



CITY OF HOUSTON INVITATION TO BID

Issued: *November 16, 2012*

REVISED 12/7/2012

BID OPENING:

Sealed bids, in duplicate, will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002, until 10:30 a.m. **Thursday, December 20, 2012** and all bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby at 11:00 a.m. on that date for the purchase of:

**ONSITE WATER TREATMENT SLUDGE DEWATERING AND DISPOSAL SERVICES
FOR PUBLIC WORKS & ENGINEERING DEPARTMENT
BID INVITATION NO. S50-L24437
NIGP Code: 968-93 & 910-70**

BUYER:

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

ELECTRONIC BIDDING:

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

MANDATORY PRE-BID CONFERENCE:

A Pre-Bid Conference will be held for all Prospective Bidders in the Administrative Building of the Southeast Water Purification Plant, located at, 3100 Genoa Red Bluff, Houston, Texas 77034 (Key Maps 577 M & R) **10:00 am. on Thursday, November 29, 2012.** (NOTE: *Valid Picture I.D. is Required in Order to Enter the Facility, NO Exceptions Taken*).

WALK-THROUGH SCHEDULE:

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

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

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

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

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

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

***CONTENTS:**

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

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

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

**SECTION A
OFFICIAL BID FORM**



**ONSITE WATER TREATMENT SLUDGE DEWATERING AND DISPOSAL SERVICES
FOR PUBLIC WORKS & ENGINEERING DEPARTMENT
BID #S50-L24437
NIGP Code: 968-93 & 910-70**

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

The undersigned Bidder hereby offers to contract with the City upon the terms and conditions stated in that certain **"Contract Onsite Water Treatment Sludge Dewatering and Disposal Services for a three-year period with two (2) one-year option periods for the Southeast Water Purification Plant located at, 3100 Genoa Red Bluff, Houston, Texas 77034 for Public Works & Engineering Department"**, which was distributed by the City together with the "Notice to Bidders" and is hereby incorporated herein by this reference (the "Contract"). This offer is made at the prices stated on the electronic Bid Form. When issued by the City of Houston, Letters of Clarification shall automatically become part of this bid document and shall supersede any previous specifications or provisions in conflict with the Letters of Clarification. It is the responsibility of the bidder to ensure that it has obtained all such letters. By submitting a bid on this project, bidder shall be deemed to have received all Letters of Clarification and to have incorporated them into its bid.

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

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

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

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

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

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

Additional Required Forms to be Included with this Bid:

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

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

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

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

Questions concerning the Bid should be submitted in writing to: City of Houston, Strategic Purchasing Division, 901 Bagby, Room B506, Houston, TX 77002, Attn: Arturo Lopez or via fax: 832-393-8759 or via email (preferred method) to arturo.lopez@cityofhouston.net no later than **4:00 PM, Friday, December 7, 2012.**

PRICING:

The Contractor shall provide the unit prices to operate and maintain equipment, process the sludge onsite, transport, and dispose of the water treatment sludge at the SEWPP. The dewatered sludge will be disposed of the on-site permitted landfill (monofill).

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

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

PERFORMANCE BOND:

The successful Contractor shall be required to provide a Performance Bond or a Clean Irrevocable Letter of Credit in the amount of **50% of the annual award to be renewed annually.** The Contract term is three-years with two one-year options to renew for a total five-year term.

The bond will be renewed for each one-year term upon extension of the Contract. Further, subsequent to

Contract award extension and upon the City's written notification, to the Contractor, of its intent to exercise a one-year contract option year, the Contractor shall provide to the City, within ten (10) calendar days of receipt of such notification, a Performance Bond or Clean Irrevocable Letter of Credit in the amount of 50% of the total contract option year amount.

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

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

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

SITE INSPECTION

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

QUALITY AND WORKMANSHIP

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

PROTEST

A protest shall comply with and be resolved, according to the City of Houston Procurement Manual http://purchasing.houstontx.gov/docs/Procurement_Manual.pdf and rules adopted thereunder. Protests shall be submitted in writing and filed with both, the City Attorney and the Solicitation contact person. A pre-award protest of the ITB shall be received five (5) days prior to the solicitation due date and a post-award protest shall be filed within five (5) days after City Council approval of the contract award.

