

## GENERAL TERMS & CONDITIONS

THE STATE OF TEXAS

BID # L23341

COUNTY OF HARRIS

ORDINANCE # 09-0865

CONTRACT # 4600009876

### I. PARTIES

#### 1.0 ADDRESS

THIS AGREEMENT for **Biosolids Transportation and Land Disposal/Application Services** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and **Terra Renewal LLC** ("Contractor"), a corporation doing business in Texas.

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

#### City

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

#### Contractor

Terra Renewal LLC  
201 S. Denver Avenue, Suite B  
Russellville, Arkansas 72801  
Phone: 336-918-2993; 479-498-0500  
email: jonathan.hill@terrarenewal.com

The Parties agree as follows:

#### 2.0 TABLE OF CONTENTS

2.1 This Agreement consists of the following sections:

# TABLE OF CONTENTS

Page No.

|      |   |    |
|------|---|----|
| I.   | PARTIES .....   | 1  |
|      | 1.0 ADDRESS .....   | 1  |
|      | 2.0 TABLE OF CONTENTS .....                                   | 1  |
|      | 3.0 PARTS INCORPORATED .....                                  | 3  |
|      | 4.0 CONTROLLING PARTS .....                                   | 3  |
|      | 5.0 DEFINITIONS .....   | 3  |
|      | 6.0 SIGNATURES .....  | 4  |
| II.  | DUTIES OF CONTRACTOR .....                                    | 5  |
|      | 1.0 SCOPE OF SERVICES .....                                   | 5  |
|      | 2.0 RELEASE .....   | 5  |
|      | 3.0 INDEMNIFICATION .....                                     | 5  |
|      | 4.0 INDEMNIFICATION PROCEDURES .....                          | 6  |
|      | 5.0 INSURANCE .....   | 6  |
|      | 6.0 WARRANTIES .....  | 7  |
|      | 7.0 LICENSES AND PERMITS .....                                | 7  |
|      | 8.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE .....         | 7  |
|      | 9.0 MWBE COMPLIANCE .....                                     | 8  |
|      | 10.0 DRUG ABUSE DETECTION AND DETERRENCE .....                | 8  |
|      | 11.0 ENVIRONMENTAL LAWS .....                                 | 8  |
|      | 12.0 CITY'S CONTRACTOR PAY OR PLAY PROGRAM .....              | 9  |
|      | 13.0 CONTRACTOR'S PERFORMANCE .....                           | 9  |
|      | 14.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS .....            | 9  |
| III. | DUTIES OF CITY .....  | 9  |
|      | 1.0 PAYMENT TERMS .....                                       | 9  |
|      | 2.0 TAXES .....   | 10 |
|      | 3.0 METHOD OF PAYMENT .....                                   | 10 |
|      | 4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS .....               | 10 |
|      | 5.0 LIMIT OF APPROPRIATION: .....                             | 10 |
|      | 6.0 CHANGES .....   | 11 |
| IV.  | TERM AND TERMINATION .....                                    | 12 |
|      | 1.0 CONTRACT TERM .....                                       | 12 |
|      | 2.0 NOTICE TO PROCEED .....                                   | 12 |
|      | 3.0 RENEWALS .....  | 12 |
|      | 4.0 TIME EXTENSIONS .....                                     | 12 |
|      | 5.0 TERMINATION FOR CONVENIENCE BY THE CITY .....             | 12 |
|      | 6.0 TERMINATION FOR CAUSE BY CITY .....                       | 13 |
|      | 7.0 TERMINATION FOR CAUSE BY CONTRACTOR .....                 | 13 |
|      | 8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS ..... | 13 |
| V.   | MISCELLANEOUS .....   | 14 |
|      | 1.0 INDEPENDENT CONTRACTOR .....                              | 14 |
|      | 2.0 FORCE MAJEURE .....                                       | 14 |
|      | 3.0 SEVERABILITY .....  | 14 |
|      | 4.0 ENTIRE AGREEMENT .....                                    | 14 |
|      | 5.0 WRITTEN AMENDMENT .....                                   | 14 |
|      | 6.0 APPLICABLE LAWS .....                                     | 15 |
|      | 7.0 NOTICES .....   | 15 |

|      |   |    |
|------|---|----|
| 8.0  | NON-WAIVER .....                        | 15 |
| 9.0  | INSPECTIONS AND AUDITS.....             | 15 |
| 10.0 | ENFORCEMENT .....                       | 15 |
| 11.0 | AMBIGUITIES.....                        | 15 |
| 12.0 | SURVIVAL .....                          | 16 |
| 13.0 | PARTIES IN INTEREST .....               | 16 |
| 14.0 | SUCCESSORS AND ASSIGNS .....            | 16 |
| 15.0 | BUSINESS STRUCTURE AND ASSIGNMENTS..... | 16 |
| 16.0 | REMEDIES CUMULATIVE.....                | 16 |
| 17.0 | CONTRACTOR DEBT .....                   | 16 |

