE # 08-0126
CONTRACT # 4600008601

I. PARTIES

1.0 ADDRESS:

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

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

City

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

Contractor

Merrell Bros, Inc.
8811 W. 500 N.
Kokomo, Indiana 46901
Phone: 800-663-8830
Fax: 574-699-7478

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):

Merrell Bros, Inc.

WITNESSES (if a corporation):

By: _____
Name: _____
Title: _____



By: Terry Merrell
Name: Terry Merrell
Title: Treasurer
Federal Tax ID Number: 35-1681490

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

[Signature]
City Secretary

Signed by: Bill White
Mayor

APPROVED:

COUNTERSIGNED BY:

[Signature]
City Purchasing Agent

[Signature]
City Controller [Signature]

DATE COUNTERSIGNED:

2-26-08

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.

1-30-08
Date

[Signature]
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 supervision, labor, parts, tools, materials, transportation, equipment, and supplies necessary to perform the services described in Exhibit "B."

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
\$1,000,000 per occurrence; \$2,000,000 aggregate (12-month period)

4.2 All insurance policies with the exception to Pollution Liability must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, and that it shall give 30 days written notice to the City before they may be canceled. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:

- 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 0% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them.
- 8.2 Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration in Houston, Texas if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "Not Applicable." If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

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 "D," 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 "E."
- 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 "F." 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 CCODT 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 "H".

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 "G" 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 **\$308,666.65** to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

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

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

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

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$_____, upon the request of the below-signed Director, has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

The aggregate of all sums allocated for the purpose of such Agreement, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is \$_____.

SIGNED:

(Signature of the City Controller)

City Controller of the City

REQUESTED:

(Signature of the Director)

Director

- 5.4 The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.

6.0 CHANGES:

- 6.1 At any time during the Agreement Term, the City Purchasing Agent or Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.
- 6.2 The City Purchasing Agent or Director will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of Notice]
SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:

[Signature of City Purchasing Agent or Director]

- 6.3 The City Purchasing Agent or Director may issue more than one Change Order, subject to the following limitations:
- 6.3.1 Council expressly authorizes the City Purchasing Agent or Director to approve a Change Order of up to \$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 February 1, 2008 and expires three (3) years after the date specified unless sooner terminated according to the terms of this Agreement.

2.0 RENEWALS:

2.1 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 shall notify Contractor in writing of non-renewal at least 30 days before the expiration of the then-current term.

3.0 TIME EXTENSIONS:

3.1 If Department requests an extension of time to complete its performance, then the City Purchasing Agent may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

4.0 TERMINATION FOR CONVENIENCE BY THE CITY:

4.1 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.

4.2 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.

- 4.3 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.

5.0 TERMINATION FOR CAUSE BY CITY:

- 5.1 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:

5.1.1 Contractor fails to perform any of its duties under this Agreement;

5.1.2 Contractor becomes insolvent;

5.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors;
or

5.1.4 a receiver or trustee is appointed for Contractor.

- 5.2 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.

- 5.3 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.

6.0 TERMINATION FOR CAUSE BY CONTRACTOR:

- 6.1 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.

- 6.2 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.

7.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS:

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

8.0 NON-WAIVER:

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

8.2 An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

9.0 INSPECTIONS AND AUDITS:

9.1 City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 3 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

10.0 ENFORCEMENT:

10.1 The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

11.0 AMBIGUITIES:

11.1 If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

12.0 SURVIVAL:

12.1 Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

13.0 PARTIES IN INTEREST:

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

14.0 SUCCESSORS AND ASSIGNS:

14.1 This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

15.0 BUSINESS STRUCTURE AND ASSIGNMENTS:

15.1 Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent's or Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest under Section 9.406 (c) of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

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

16.0 REMEDIES CUMULATIVE:

16.1 Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

17.0 CONTRACTOR DEBT:

17.1 If Contractor, at any time during the term of this agreement, incurs a debt, as the word is defined in Section 15-122 of the Houston City Code of Ordinances, it shall immediately notify the City Controller in writing. If the City Controller becomes aware that Contractor has incurred a debt, she shall immediately notify contractor in writing. If Contractor does not pay the debt within 30 days of either such notification, the City Controller may deduct funds in an amount equal to the debt from any payments owed to Contractor under this agreement, and Contractor waives any recourse therefor.