A protest shall include the following:

- The name, address, e-mail, and telephone number of the protester;
- The signature of the protester or its representative who has the delegated authority to legally bind its company;
- Identification of the ITB description and the ITB or contract number;
- A detailed written statement of the legal and factual grounds of the protest, including copies of relevant documents, etc.; and
- The desired form of relief or outcome, which the protester is seeking

LOBBYING AND OTHER FORMS OF INFLUENCE PROHIBITED

REVISED 12/7/2012

Neither Bidder(s) nor any person acting on Bidder(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or anything of value to any appointed or elected official or employee of the City of Houston, their families or staff members. All inquiries regarding the solicitation are to be directed to the designated City Buyer identified on the first page of the solicitation. Upon issuance of the solicitation through the pre-award phase and up to the award, aside from Bidder's formal response to the solicitation, communications publicly made during the official pre-bid conference, written requests for clarification during the period officially designated for such purpose by the City Buyer, neither Bidder(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City of Houston, their families or staff through written or oral means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information

HIRE HOUSTON FIRST

Designation as a City Business or Local Business

To be designated as a City or Local Business for the purposes of the Hire Houston First Program, as set out in Article XI of Chapter 15 of the Houston City Code, a bidder or proposer must submit the Hire Houston First Application and Affidavit ("HHF Affidavit") to the Director of the Mayor's Office of Business Opportunities and receive notice that the submission has been approved prior to award of a contract. Bidders are encouraged to secure a designation prior to submission of a bid or proposal if at all possible.

Download the HHF Affidavit from the Office of Business Opportunities Webpage at the City of Houston e-Government Website at the following location:

<http://www.houstontx.gov/hbsc/hirehoustonfirstaffidavit.pdf>

Award of a Procurement of \$100,000 or More for Purchase of Goods:

THE CITY WILL AWARD THIS PROCUREMENT TO A "CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- **IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND**
- **UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.**

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER.

Award of Procurement under \$100,000 for Purchase of Goods:

THE CITY WILL AWARD THIS PROCUREMENT TO A "CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- **IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, AND**
- **UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.**

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

Award of Procurement that may be More or Less than \$100,000 for Purchase of Goods:

THE CITY WILL AWARD THIS PROCUREMENT TO A "CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- **IF THE BID OF THE CITY BUSINESS IS LESS THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, OR**
- **IF THE BID OF THE CITY BUSINESS IS MORE THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND**
- **UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.**

IF THERE IS NO BID OF A CITY BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER.

Award of Procurement of \$100,000 or More for Purchase of Non-Professional Services , Including Construction Services:

THE CITY WILL AWARD THIS PROCUREMENT TO A " CITY BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- **IF THE BID OF THE LOCAL BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND**
- **UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.**

IF THERE IS NO BID OF A LOCAL BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

Award of Procurement under \$100,000 Purchase of Non-Professional Services Including Construction Services:

THE CITY WILL AWARD THIS PROCUREMENT TO A "LOCAL BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES

- **IF THE BID OF THE CITY BUSINESS IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, AND**
- **UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED N SECTION 15-181 OF THE CODE.**

IF THERE IS NO BID OF A LOCAL BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

Award of Procurement that may be More or Less than \$100,000 for Purchase of Non-Professional Services, Including Construction Services:

THE CITY WILL AWARD THIS PROCUREMENT TO A " LOCAL BUSINESS," AS THAT TERM IS DEFINED IN SECTION 15-176 OF THE CITY OF HOUSTON CODE OF ORDINANCES ("THE CODE")

- **IF THE BID OF THE LOCAL BUSINESS IS LESS THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 5% OF THE LOWEST BID RECEIVED, OR**
- **IF THE BID OF THE LOCAL BUSINESS IS MORE THAN \$100,000 AND IS THE LOWEST RESPONSIBLE BID OR IS WITHIN 3% OF THE LOWEST BID RECEIVED, AND**
- **UNLESS THE USER DEPARTMENT DETERMINES THAT SUCH AN AWARD WOULD UNDULY INTERFERE WITH CONTRACT NEEDS, AS PROVIDED IN SECTION 15-181 OF THE CODE.**

IF THERE IS NO BID OF A LOCAL BUSINESS THAT MEETS THESE CRITERIA, THE CITY WILL AWARD THE PROCUREMENT TO THE LOWEST RESPONSIBLE BIDDER