**EXHIBITS**

- A. DEFINITIONS
- B. SCOPE OF SERVICES
- BB. LOCATION LIST
- C. EQUAL EMPLOYMENT OPPORTUNITY
- D. MWBE SUBCONTRACT TERMS
- E. DRUG POLICY COMPLIANCE AGREEMENT
- F. CERTIFICATION OF NO SAFETY IMPACT POSITIONS
- G. DRUG POLICY COMPLIANCE DECLARATION
- H. PRICING
- I. CITY'S CONTRACTORS PAY OR PLAY PROGRAM

**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".



## 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, tools, equipment, permits, parts, expendable items, material, and supplies necessary to perform the services described in Exhibit "B" & "BB".

### 2.0 RELEASE

2.1 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.

### 3.0 INDEMNIFICATION

3.1 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:

3.1.1 PRIME CONTRACTOR/SUPPLIER AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 2.1-3.2, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

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

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

3.1.4 PRIME Contractor/SUPPLIER 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.

3.2 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.

## 4.0 INDEMNIFICATION PROCEDURES

4.1 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:

- 4.1.1 a description of the indemnification event in reasonable detail, and
- 4.1.2 the basis on which indemnification may be due and
- 4.1.3 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 Prime Contractor/Supplier is prejudiced, suffers loss, or incurs expense because of the delay.

### 4.3 Defense of Claims

4.3.1 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.

4.3.2 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.

## 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 coverage 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)

5.1.5 Pollution Liability

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

5.2 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. Contractor shall give written notice to the Director if any of its insurance policies are cancelled, materially changed or non-renewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:

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

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

**6.0 WARRANTIES**

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

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

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

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

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

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

**7.0 LICENSES AND PERMITS**

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

**8.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE**

8.1 Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set

out in Exhibit "C".

## **9.0 MWBE COMPLIANCE**

9.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least **12%** of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them.

9.2 Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration in Houston, Texas if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "D". If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

## **10.0 DRUG ABUSE DETECTION AND DETERRENCE**

10.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

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

10.2.1 a copy of its drug-free workplace policy,

10.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E", together with a written designation of all safety impact positions, and

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

10.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G". Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

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

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

## **11.0 ENVIRONMENTAL LAWS**

11.1 Contractor shall comply with all rules, regulations, statutes, or orders of the

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

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

## **12.0 CITY'S CONTRACTOR PAY OR PLAY PROGRAM**

12.1 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.

12.2 The Pay or Play Program for various departments will be administered by the City of Houston Affirmative Action Division's designee and for a Department specific contract; the Department's designated contract administrator will administer the Pay or Play Program.

## **13.0 CONTRACTOR'S PERFORMANCE**

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

## **14.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS**

14.1 Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees.

14.2 Failure of Contractor to pay its employees as required by law shall constitute a default under this contract for which the Contractor and its surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.

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

### **III. DUTIES OF CITY**

#### **1.0 PAYMENT TERMS**

1.1 The City shall pay and Contractor shall accept fees 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.

## **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 ~~\$3,438,045.90~~ to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

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

### **"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"**

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

5.4 The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the

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

##### **5.0 TERMINATION FOR CONVENIENCE BY THE CITY**

5.1 The City Purchasing Agent or Director may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies, which exist now or in the future.

5.2 On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section III unless the fees exceed the allocated funds remaining under this Agreement.

##### **5.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES**

RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. Contractor WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

## **6.0 TERMINATION FOR CAUSE BY CITY**

6.1 If Contractor defaults under this Agreement, the City Purchasing Agent or Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies, which exist now or in the future. Default by Contractor occurs if:

- 6.1.1 Contractor fails to perform any of its duties under this Agreement;
- 6.1.2 Contractor becomes insolvent;
- 6.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- 6.1.4 a receiver or trustee is appointed for Contractor.

6.2 If a default occurs, the City Purchasing Agent or Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent or Director, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's or Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the City Purchasing Agent or Director may terminate this Agreement on the termination date, at no further obligation of the City.

6.3 To effect final termination, the City Purchasing Agent or Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

## **7.0 TERMINATION FOR CAUSE BY Contractor**

7.1 Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date.

7.2 The date must be at least 30 days after the Director receives notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

## **8.0 REMOVAL OF Contractor OWNED EQUIPMENT AND MATERIALS**

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

may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

## **V. MISCELLANEOUS**

### **1.0 INDEPENDENT Contractor**

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

### **2.0 FORCE MAJEURE**

2.1 Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.