EXHIBIT "A" DEFINITIONS

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

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

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

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

"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.

"Director" means 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.

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

EXHIBIT "B"
SCOPE OF WORK

1.0 GENERAL SERVICES:

- 1.1 The Contractor shall furnish all supervision, labor, parts, tools, materials, transportation, equipment, supplies and permits necessary to operate onsite dewatering system, haul and dispose of water treatment plant sludge at the City's Northeast Water Purification Plant (NEWPP). In addition the Contractor shall provide the onsite dewatering, sludge hauling, and disposal operations performed in compliance with all applicable statutes and regulations which shall include, but not be limited to, federal, state, county, and local regulations.
- 1.2 Contractor shall perform Work in a manner which minimizes disruption of the normal operation of the NEWPP 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.
- 1.3 The amount of sludge the Contractor may be asked to handle may vary depending on various factors which include, but not limited, raw water turbidity, chemical dosages, treated water flow capacity, and equipment failure. There is no minimum/maximum quantities of sludge guaranteed under this contract.
- 1.4 The Contractor shall have sole responsibility for the method of disposal of sludge. Contractor, at his own expense, shall obtain and analyze sludge samples to ascertain the quality and characteristics of the sludge for disposal, if required by disposal site.
- 1.5 The Contractor shall dispose all generated sludge at the Waste Management – Atascocita Landfill site. The Contractor also responsible for completing the waste manifests as required. All waste manifests shall be properly completed, fully and legibly executed with correct information and dates. The landfill disposal fees will be paid for by the Contractor.

2.0 SITE DESCRIPTION:

- 2.1 The Northeast Water Purification Plant is located at 12121 North Sam Houston Parkway East, Humble, Texas (Key Map 376Z).
- 2.2 The daily average treated water flow rate is about 30 million gallons per day. The water treatment sludge is thickened by using gravity thickeners and dewatered through the on-site filter belt presses.
- 2.3 Currently, three filter belt presses which consisted of two Komline-Sanderson systems (each rated for 1,300 lbs/hour) and one Ashbrook system (rated at 1,500 lbs/hour) are being used at the facility.
- 2.4 After the sludge is dewatered, the sludge is transported to an off-site landfill for disposal in a watertight container. Approximate 3,800 dry tons of sludge was disposed of in 2006.
- 2.5 The quantity of treated sludge will vary from day to day, month to month, and year to year. The amount of sludge will also depend upon raw water turbidity, chemical dosages, and treated water flow capacity.

3.0 SCOPE OF SERVICES:

- 3.1 The NEWPP Plant Manager will be the designated point of contact for the project. All coordination for the project shall be made through the Plant Manager or his designee.