CONTRACTOR'S QUESTIONNAIRE

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

1. Name: _____

Address: _____

City & State: _____

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

2. Name: _____

Address: _____

City & State: _____

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

3. Name: _____

Address: _____

City & State: _____

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

4. Name: _____

Address: _____

City & State: _____

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

5. Name: _____

Address: _____

City & State: _____

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

**SECTION B
SCOPE OF WORK**

ONSITE WATER TREATMENT SLUDGE DEWATERING AND DISPOSAL SERVICES

1.0 GENERAL:

- 1.1 The Contractor shall be required to 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 Southeast Water Purification Plant (SEWPP) located at 3100 Genoa Red Bluff, Houston, Texas 77034 (Key Maps 577 M & R).
- 1.1.1 Operations and Maintenance of the Sludge Dewatering System (Fee Schedule, Group One, Bid Item #1): 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 (to be supplied by the contractor. The cost is incidental to Fee Schedule, Group One, Bid Item #1)
- 1.1.1.3 Thickener system (six) and associated equipment.
- 1.1.1.4 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 (Electronic Bid Form, Group One, Line Item No. 2). The Contractor shall be required to transport and dispose of the dewatered sludge at an on-site landfill. The contractor shall provide labor and equipment to maintain (such as to promote drainage, compacting and leveling) the on-site landfill as required by the TCEQ permit. The contractor shall also be responsible for mowing, edging and vegetation control inside the landfill. The contractor shall maintain internal roads (gravel) within the landfill. The contractor shall enter the landfill only through one entrance located on the south side of the landfill. The contractor shall also maintain asphalt roadway around the landfill and keep it in good condition to remain serviceable throughout the year. The Contractor has the option to transport and dispose the sludge at an off-site landfill registered and permitted by TCEQ for the land application of water treatment sludge in accordance with 30 TAC 312.12.1 in an event of belt presses/transportation equipment failure. 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. Waste haulers/transporters, where used, shall have current registrations and stickers on trucks.
- 1.4 The Contractor shall perform Work in a manner which minimizes disruption of the normal operation of the Southeast Water Purification Plant (SEWPP) and maintain continuous operation of the existing facilities. The City will not tolerate inaction or action by the Contractor that could jeopardize the operation of the plant. The operation of the sludge dewatering system

shall be restored within 24 hours in case of a natural disaster such as hurricane, flood etc.

- 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 to raw water chemistry and turbidity, treatment chemical types and dosages, treated water flow capacity, and equipment failure. There is no minimum/maximum quantities of sludge guaranteed under this contract.
- 1.6 The City recommends that the Contractor base their pricing on the same sludge polymer that is being used at the SEWPP (Anionic Polymer: Hyperfloc CE2054 by Hychem). If an alternate dewatering polymer is subsequently proposed by the Contractor, the Contractor must obtain approval from the Managing Engineer prior to utilizing the new polymer. The Contractor needs to maintain at least 30-day supply of the polymer at SEWPP at all times. The cost of the polymer is incidental to Fee Schedule, Group One, Bid Item #2.
- 1.7 The Contractor shall keep the sludge level in the thickeners at a level less than 4 feet and shall maintain a torque reading of less than 30% when read on the local torque indicators on the sludge thickeners. The Contractor shall maintain the level in the Thickened Sludge Wet Well at a level between 5 feet and 14 feet as read on the local indicator. This level is controlled by the amount of sludge drawn off from one or more thickeners via pumps located at thickener draw-off structure. The level is then lowered by the Thickened Sludge Pump which sends the sludge to the belt presses. This requirement supersedes any specifications provided in the O&M manual.
 - 1.7.1 The Contractor shall verbally notify the Managing Engineer 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:
 - 1.7.1.1.1 If the Contractor, upon receiving written notice from the Managing Engineer or designee, does not comply with operation levels specified for the thickeners, a penalty of \$500/day may be applied. The Contractor has 24 hours to cure the deficiency from the time notice is provided before penalty is applied.
 - 1.7.1.1.2 If the Contractor, upon receiving written notice from the Managing Engineer or designee, does not repair a belt press within 48 hours from notice, a penalty of \$500/day may be applied.
 - 1.7.1.1.3 If the Contractor, upon receiving written notice from the Managing Engineer or designee, does not provide documentation as specified in this contract, a penalty of \$250/day may be applied. The Contractor has 5 business days to cure deficiency from the time notice is provided before penalty is applied.
 - 1.7.1.1.4 Assessed monthly penalties may be debited from the monthly invoice.
 - 1.7.2 The Contractor shall be required to 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 SEWPP Control Room daily and included in the Monthly Operations Report.

2.0 SITE DESCRIPTION: **REVISED 12/7/2012**

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

2.1.1 Southeast Water Purification Plant (SEWPP)

2.2 Southeast Water Purification Plant (SEWPP):

2.2.1 The SEWPP is located at 3100 Genoa Red Bluff, Houston, Texas 77034 (Key Maps 577 M & R).

2.2.2 The daily average treated water flow rate for the SEWPP is approximately 85 MGD, and the annual water treatment sludge produced is approximately 4,000 dry tons per year. Daily treated water flow rate for the SEWPP may increase to an average flow rate of 200 MGD during the contract term. The total plant capacity is 200 MGD.