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

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

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

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

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

### **3.0 SEVERABILITY**

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

### **4.0 ENTIRE AGREEMENT**

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

### **5.0 WRITTEN AMENDMENT**

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

functions specifically delegated to him or her in this Agreement.

## **6.0 APPLICABLE LAWS**

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

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

## **7.0 NOTICES**

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

## **8.0 NON-WAIVER**

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

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

## **9.0 INSPECTIONS AND AUDITS**

9.1 City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 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 therefore.

## **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.

"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" mean the Directors/Chiefs of each of the Departments or the City Purchasing Agent for the City, or the person he or she designates.

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

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

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

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

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

**EXHIBIT B**  
**SCOPE OF SERVICES**  
**Biosolids Transportation Landfill Disposal/Application**

Terra Renewal LLC will provide services for transportation, landfill disposal and application of biosolids produced at City of Houston Wastewater Treatment Plants 24 hours per day / 7 days per week / 365 days per year (366 days during a leap year) as required. These 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.

**1.0 General**

- 1.1 The City of Houston, Department of Public Works and Engineering, Public Utilities Division, Wastewater Operations Branch (City) is seeking the services of a contractor experienced in the transportation of liquid sludge between municipal wastewater treatment plants (WWTPs) and the transportation and landfill disposal of municipal WWTP cake and non-specification pellets. These contract services can be generally grouped as follows:
  - 1.1.1 Liquid Sludge Transportation shall mean:
  - 1.1.2 Cake/Non-Spec Pellet Transportation & Landfill Disposal
  - 1.1.3 Cake Transportation and Land Application
  - 1.1.4 Cake Transportation
  - 1.1.5 Yard Tractors/Mules Rental
  - 1.1.6 Non-Spec Pellet Transport Containers Rental

**2.0 Definitions**

- 2.1 End-Dump Trailer shall mean a semi-trailer whose tractor-end can be raised so that the material in the trailer can slide out through the tailgate.
- 2.2 Roll-on / Roll-off Container shall mean a truck transportable container which can hold at least 26 cubic yards of biosolids within its outside dimensions.
- 2.3 Biosolids are defined as liquid sludge, cake, and non-spec pellets generated from the operation of the City's WWTPs. Liquid sludge means stabilized (aerobically digested) or unstabilized waste activated sludge containing approximately 1% to 5% solids by weight. Cake means dewatered stabilized (aerobically digested or lime-stabilized) or dewatered unstabilized waste activated sludge containing approximately 10% to 25% solids by weight. Non-spec pellets means thickened, dewatered, and heat-dried waste activated sludge cake containing approximately 80% to 95% solids by weight (commonly referred to as Hou-Actinite) that are not marketed under a separate contract.

**3.0 Liquid Sludge Transportation**

- 3.1 The Contractor shall:
  - 3.1.1 Provide liquid sludge transfer rigs that consist of a road tractor and a vacuum tanker trailer. These rigs shall be capable of hauling at a gross weight of up to 80,000 lb.
  - 3.1.2 Provide empty tanker trailers prior to filling (<100 gallons remaining).
  - 3.1.3 Fill tractor/trailer rigs to a gross weight of 79,000 pounds plus or minus 1,000 pounds.
  - 3.1.4 Clearly mark the filled liquid sludge level on an external level indicator and

reference this level to a fixed point on top of the trailer.

- 3.1.5 Haul liquid sludge (unstabilized and/or stabilized) from a City-identified WWTP to another City-identified WWTP (See Table I) or another City-owned wastewater handling facility (e.g., lift station or collection system).
- 3.1.6 Fill and empty the tanker trailers either by gravity flow or by using the trailer's vacuum system.
- 3.1.7 With the exception of City-identified valves, not operate City-owned equipment in order to fill the tanker trailers.
- 3.1.8 Provide all quick-connect hoses required to fill and empty the trailers.
- 3.1.9 Transport liquid sludge from Northside WWTPs (north of Interstate Highway 10) to one of three liquid sludge pump away WWTPs on the northside as indicated in Table I.
- 3.1.10 Transport liquid sludge from one Southside WWTP (Greenridge; south of Interstate Highway 10) to WCID No. 51 lift station or the Southwest WWTP on the southside as indicated in Table I.
- 3.1.11 Transport liquid sludge from one City WWTP to another City WWTP or wastewater facility on an emergency basis. Table II provides a summary of potential WWTPs where liquid sludge would be transferred from.
- 3.1.12 Obtain written approval from the City in advance of proposed modifications to the City-provided weekly inter-facility liquid sludge transfer schedule.