- 3.2 The Contractor shall designate a Project Manager for this contract by submitting in writing a letter to the Plant Manager. This letter shall be delivered within 10 days of notification of award by 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.
- 3.3 The onsite operations normally operate between the hours of 7:00 AM and 7:00 PM, Monday through Friday. The Plant Manager, or his designee, will determine if service outside normal working hours is required at the site. The City shall not be charged an additional fee for the services outside of the normal working hours, including weekends or holidays. The Contractor shall make provisions to complete any and all scheduled work as quickly as possible after a delay caused by inclement weather, or other conditions.
- 3.4 The Contractor will use the existing onsite dewatering system. The Contractor shall provide qualified personnel to operate the system. The Contractor shall also provide all routine and preventive maintenance works on the belt filter presses per manufacturer's recommendations specified in the Operation and Maintenance (O & M) manual. The City will not be charged any additional fees for maintenance services on the equipment. For references, copies of the O & M manuals will be made available by contacting the Plant Manager.
- 3.5 Any repair or replacement in excess of \$2,500 shall require authorization from the Plant Manager or his designee. City will reimburse for the repairing costs if the Contractor demonstrates the damage is not preventable.
- 3.6 The Contractor shall specify and supply the sludge polymer to be used for onsite dewatering service. The dewatered material shall have a solids content at least 19% or higher. City will pay for all polymer costs associated with onsite dewatering service as a direct pass-through cost.
- 3.7 Contractor shall keep the sludge in the sludge thickeners and torque readings at an appropriate level that minimizes disruption of the normal operation of the NEWPP at all times, including weekends.
- 3.8 The Contractor shall sample each container for percent solids to determine the dry tonnage of hauled sludge.
- 3.9 The Contractor shall provide a sufficient number of containers and transporting vehicles at the NEWPP to enable continuous operation of the described onsite water treatment sludge dewatering, hauling, and disposal service.
- 3.10 The Contractor shall utilize only watertight containers. All containers shall be covered with tarpaulins prior to leaving NEWPP and en route to disposal site.
- 3.11 The Contractor shall perform a dewatered sludge sample analysis at least once per year. All parameters as required by "TCEQ Instructions and Procedural Information for the Registration of the Land Application of Water Treatment Sludge" shall be analyzed.
- 3.12 The Contractor shall ensure its employee and/or subcontractors comply with the regulations governing the issuance of a Stormwater Discharge Permit by the EPA/TCEQ. The permit, in general, requires the City to eliminate or remedy any erosion of soil into the waterways and prevent any contaminants from reaching the waterways. Contractor shall not disturb vegetated areas to the point where the soil may be exposed to erosion.

- 3.13 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 cost for providing this interface with the City.
- 3.14 At a minimum, Contractor shall furnish a monthly progress report to the Plant Manager by the 15th 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 cost of sludge polymer,
 - 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 belt filter presses.
- 3.15 Contractor shall provide other reports as reasonably stipulated by the Plant Manager, or his designee, on a routine or as needed basis. The City shall not be charged an additional fee for these services.
- 3.16 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 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 Contractor shall be responsible for containing all spillage of product that includes belt pressed solids, fuel and lubricants, and 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 or his designee.

4.0 LICENSES, CERTIFICATIONS, AND PERMITS:

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

- 4.6 Contractor shall be responsible for securing overweight permit and associated costs, if necessary.

5.0 SAFETY AND SECURITY REQUIREMENTS:

- 5.1 The Contractor shall be completely familiar with, and shall comply with all local, City, State and Federal OSHA regulations and requirements as applicable for all services performed under this Contract.
- 5.2 The Contractor shall be responsible and liable for the safety, injury, and health of its employees while performing service work.
- 5.3 The Contractor shall strictly abide by all security and safety regulations issued by the City. The City shall provide the Contractor copies of all updates or changes to the City's security and safety regulations. The Contractor shall implement these updates or changes upon notification.
- 5.4 The Contractor shall develop a spill response plan and be available to respond in no more than eight (8) hours to all liquid sludge or sludge polymer spills and provide thorough cleanup and removal of spilled material.
- 5.5 The Contractor shall provide Material Safety Data Sheet (MSDS) of the sludge polymers and chemicals to be used at the facility.
- 5.6 Company-owned and/or leased vehicles entering City facilities must have company's logo displayed on both sides of the vehicle. The logo must not be smaller than 5" x 8" in size and must be easily read from a distance of not less than 100 feet.
- 5.7 The Contractor's employees and/or subcontractor(s) shall wear photo identification badges and possess a valid State identification card when entering the plant. Contractor must control the distribution of their company photo identification badges so only current active employees have an issued badge.
- 5.8 Contractor shall not block roads or streets without permission from the Plant Manager or his designee. When Contractor obstructs a road or street, Contractor shall provide approved barricades and warning devices.
- 5.9 The Contractor shall solely be responsible for furnishing, erecting and maintaining suitable barricades, warning signs, flares, barriers, cones, lights, flags, signals, flagmen, and other traffic control devices as are or may be necessary to adequately protect the Work and warn, advise and safeguard others over the entire length of the project, including, but not limited to, sections of the project which the Contractor closes to traffic. All barricades, signs and other types of devices necessary for traffic control and to protect the Work shall be in accordance with the "Texas Manual on Uniform Traffic Control Devices".