2.2.3 After the sludge is dewatered, the sludge is currently hauled off in form of a truck-able dry cake and disposed at an on-site landfill. The dewatered sludge shall have solids content of at least 18% solids or higher on a consistent basis. The City will not pay for any loads for which the solids content is less than 18%.

3.0 SCOPE OF SERVICES:

3.1 The Managing Engineer or designee will be the designated point of contact for the contract. All coordination for the project shall be made through the Managing Engineer or his designee.

3.2 The Contractor shall designate a Project Manager for this contract by submitting in writing a letter to the Managing Engineer. 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 SEWPP is 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 and 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 system as well as contractor supplied belt presses as identified in Section 1.1.***

3.4.1 The Contractor shall be required to 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, where applicable.

3.4.2 The Contractor shall be required to provide all preventive and corrective maintenance work on the 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 SEWPP sludge dewatering system. At a minimum the Contractor shall follow PM schedule per City's Work Management System (WMS) currently being followed by the maintenance team at SEWPP. A copy of the PM schedule will be provided to the Contractor.

3.5 Documentation Required:

3.5.1 Maintenance Reports:

The Contractor shall be required to provide monthly maintenance reports with 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 be required to furnish an operations report to the Managing Engineer or designee, with 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 Daily sludge blanket readings and torque levels for each thickener,
- 3.5.2.4 Number and size of trucks/bins hauled each day,
- 3.5.2.5 Percent solids of sludge in each container that is disposed,
- 3.5.2.6 Volume of solids disposed in wet tons and dry tons,
- 3.5.2.7 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,
- 3.5.2.8 Analytical testing reports, if any, and

3.5.2.9 Disposal manifests (if required).

REVISED 12/7/2012

3.5.2.10 Daily operation status of each major piece of equipment (i.e. Thickeners, Belt Presses, Sludge transfer pumps, Sludge feed pumps etc.)

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

3.6.1 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. This cost is incidental to the Electronic Bid Form, Group One, Bid Item #1.

3.6.2 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 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 Services" and will be paid in accordance with the Electronic Bid Form, Group Two, "Special City Directed Services", Bid Item #2. Any repair of City-owned equipment (with record of preventative maintenance) totaling more than \$3,000 will be paid by the City entirely.

3.6.3 For all work exceeding \$3,000, a minimum of 3 bids shall be obtained by the Contractor. Each bid shall have the detailed breakdown of labor, equipment, materials, subcontractor cost and other incidentals. The subcontractor cost shall also include the detailed breakdown of labor, equipment, materials and other incidentals. If 3 bids cannot be obtained, the Contractor shall provide documentation that a reasonable effort was made to obtain the bids. The City also reserves the right to retain other entities to make the repair(s) if the Contractor's bids are not acceptable by the City.

3.6.4 Any repair or replacement in excess of \$3,000 per item shall require authorization from the Managing Engineer 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 Managing Engineer or designee before commencing.

3.7 **Additional "Special City Directed Services"**

For additional "Special City Directed Services", the City will pay the entire cost of the directed service as submitted by the Contractor **plus 15% mark-up** per the Contract Exhibit "H", titled, "Fees and Costs". It may include the following tasks and shall be performed at the discretion of the City:

3.7.1 *Fees & Costs Schedule, Group 2, Line Item No. 1: Sludge removal at other locations inside SEWPP such as Return Flow B Forebay (RFB), Sedimentation Basins, Flocculators etc.*

3.7.2 Fees & Costs Schedule, Group 2, Line Item No. 2: Repairs to City-Owned equipment that exceed the \$3,000 threshold as described in Section 3.6b above. Any repair of City-owned equipment (with record of preventative maintenance) totaling more than \$3,000 will be paid by the City entirely.