### 3.2 The City will:

- 3.2.1 Pay for inter-facility liquid sludge transportation services on a cost per load basis per Exhibit H, line Items No. 1, 2, and 3).
- 3.2.2 Prepare a weekly inter-facility liquid sludge transfer schedule by the last work day of the preceding week and distribute this schedule to the Contractor. This schedule will identify each pickup WWTP and each discharge WWTP or facility and the required volume to be transferred by the scheduled dates.
- 3.2.3 Generally direct liquid sludge transportation loads to the nearest City wastewater facility with the available capacity to handle the transported loads.

## 4.0 **Cake/Non-Spec Pellet Transportation & Landfill Disposal**

### 4.1 The Contractor shall:

- 4.1.1 Submit weight tickets from a certified public scale for all loads. These tickets shall contain the actual gross, tare, and net weights. Stored/memory tare weights shall not be submitted without written approval from the City.
- 4.1.2 Submit a landfill company invoice for each landfilled load.
- 4.1.3 Connect City-filled end-dump trailers, haul dewatered cake (unstabilized or stabilized) from City cake preparer WWTPs to a permitted landfill, empty the trailers, and haul the trailer to a Contractor-identified WWTP for re-filling.
- 4.1.4 Provide these services as a fail-safe backup under emergency conditions (e.g., equipment failures).
- 4.1.5 As directed by the City, load City-filled rolloff containers, haul non-spec heat dried pellets in rolloff containers from the 69<sup>th</sup> Street WWTP to a permitted landfill, empty the containers, and return the containers to the 69<sup>th</sup> Street plant.
- 4.1.6 Submit additional charges relating to failed paint filter tests to the City for review and consideration of payment.
- 4.1.7 Notify the City within twenty-four hours of failed paint filter test results.
- 4.1.8 Transport and landfill cake (unstabilized or stabilized) or non spec pellets

from up to eight (8) Eastside WWTPs and up to five (5) Westside WWTPs (See Table II).

4.2 The City will:

- 4.2.1 Fill end-dump trailers with dewatered cake and as necessary move the trailers to a staging area at each WWTP.
- 4.2.2 Fill rolloff containers with non-spec pellets.
- 4.2.3 Pay for Non-Spec Pellet Transportation and Landfill Disposal services on a cost per load basis per Exhibit H, line Item No. 4).
- 4.2.4 Pay for Cake Transportation and Landfill Disposal services on a cost per load basis per Exhibit H, line Item No. 5.
- 4.2.5 Pay for additional charges levied by the landfill operator for City-provided non-spec pellets or cake that did not pass paint filter testing. Payment will be at the discretion of the City upon completion of the City's investigation of a Contractor's claim for additional charges.
- 4.2.6 Provide non-hazardous, non-spec pellets or cake that passes the paint filter test.

## 5.0 Cake Transportation and Land Application

5.1 For Group B Cake Transportation and Land Application – Eastside Cake and Cake Transportation and Land Application – Westside Cake services, the Contractor shall:

- 5.1.1 Furnish the site name, permit holder name, permit number, site size in acres, locations and addresses of any intended contract use land application sites.
- 5.1.2 Apply City biosolids only to site tracts reserved for the exclusive use of the City.
- 5.1.3 Sample and analyze for any required nutrients.
- 5.1.4 Sample and analyze soil from new land application sites for all the constituents regulated under the EPA 40 CFR 503 and TAC Chapter 312 regulations in order to provide information on existing site conditions. The sampling and analyses plans shall be approved by the City prior to conducting. Analytical results shall be provided to the City.
- 5.1.5 Assure that all processes utilized at the sites comply with all applicable laws, rules, and regulations.
- 5.1.6 Provide an adequate supply of end-dump trailers at the Sims Bayou WWTP to allow for a 24 hour filled trailer hold time to allow pH measurement prior to transport.
- 5.1.7 Dispose of related cake in a permitted landfill when City-conducted regulatory compliance test results are pending (between sample collection and laboratory reporting) and invoice these loads at landfill transportation and disposal prices.
- 5.1.8 Transport and landfill dispose loads containing cake that failed recent regulatory compliance testing and invoice at transportation and landfill disposal prices.
- 5.1.9 Transport and land apply stabilized, dewatered cake from up to seven Eastside WWTPs (east of an Interstate Highway 45/North Freeway and Highway 288/South Freeway line): Chocolate Bayou, Imperial Valley, Kingwood Central, Metro Central, Northgate, Sims Bayou, and Southeast (See Table II).
- 5.1.10 Transport and land apply stabilized, dewatered cake from up to three Westside WWTPs (west of an Interstate Highway 45/North Freeway and Highway 288/South Freeway line): Beltway, Keegans Bayou, and Upper Brays (See Table II).
- 5.1.11 Connect City-filled end-dump trailers, haul the trailers to a permitted land application site destination, empty the trailers, and haul the trailer to a Contractor-identified WWTP for re-filling.
- 5.1.12 Submit a monthly log sheet of Contractor site operations.
- 5.1.13 Submit a monthly summary of the anticipated number of land application and

landfill loads for each WWTP, as well as an accounting of the land applied and land filled loads to date for each WWTP at least five (5) working days before the start of each month.