6.0 CONTRACTOR'S LIABILITY:

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

7.0 ADDITIONS AND DELETIONS:

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

8.0 WARRANTY OF SERVICES:

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

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

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

8.3 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.

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"
DRUG POLICY COMPLIANCE AGREEMENT

I, Terry Merrell Treasurer as an owner or officer of
(Name) (Print/Type) (Title)
Merrell Bros., Inc. (Contractor)
(Name of Company)

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

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

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

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

Date 1/19/08

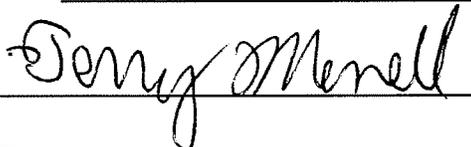
Contractor Name Terry Merrell
Signature 
Title Treasurer

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

I, Terry Merrell Treasurer
(Name)(Print/Type) (Title)

as an owner or officer of Merrell Bros., Inc. (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.

1/19/08
Date

Terry Merrell
Contractor Name

Terry Merrell
Signature

Treasurer
Title

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

I, Terry Merrell
(NAME) (PRINT/TYPE)

as an owner or officer of Merrell Bros., Inc. (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.

1/19/08
DATE

Terry Merrell
CONTRACTOR NAME

Terry Merrell
SIGNATURE

Treasurer
TITLE

**EXHIBIT "F"
DRUG POLICY COMPLIANCE DECLARATION**

I, Terry Merrell Treasurer as an owner or officer of
 (Name) (Print/Type) (Title)
Merrell Bros., Inc. (Contractor or Vendor)
 (Name of Company)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from July 1 to Dec. 31, 2007.

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

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

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

TM
Initials
 Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is 0.

TM
Initials
 From 1/1/07 to 12/31/07 the following test has occurred
 (Start date) (End date)

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested	45	0	1	46
Number Employees Positive	3	0	0	3
Percent Employees Positive	6.6%	0%	0%	6.5%

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

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

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

1/19/08
 (Date)

Terry Merrell
 (Typed or Printed Name)
Terry Merrell
 (Signature)
Treasurer
 (Title)

**EXHIBIT "G"
FEES AND COSTS**

BID ITEM NO.	DESCRIPTION	UNIT	UNIT PRICE
YEAR ONE (1)			
1	The Contractor shall provide all supervision, labor, parts, tools, materials, transportation, equipment, supplies and permits necessary to operate onsite sludge dewatering system, haul and dispose of water treatment plant sludge at the City's Northeast Water Purification Plant (NEWPP). In Strict Accordance with the Scope of Work & Exhibits.	Per Month	\$61,733.33
BID ITEM NO.	DESCRIPTION	UNIT	UNIT PRICE
YEAR TWO (2)			
1	The Contractor shall provide all supervision, labor, parts, tools, materials, transportation, equipment, supplies and permits necessary to operate onsite sludge dewatering system, haul and dispose of water treatment plant sludge at the City's Northeast Water Purification Plant (NEWPP). In Strict Accordance with the Scope of Work & Exhibits.	Per Month	\$62,100.00
BID ITEM NO.	DESCRIPTION	UNIT	UNIT PRICE
YEAR THREE (3)			
1	The Contractor shall provide all supervision, labor, parts, tools, materials, transportation, equipment, supplies and permits necessary to operate onsite sludge dewatering system, haul and dispose of water treatment plant sludge at the City's Northeast Water Purification Plant (NEWPP). In Strict Accordance with the Scope of Work & Exhibits.	Per Month	\$63,864.16
BID ITEM NO.	DESCRIPTION	UNIT	UNIT PRICE
YEAR FOUR (4), OPTION YEAR ONE (1)			
1	The Contractor shall provide all supervision, labor, parts, tools, materials, transportation, equipment, supplies and permits necessary to operate onsite sludge dewatering system, haul and dispose of water treatment plant sludge at the City's Northeast Water Purification Plant (NEWPP). In Strict Accordance with the Scope of Work & Exhibits.	Per Month	\$65,725.25