3.7.3 *Fees & Costs Schedule, Group 3, Line Item No. 3: Capital improvements that improve or restore the operability and reliability of the system. An annual joint inspection will be performed by the City and the Contractor to assess the condition of the sludge dewatering system. One week after inspection is completed; the Contractor shall be required to provide a list of items that is recommended for repair or improvement.*

- 3.7.4 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.
- 3.8 The Contractor shall provide containment around the totes stored at the SEWPP. The Contractor shall dispose of unused polymer and totes in a lawful manner off-site.
- 3.9 The Contractor shall provide a sufficient number of watertight containers and transporting vehicles at the plant to enable continuous operation of the described on-site water treatment sludge dewatering, hauling, and disposal services. This cost is incidental to the Electronic Bid form, Group One, Line Item No. 2.
- 3.10 The Contractor shall be required to 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 attached City of Houston's Standard Operating Procedure (SOP). Prior to commencing the work, the Contractor shall be required to provide laboratory information to the Managing Engineer or his/her 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 Contractor's results. The Contractor shall be required to weigh-in all filled and empty containers at SEWPP and include this documentation with the monthly invoice. This cost is incidental to the Electronic Bid Form, Group One, Line Item No. 2.
- 3.11 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.
- 3.12 The Contractor must be equipped to exchange information electronically with the City in a format that is compatible with Microsoft Office software. It shall be solely the Contractor's responsibility to facilitate this electronic exchange. The Contractor shall bear all costs for providing this interface with the City.
- 3.13 The Contractor shall insure that copies of back-up documents and manifests are properly completed, fully and legibly executed with correct information and dates.
- 3.14 The Contractor shall remove debris, rubbish or standing water from the work site as frequently as necessary to avoid safety hazards and unsightliness, and at the end of each workday.
- 3.15 The Contractor shall be responsible for containing and disposing of any spillages such as but not limited to dewatered solids, fuel, lubricants, sludge polymer etc. 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 Managing Engineer or his/her designee.
- 3.16 The Contractor shall ensure that his employees and 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.

4.0 SITE VISIT:

- 4.1 When deemed necessary an inspection may be made by the City to determine whether a bidder **REVISED 12/7/2012** actually has a facility at the location they have listed in the bid document and determine if the bidder meets the bid requirements.

5.0 CONTRACT COMPLIANCE:

- 5.1 The City reserves the right to monitor this contract for compliance to ensure legal obligations are fulfilled and that an acceptable level of service is 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.

6.0 INVOICES:

- 6.1 ***The Contractor shall submit invoices for payment in triplicate (one original and two copies) that are on Contractor's company stationary with the original signed by an authorized agent of the company. ALL SUPPORT DOCUMENTS SHALL BE ORIGINAL. The invoice number shall not be duplicated during the term of the contract periods. Each invoice shall include the following information:***
- 6.1.1 ***The City Contractor Number, City Ordinance Number, City Release Number, and Contractor's Job Number.***
 - 6.1.2 ***The Contractor's name and address and where the service was performed.***
 - 6.1.3 ***The total invoice costs of the job.***
- 6.2 ***Mail invoices to: Accounts Payable:***
Attn: Craig Foster
City of Houston, Accounts Payable
P.O. Box 61449
Houston, Texas 77208-1449.

7.0 POST AWARD MEETING:

- 7.1 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.

8.0 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.

9.0 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 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 thereof 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.

10.0 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.

11. WARRANTY OF SERVICES:

11.1 *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.

11.2 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.