- 5.1.14 Notify the City in writing of significant changes in biosolids land application or landfill plans in advance such that the City will be able to adjust its related biosolids stabilization/management operations and sampling and analyses procedures accordingly.
- 5.2 For Group B Cake Transportation and Land Application – Eastside Cake and Cake Transportation and Land Application – Westside Cake services, the City will:
  - 5.2.1 Provide non-hazardous, Class B stabilized, dewatered cake (12 to 18% solids) that meets vector attraction requirements and EPA pollutant limits.
  - 5.2.2 Distribute a regulatory compliance testing schedule each month (SOUR and MPN).
  - 5.2.3 Pay for Cake Transportation and Land Application services (Eastside and Westside) on a cost per load basis (See Exhibit H).
  - 5.2.4 Based on agreement with Contractor-identified unique circumstances, prepare written authorization to reduce the required minimum annual cake tonnage that shall be land applied.
  - 5.2.5 Fill the end-dump trailers with stabilized, dewatered cake and if necessary move the trailers to a staging area at each WWTP.

## **6.0 Cake Transportation**

- 6.1 The Contractor shall:
  - 6.1.1 Connect City-filled end-dump trailers, haul dewatered cake (unstabilized or stabilized) from City cake preparer WWTPs (Sims Bayou, Greenridge, or other) to the City's Alameda Sims Heat Drying facility, empty the trailers(if the cake receiving facility is available), and haul the trailer to a Contractor-identified WWTP for re-filling
  - 6.1.2 Provide these services as a fail-safe backup to landfill disposal and as required by the City under emergency conditions (e.g., equipment failures).
  - 6.1.3 If the Alameda Sims Heat Drying Cake Receiving is not available for dumping, drop the filled-trailers for City dumping and haul Contractor-provided empty standby trailers.
- 6.2 The City will:
  - 6.2.1 Fill end-dump trailers with dewatered cake and as necessary move the trailers to a staging area at each WWTP.
  - 6.2.2 Pay for cake transportation service between Sims Bayou WWTP and the Alameda Sims Heat Drying facility on a cost per load basis per Exhibit H, line Item No. 6).
  - 6.2.3 Pay for cake transportation service between Greenridge WWTP and the Alameda Sims Heat Drying facility on a cost per load basis per Exhibit H, line Item No. 6).
  - 6.2.4 Pay for cake transportation service between any other City WWTP and the Alameda Sims Heat Drying facility on a cost per load basis per Exhibit H, line Item No. 7).

## **7.0 Yard Tractors/Mules Rental**

7.1 The Contractor shall:

- 7.1.1 Provide up to twelve (12) yard tractors/mules at City-identified cake/pellet preparer plants.
- 7.1.2 Maintain and fuel these rented yard tractors such that they are available for continuous use.
- 7.1.3 Provide a replacement tractor within 2 hours, if the rented tractor is out-of-service for more than 4 hours after notification.
- 7.1.4 Provide yard tractors/mules that can handle at least a 70,000 pound loaded trailer, have a minimum 50-inch wide insulated cab, air ride seat, two (2) batteries, comply with all Federal air pollution regulations and the State Implementation Plan (SIP) for the Houston Non-Attainment Area and have a hydraulically activated fifth wheel.
- 7.1.5 Provide four (4) continuous hours of training to City personnel regarding the proper and safe operation of the yard tractors/mules. This training shall be conducted on three separate occasions in the first month of Contract Year No. 1 and annually in Contract Years 2 and 3.
- 7.1.6 Issue written training certification to each City employee upon successful completion of yard tractor/mule operations training.
- 7.1.7 At the City's discretion, the Almeda Sims WWTP yard tractor shall be equipped with a hydraulic power take-off pump and be capable of unloading end-dump trailers (i.e., lifting all of the Contractor-provided trailers to the recommended dump angle).

7.2 The City will:

- 7.2.1 Operate Contractor-provided yard tractors/mules in order to move end-dump trailers while filling (to create multiple piles) and to move empty and filled trailers within the plant grounds.
- 7.2.2 Pay for yard tractor/mule rental on a cost per mule per month basis per Exhibit H, line Item No. 8).