YEAR FIVE (5), OPTION YEAR ONE (2)			
1	The Contractor shall provide all supervision, labor, parts, tools, materials, transportation, equipment, supplies and permits necessary to operate onsite sludge dewatering system, haul and dispose of water treatment plant sludge at the City's Northeast Water Purification Plant (NEWPP). In Strict Accordance with the Scope of Work & Exhibits.	Per Month	\$67,644.83

EXHIBIT "H"
PAY OR PLAY PROGRAM



ATTACHMENT A

CERTIFICATION OF AGREEMENT TO COMPLY WITH PAY OR PLAY PROGRAM

Contractor Name: Merrell Bros., Inc. \$ 3,852,811.00
(Contractor/Subcontractor) (Amount of Contract)

Contractor Address: 8811 W. 500 N. Kokomo, IN 46901

Project No.: [GFS/CIP/AIP/File No.] S29-L22377

Project Name: [Legal Project Name] Onsite Water Treatment Sludge Dewatering, Hauling & Disposal Serv.

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.

- [] Yes [x] No Contractor agrees to Pay \$1.00 per hour for work performed by covered employees, including covered subcontractors' employees, under the contract with the City.
[x] Yes [] No Contractor agrees to offer health benefits to each covered employee, including covered subcontractors' employees that meet or exceed the following criteria:
(1) the employer will contribute no less than \$150 per employee per month toward the total premium cost; and
(2) the employee contribution, if any amount, will be no greater than 50% of the total premium cost.
[] Yes [x] No Contractor agrees to pay of behalf of some covered employees and play on behalf of other covered employees, in accordance with program requirements, including subcontractors' employees, if applicable.
[x] Yes [] No 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.
[x] Yes [] No For Prime Contractors Only: Contractor will file compliance reports with the City, which will include activity for subcontractors subject to the program, in the form and to the extent requested by the administering department or the Affirmative Action and Contract Compliance Office. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

I hereby certify that the above information is true and correct.

Terry Merrell 1/18/08
CONTRACTOR (Signature) DATE
Terry Merrell Treasurer
NAME AND TITLE (Print or type)



ATTACHMENT C
Pay or Play Program
Contractor/Subcontractor Waiver Request

If a waiver of the Pay or Play Program requirements is requested, the City of Houston contracting department shall submit this Waiver Request form to the City of Houston Affirmative Action and Contract Compliance Division along with any supporting documentation. A waiver, if granted, shall be effective for the duration of the contract. In the event of renewal or renegotiation of the contract, subsequent waivers may be requested and either granted or denied.

Department: _____ Date Submitted: _____

Contact Name: _____ Phone: _____

Contractor/Subcontractor Name: _____ Vendor No.: _____

Contract No./Description: _____

Contract/Subcontract Amount: \$ _____

This contract or subcontract is appropriate for a waiver based on the following: *(Check the appropriate box.)*

- Sole Source.** The contractor or subcontractor is the sole source of the service or material at issue.
- Emergency.** The contract or subcontract is a response to an emergency that endangers public health or safety.
- Essential.** No other qualified responsive bidders comply with the requirements of the Pay or Play Ordinance and the contract or subcontract is for a service or project that is essential to the City or public.
- Adverse Impact.** Compliance with the Pay or Play Program would cause an unreasonably adverse impact on the City's ability to obtain services or an unreasonably adverse financial impact on the City.
- Bulk Purchasing.** The services to be purchased are available under a bulk purchasing agreement with a federal, state, or local government entity.
- Intergovernmental/Interlocal Agreement/Purchasing Cooperative**

Department Signature:

Request submitted by department head or authorized representative:

Signature

Print Name

City of Houston Affirmative Action and Contract Compliance Use Only

Action: [] Approved [] Disapproved

Signature: _____ Date: _____

Print Name: _____