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

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

END OF SECTION

**SECTION BB
EQUIPMENT ASSET CHECKLIST**

No.	Equipment #	Asset #	Description	Responsibility Matrix	
				Operations	Maintenance
1	GB7120	600428	BWC7120 GB7120 Gearbox	Contractor	Contractor
2	MO7120	600429	BWC7120 MO7120 Motor	Contractor	Contractor
3	SR7120	600430	BWC7120 SR7120 Speed Reducer	Contractor	Contractor
4	TK7120	600431	BWC7120 TK7120 Tank	Contractor	Contractor
5	PV7171A	633953	PV7171A - Plug Valve	Contractor	Contractor
6	PV7171B	633954	PV7171B - Plug Valve	Contractor	Contractor
7	PV7172A	633955	PV7172A - Plug Valve	Contractor	Contractor
8	PV7172B	633956	PV7172B - Plug Valve	Contractor	Contractor
9	PV7173A	633957	PV7173A - Plug Valve	Contractor	Contractor
10	PV7173B	633958	PV7173B - Plug Valve	Contractor	Contractor
11	PV7173C	633959	PV7173C - Plug Valve	Contractor	Contractor
12	PV7173D	633960	PV7173D - Plug Valve	Contractor	Contractor
13	PV7174A	633961	PV7174A - Plug Valve	Contractor	Contractor
14	PV7174B	633962	PV7174B - Plug Valve	Contractor	Contractor
15	PV7174C	633963	PV7174C - Plug Valve	Contractor	Contractor
16	PU7112	600476	RSP7151 PU7112 Pump	Contractor	Contractor
17	PU7113	600479	RSP7152 PU7113 Pump	Contractor	Contractor
18	PU7114	600482	RSP7154 PU7114 Pump	Contractor	Contractor
19	GB7111	600489	RST7111 GB7111 Gearbox	Contractor	Contractor
20	MO7111	600483	RST7111 MO7111 MOTOR	Contractor	Contractor
21	SR7111	600485	RST7111 SR7111 Speed Reducer	Contractor	Contractor
22	TK7101	600486	RST7111 TK7101 Tank	Contractor	Contractor
23	GB7112	600490	RST7112 GB7112 Gearbox	Contractor	Contractor
24	MO7112	600491	RST7112 MO7112 Motor	Contractor	Contractor
25	SR7112	600493	RST7112 SR7112 Speed Reducer	Contractor	Contractor
26	TK7102	600494	RST7112 TK7102 Tank	Contractor	Contractor
27	GB7113	633943	RST7113 GB7113 Gearbox	Contractor	Contractor
28	MO7113	633945	RST7113 MO7113 Motor	Contractor	Contractor
29	SR7113	633944	RST7113 SR7113 Speed Reducer	Contractor	Contractor
30	SG7113	633946	RST7113 SG7113 Spur Gear	Contractor	Contractor
31	WG7113	633947	RST7113 WG7113Worm Gear	Contractor	Contractor
32	RST7113	633065	RST7113 Tank	Contractor	Contractor
33	GB7114	600497	RST7114 GB7114 Gearbox	Contractor	Contractor
34	MO7114	600498	RST7114 MO7114 Motor	Contractor	Contractor
35	RST7114	624224	RST-7114 SLUDGE THICKNER DRIVER	Contractor	Contractor
36	SR7114	600500	RST7114 SR7114 Speed	Contractor	Contractor

			Reducer		
37	TK7104	600501	RST7114 TK7104 Tank	Contractor	Contractor
38	GB7115	633948	RST7115 Gearbox	Contractor	Contractor
39	MO7115	633950	RST7115 Motor	Contractor	Contractor
40	SR7115	633949	RST7115 Speed Reducer	Contractor	Contractor
41	SG7115	633951	RST7115 SG7115 Spur Gear	Contractor	Contractor
42	WG7115	633952	RST7115 WG7115 Worm Gear	Contractor	Contractor
43	RST7115	633066	RST7115 Tank	Contractor	Contractor
44	PU7111	602051	SBP7111 PU7111 Submersible Pump	Contractor	Contractor
45	PU7101	602305	TDP7111 PU7101 Submersible Pump	Contractor	Contractor
46	PU7102	602308	TDP7112 PU7102 Submersible Pump	Contractor	Contractor
47	TSP7171M	632734	TSP-7171 - PROGRESSING CAVITY PUMP - MOTOR - TRUCK LOADING STATION #1	Contractor	Contractor
48	TSP7171	632840	TSP-7171 - PROGRESSING CAVITY PUMP - TRUCK LOADING STATION #1	Contractor	Contractor
49	TSP7172M	632735	TSP-7172 - PROGRESSING CAVITY PUMP - MOTOR - TRUCK LOADING STATION #1	Contractor	Contractor
50	TSP7172	632841	TSP-7172 - PROGRESSING CAVITY PUMP - TRUCK LOADING STATION #1	Contractor	Contractor
51	TSP7173M	632736	TSP-7173 - PROGRESSING CAVITY PUMP - MOTOR - TRUCK LOADING STATION #1	Contractor	Contractor
52	TSP7173	632842	TSP-7173 - PROGRESSING CAVITY PUMP - TRUCK LOADING STATION #1	Contractor	Contractor
53	TSP7174M	632737	TSP-7174 - PROGRESSING CAVITY PUMP - MOTOR - TRUCK LOADING STATION #1	Contractor	Contractor
54	TSP7174	632843	TSP-7174 - PROGRESSING CAVITY PUMP - TRUCK LOADING STATION #1	Contractor	Contractor
55	GB7201	600504	TSP7211 GB7201 Gearbox	Contractor	Contractor
56	MO7201	600505	TSP7211 MO7201 Motor	Contractor	Contractor
57	PU7201	600506	TSP7211 PU7201 Pump	Contractor	Contractor
58	GB7202	600507	TSP7212 GB7202 Gearbox	Contractor	Contractor
59	MO7202	600508	TSP7212 MO7202 Motor	Contractor	Contractor
60	PU7202	600509	TSP7212 PU7202 Pump	Contractor	Contractor
61	GB7203	600510	TSP7213 GB7203 Gearbox	Contractor	Contractor
62	MO7203	600511	TSP7213 MO7203 Motor	Contractor	Contractor
63	PU7203	600512	TSP7213 PU7203 Pump	Contractor	Contractor
64	TSWW		Wet Well Pit	Contractor	Contractor