**8.0 Non-Spec Pellet Transport Containers Rental**

8.1 The Contractor shall:

- 8.1.1 Provide up to eight (8) watertight 40 cubic yard rolloff containers at the 69<sup>th</sup> Street WWTP to capture and store non-spec heat dried pellets for transportation and landfill disposal.
- 8.1.2 Position containers as directed by the City.
- 8.1.3 Mark and maintain a continuous, uniform fill line around the inside of each rolloff container indicating the fill level that will result in a legal loaded gross weight for transportation.

8.2 The City will:

- 8.2.1 Schedule transportation and landfill disposal of the non-spec pellets in each container.
- 8.2.2 Pay for non-spec transport container rental on a cost per container per month basis per Exhibit H, line Item No. 9).

**9.0 General**

- 9.1 Upon the completion of a cake receiving facility construction project at the Almeda Sims WWTP, the following plan changes are anticipated sometime between Contract Year 2

and 3:

- 9.1.1 Cake versus liquids sludge from the Greenridge WWTP will be transported to the Alameda Sims WWTP heat dryer facility.
- 9.1.2 Dewatered, unstabilized cake from the Sims Bayou WWTP will be transported to the Alameda Sims WWTP heat dryer cake receiving facility, along with cake from other WWTPs.

9.2 The Contractor shall:

- 9.2.1 Provide all labor, equipment, and materials needed to complete the specified services.
- 9.2.2 Operate and maintain the provided equipment.
- 9.2.3 Provide the City with empty tractor/trailer weights and full tractor/trailer weights when these rigs are initially put into service.
- 9.2.4 Prepare and submit a copy (original top copy) of a completely executed five-part paper manifest for all loads. Written approval of the manifest content and format shall be obtained from the City Health Department and the City Wastewater Operations Branch.
- 9.2.5 Provide a driver(s) and tractor(s) ready to move a trailer anywhere within the City within ninety (90) minutes of notification.
- 9.2.6 Utilize road tractors and watertight end-dump trailers for cake transportation (frameless, frame, or quarter-frame type). The trailer splash guards or nose and tail caps shall not interfere with the point discharge loading of these trailers. These rigs shall be capable of hauling at a filled gross weight of 79,000 pounds plus or minus 1,000 pounds.
- 9.2.7 Subject to verification by the City, provide end-dump trailers with a continuous, uniform line around the inside of each trailer at the 79,000 pound gross weight plus or minus 1,000 pound fill level and, per the City's request, re-mark these lines within two working days.
- 9.2.8 Be available to perform the specified services 24 hours per day, 7 days per week, 365 days per year (366 days in a leap year). Unless specifically requested by the City, the services shall be performed during daytime work hours on normal City work days.
- 9.2.9 Not affect the continuous operation of any of the City's WWTPs.
- 9.2.10 Not remove partially filled trailers, unless removal is authorized by the City.
- 9.2.11 Make all reasonable efforts to cooperate with City construction, service, or supply contractors as well as City customers.
- 9.2.12 Provide details of all modifications to City equipment required in order to safely load the Contractor's trailers.
- 9.2.13 Abide by all identified City security procedures.
- 9.2.14 Be completely familiar with, and conduct all contract service activities in compliance with all applicable City, County, State of Texas and Federal regulations, codes, and standards.
- 9.2.15 Pay the cost of all required permits and/or fees and provide copies of these permits to the City.
- 9.2.16 Ensure its employees and/or subcontractors comply with the regulations governing the issuance of Storm Water Discharge Permits issued to the City by the US Environmental Protection Agency (EPA)/Texas Commission on Environmental Quality (TCEQ).
- 9.2.17 Develop a spill response plan(s) and respond in a timely manner to all spills and provide thorough cleanup and removal of the spilled material.
- 9.2.18 Obtain and properly display TCEQ and City permits for all trailers used to transport biosolids.
- 9.2.19 Ensure that all required equipment licenses and inspections are current.

- 9.2.20 Provide timely transfer of all trailers and provide empty trailers in a timely manner to ensure continuous processing of biosolids at each WWTP.
- 9.2.21 Handle liquid sludge, cake, and pellets in a manner that minimizes odor complaints.
- 9.2.22 Find, arrange for, and continue the use of permitted land application sites and permitted landfill disposal sites associated with the services provided in this contract.
- 9.2.23 Cover all end-dump trailers and rolloff containers with tarpaulins while on public thoroughfares.
- 9.2.24 Deliver clean end-dump trailers (material covering less than one third of trailer bed and less than 3 inches in thickness) to the City's WWTPs for filling.
- 9.2.25 Be liable to the City for any damage caused to City property or employee injuries.
- 9.2.26 Provide monitoring and record keeping suitable for presenting related information for regulatory purposes.

9.3 The City will:

- 9.3.1 Only pay the Contractor for full loads unless otherwise authorized by the City.
- 9.3.2 As required, request the movement of a trailer/rolloff and/or the disposal of the trailer/rolloff contents before the contents are completely full.
- 9.3.3 Allow the Contractor access to City sites during non-routine operating hours.
- 9.3.4 Complete and sign the Generator portion of all load manifests and, as appropriate, the destination portion of the manifests.
- 9.3.5 Sample and analyze dewatered cake in compliance with regulatory requirements for Toxicity Characteristic Leaching Procedure (TCLP), polychlorinated biphenyls (PCB's), pathogens, vector attraction (SOURS), and metals.
- 9.3.6 As required, notify the Contractor's dispatcher of the need for an empty end-dump trailer at least ninety minutes before it is needed.
- 9.3.7 Designate a Contract Administrator.
- 9.3.8 Not guarantee minimum/maximum quantities of services handled under this contract.
- 9.3.9 Pay for excessively under loaded road tractor/trailer rigs (gross weight < 74,000 lb) and excessively overloaded road tractor=trailer rigs (gross weight > 84,000 lb) on a prorated basis (ratio of the measured gross weight and the normal gross weight of 79,000 lbs times contract cost per load).
- 9.3.10 For delivered trailers containing an excessive amount of material (measured tare weight > 6,000 lb over the actual tare weight), reduce load payment on a prorated basis (ratio of the difference between the measured tare weight and actual tare weight and the normal gross weight of 79,000 lbs times contract cost per load).
- 9.3.11 Deduct the sum of five hundred dollars (\$500) per day, not as a penalty, but as a service fee credit for each day during which the Contractor refuses, either voluntarily or involuntarily, to provide the City-requested service(s).
- 9.3.12 Modify City-owned equipment as required to safely load Contractor-owned standard trailers.
- 9.3.13 Not pay demurrage charges.

**10.0 Additions & Deletions:**

- 10.1 The City, by written notice from the City Purchasing Agent to the Contractor, at anytime during the term of this contract, may add or delete like services to be performed. Any such written notice shall take effect on the date stated in the notice from the City. Equipment, locations and/or services added will be subject to the contract services and charges or rates as an item already specified in the fee schedule. In the event the additional service is not identical to any item already under contract, the charges therefore will then be the Contractor's normal and customary charges or rates for the equipment, locations and/or services classified in the fee schedule.

## **11.0 Estimated Quantities Not Guaranteed:**

- 11.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of services outlined in the scope of work 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.

## **12.0 Warranty of Services:**

- 12.1 *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.
- 12.2 "Correction" as used in this clause, means the elimination of a defect.
- 12.3 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.
- 12.4 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.
- 12.5 If the City does not require correction or re-performance, the City will make an equitable adjustment in the contract price.

## **13.0 Contract Compliance**

- 13.1 The City reserves the right to monitor this Contract to ensure that the Contractor is providing the goods or services required in strict accordance Contract specifications, as well as complying with the Contract terms and conditions.
- 13.2 Monitoring may take the form of, but not limited to:
- 13.2.1 Inspection, testing, and/or sampling of goods delivered or to be delivered.
  - 13.2.1 Review of deliveries received for accuracy and timeliness.
  - 13.2.3 Review of Contractor's invoices for accuracy.
  - 13.2.4 Review of certifications and/or licenses.
  - 13.2.5 Site visits.
  - 13.2.6 The Contract Compliance Section of the applicable department(s) shall be responsible for Contract compliance on this Contract.

## **14.0 Pre-Performance Meeting**

- 14.1 Subsequent to Contract approval/execution, the Contractor shall be required to attend a performance conference. The Public Works & Engineering Department will host the pre-performance conference. The purpose of the pre-performance conference is for the Contractor to introduce his or her project manager to the Department staff and for Department staff to introduce the Contract end-users, Contract compliance, and accounts payable representatives.