65	WG7231	633067	WG-7231 - WEIR GATE - RAW SLUDGE DISTRIBUTION STATION	Contractor	Contractor
66	WG7232	633068	WG-7232 - WEIR GATE - RAW SLUDGE DISTRIBUTION STATION	Contractor	Contractor
67	WG7233	633069	WG-7233 - WEIR GATE - RAW SLUDGE DISTRIBUTION STATION	Contractor	Contractor
68	WG7234	633070	WG-7234 - WEIR GATE - RAW SLUDGE DISTRIBUTION STATION	Contractor	Contractor

END OF SECTION

**SECTION C
GENERAL TERMS & CONDITIONS**

THE STATE OF TEXAS

BID # _____

ORDINANCE # _____

COUNTY OF HARRIS

CONTRACT # _____

I. PARTIES

1.0 ADDRESS:

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

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

City

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

Contractor

Phone: _____
Fax: _____

The Parties agree as follows:

2.0 TABLE OF CONTENTS:

2.1 This Agreement consists of the following sections:

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- A. DEFINITIONS
- *B. SCOPE OF SERVICES
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- G. DRUG POLICY COMPLIANCE DECLARATION
- *H FEES AND COSTS
- *I. CONTRACTOR'S PAY OR PLAY
- *J. PERFORMANCE BOND

* Note: These Exhibits shall be inserted into the Contract agreement at the time of Contract execution.

3.0 PARTS INCORPORATED:

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

4.0 CONTROLLING PARTS:

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

5.0 DEFINITIONS:

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

6.0 SIGNATURES:

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

ATTEST/SEAL (if a corporation): _____

WITNESS (if not a corporation):

By: _____

Name:

Title:

By: _____

Name:

Title:

Federal Tax ID Number: _____

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

City Purchasing Agent

City Controller

DATE COUNTERSIGNED:

This Contract has been reviewed as to form by the undersigned legal assistant and has been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

Date

Legal Assistant

II. DUTIES OF CONTRACTOR

1.0 SCOPE OF SERVICES:

- 1.1 In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit "B" titled, **Scope of Services** and Exhibit "BB" titled, **Equipment Asset Checklist**.

2.0 RELEASE:

- 2.1 **CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE CITY) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.**

3.0 INDEMNIFICATION:

- 3.1 **CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY "THE CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**

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

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

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

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

4.0 INDEMNIFICATION PROCEDURES:

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

- 4.1.1 a description of the indemnification event in reasonable detail,
- 4.1.2 the basis on which indemnification may be due and the anticipated amount of the indemnified loss.
- 4.2 This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.
- 4.3 Defense of Claims
 - 4.3.1 Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.
 - 4.3.2 Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

5.0 INSURANCE:

- 5.1 Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:
 - 5.1.1 Commercial General Liability insurance including Contractual Liability insurance:
\$500,000 per occurrence; \$1,000,000 aggregate
 - 5.1.2 Workers' Compensation including Broad Form All States endorsement:
Statutory amount
 - 5.1.3 Automobile Liability insurance
\$1,000,000 combined single limit per occurrence
Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period unless otherwise indicated.
 - 5.1.4 Employer's Liability
Bodily injury by accident \$100,000 (each accident)
Bodily injury by disease \$100,000 (policy limit)
Bodily injury by disease \$100,000 (each employee)

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

5.2.1 immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or

5.2.2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

5.2.3 All certificates of insurance submitted by Contractor shall be accompanied by endorsements for additional insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and waivers of subrogation in favor of the City for Commercial General Liability, Automobile Liability, and Worker's Compensation/Employers' Liability policies. For a list of pre-approved endorsement forms see <http://purchasing.houstontx.gov/forms.shtml>. The Director will consider all other forms on a case-by-case basis.

6.0 WARRANTIES:

6.1 Contractor represents and warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

6.2 With respect to any parts and goods furnished by it, Contractor warrants:

6.2.1 that all items are free of defects in title, material, and workmanship,

6.2.2 that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,

6.2.3 that each replacement item is new in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and

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

7.0 LICENSES AND PERMITS:

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

8.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE:

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

9.0 MWBE COMPLIANCE:

- 9.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least **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 Affirmative Action Division and will comply with them.
- 9.2 Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration in Houston, Texas if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "D."

10.0 DRUG ABUSE DETECTION AND DETERRENCE:

- 10.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- 10.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
- 10.2.1 a copy of its drug-free workplace policy,
 - 10.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E," together with a written designation of all safety impact positions and,
 - 10.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F."
- 10.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.
- 10.4 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.
- 10.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

11.0 ENVIRONMENTAL LAWS:

- 11.1 Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any

other governmental agency with the authority to promulgate environmental rules and regulations ("Environmental Laws"). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.

- 11.2 Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Regulations. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

12.0 PERFORMANCE BOND:

- 12.1 The Contractor shall furnish and maintain a performance bond in the amount of **50% of the annual award, renewable annually**, which will be for a period not to exceed one year. If the City exercises its option to extend the agreement beyond the initial term of three years and the Contractor mutually agrees, the Contractor shall furnish a performance bond for each renewal year, per awarded facility. However, the surety providing the performance bond for the initial term of the agreement shall be under no obligation to provide the performance bond for any renewal year. The bond shall be conditioned upon the Contractor's full and timely performance of this agreement and must be issued by a corporate surety authorized to write surety bonds in the State of Texas and in the form set out in Exhibit "I".
- 12.2 If the City exercises any option years, Contractor shall maintain a Performance Bond in the amount equal to **50% of the annual award, renewable annually** 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.

13.0 CONTRACTOR'S PERFORMANCE:

- 13.1 Contractor shall make citizen satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Contractor is not interacting in a positive and polite manner with citizens, he or she shall direct Contractor to take all remedial steps to conform to these standards.

14.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS:

- 14.1 Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees.
- 14.2 Failure of Contractor to pay it's employees as required by law shall constitute a default under this contract for which the Contractor and it's surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.

- 14.3 Contractor shall defend and indemnify the City from any claims or liability arising out of Contractor's failure to pay its subcontractors as required by law. Contractor shall submit disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

15.0 CONTRACTOR PAY OR PLAY PROGRAM:

- 15.1 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".
- 15.2 The Pay or Play Program for various departments will be administered by the City of Houston's Office of Business Opportunity designee and for a Department specific contract; the Department's designated contract administrator will administer the Pay or Play Program.

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 \$ [REDACTED] 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

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/Chief 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.

9.0 SURETY BOND RENEWALS:

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

V. MISCELLANEOUS

1.0 INDEPENDENT CONTRACTOR:

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

2.0 FORCE MAJEURE:

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

and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.

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

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

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

2.3 The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.

2.4 If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director may terminate this Agreement by giving 30 days' written notice to Contractor. This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.

3.0 SEVERABILITY:

3.1 If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

4.0 ENTIRE AGREEMENT:

4.1 This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding this Agreement.

5.0 WRITTEN AMENDMENT:

5.1 Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

6.0 APPLICABLE LAWS:

6.1 This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

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

7.0 NOTICES:

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

the sending party.

8.0 NON-WAIVER:

- 8.1 If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.
- 8.2 An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

9.0 INSPECTIONS AND AUDITS:

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

10.0 ENFORCEMENT:

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

11.0 AMBIGUITIES:

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

12.0 SURVIVAL:

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

13.0 PARTIES IN INTEREST:

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

14.0 SUCCESSORS AND ASSIGNS:

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

15.0 BUSINESS STRUCTURE AND ASSIGNMENTS:

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

16.0 REMEDIES CUMULATIVE:

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

17.0 CONTRACTOR DEBT:

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

18.0 INTERLOCAL AGREEMENTS:

- 18.1 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.

EXHIBIT "A" DEFINITIONS

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

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

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

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

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

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

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

"Contract Term" is defined in Article IV.

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

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

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

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

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

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

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

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

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

EXHIBIT "BB"
EQUIPMENT ASSET LIST
(CITY WILL INSERT)

EXHIBIT "C"
EQUAL EMPLOYMENT OPPORTUNITY
(CITY WILL INSERT)

EXHIBIT "D"
MWBE SUBCONTRACT TERMS
(CITY WILL INSERT)

EXHIBIT "E"
DRUG POLICY COMPLIANCE AGREEMENT
(CITY WILL INSERT)

EXHIBIT "F"
CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT
(CITY WILL INSERT)

EXHIBIT "G"
DRUG POLICY COMPLIANCE DECLARATION
(CITY WILL INSERT)

**EXHIBIT "H"
FEES AND COSTS
(CITY WILL INSERT)**

EXHIBIT "I"
PAY OR PLAY PROGRAM
(CITY WILL INSERT)

EXHIBIT "J"
PERFORMANCE BOND
(CITY WILL INSERT)