**EXHIBIT BB**

| <b>TABLE I</b>                               |                |   |                 |                                  |
|--|----------------|---|-----------------|----------------------------------|
| <b>LIQUID SLUDGE TANKER HAUL WWTPs</b>       |                |   |                 |                                  |
|  |                |   |                 |                                  |
| <b>Northside</b>                             |                |   |                 |                                  |
| <b>From WWTP Plant Address</b>               | <b>Key Map</b> | <b>Primary To WWTP Plant Address</b>                              | <b>Key Map</b>  | <b>(Estimated Loads/Year)</b>    |
| Cedar Bayou<br>2804 Huffman Eastgate         | 339-G          | Homestead<br>5565 Kirkpatrick                                     | 455-N           | 50                               |
| Forest Cove<br>21951 Trail Tree Lane         | 336-E          | Kingwood Central<br>3928 Kingwood Drive                           | 337-F           | 200                              |
| H.C.M.U.D. #203<br>1215 Gears Road           | 372-P          | Northwest<br>5423 Mangum Road                                     | 451-C           | 225                              |
| Intercontinental Airport<br>2450 Rankin Road | 373-M          | Homestead<br>5565 Kirkpatrick                                     | 455-N           | 750                              |
| Kingwood West<br>5900 Sorters Road           | 295-V          | Kingwood Central<br>3928 Kingwood Drive                           | 337-F           | 200                              |
| Northbelt<br>14506 Smith                     | 375-Y          | Homestead<br>5565 Kirkpatrick                                     | 455-N           | 1225                             |
| Park Ten<br>16500 Park Row                   | 447-Y          | Turkey Creek<br>1147 Enclave Parkway                              | 488-G           | 450                              |
| Tidwell Timbers<br>10545 Tidwell Road        | 456-G          | Homestead<br>5565 Kirkpatrick                                     | 455-N           | 25                               |
| W.C.I.D. #076<br>13535 River Trail Drive     | 415-A          | Homestead<br>5565 Kirkpatrick                                     | 455-N           | 75                               |
| West Lake Houston<br>16702 West Lake Hosuton | 377-G          | Homestead<br>5565 Kirkpatrick                                     | 455-N           | 25                               |
| Westway<br>10273 Genard                      | 450-A          | Northwest<br>5423 Mangum Road                                     | 451-C           | 250                              |
| Willowbrook<br>7101 Greens Road West         | 370-K          | Northwest<br>5423 Mangum Road                                     | 451-C           | 550                              |
| Willow Run<br>1818 ½ Mosher Lane             | 412-K          | Northwest<br>5423 Mangum Road                                     | 451-C           | 150                              |
|  |                |   | <b>13 WWTPs</b> |                                  |
|  |                |   | <b>Total =</b>  | <b>(4,175 loads/year)</b>        |
| <b>Southside</b>                             |                |   |                 |                                  |
| Greenridge<br>6301 Fuqua West                | 571-X          | Southwest<br>4211 Beechnut<br>or WCID No. 51 LS<br>4900 Gallagher | 531-P<br>471-R  | 1,225                            |
|  |                |   | <b>Total =</b>  | <b>1 WWTP (1,225 loads/year)</b> |
|  |                |   |                 |                                  |

| <b>TABLE II</b>  |         |                       |                |   |
|--|---------|-----------------------|----------------|---|
| <b>NON-SPEC PELLETT/CAKE PRODUCING &amp; LIQUID SLUDGE PUMP AWAY WWTPs</b> |         |                       |                |   |
| <b>Generating WWTP</b>   |         | <b>Plant Address</b>  | <b>Key Map</b> | <b>Landfilled Material<br/>(Estimated Loads/Year)</b> |
| <b>Non-Spec Pellet/Cake Producing Plants – Eastside</b>                    |         |                       |                |   |
| 69 <sup>th</sup> Street  | 2525    | S/Sgt. Macario Garcia | 494-R          | Non-spec pellets                                      |
| Chocolate Bayou  | 9600    | Martin Luther King    | 574-J          | Cake (110)  |
| Imperial Valley  | 15500   | Cotillion             | 373-W          | Cake (90)   |
| Kingwood Central   | 3928    | Kingwood Drive        | 337-F          | Cake (210)  |
| Metro Central  | 12815   | Galveston Road        | 617-C          | Cake (40)   |
| Northgate  | 303     | Benmar                | 373-N          | Cake (110)  |
| Sims Bayou   | 9500    | Lawndale              | 535-H          | Cake (2,560)  |
| Southeast  | 9610    | Kingspoint            | 576-W          | Cake (390)  |
| <b>Non-Spec Pellet/Cake Producing Plants - Westside</b>                    |         |                       |                |   |
| Almeda Sims  | 12319 ½ | Almeda Road           | 572-Q          | Non-spec pellets                                      |
| Beltway  | 10518   | Bellaire              | 529-G          | Cake (730)  |
| Greenridge   | 6301    | Fuqua West            | 571-X          | Cake (200)  |
| Keegans Bayou  | 9401    | White Chapel Lane     | 530-S          | Cake (650)  |
| Upper Brays  | 13525   | Old Westheimer        | 529-A          | Cake (410)  |
| <b>Liquid Sludge Pump Away Plants</b>                                      |         |                       |                |   |
| Clinton Park   | 9030    | Clinton Drive         | 495-T          |   |
| Easthaven  | 8545    | Scranton              | 575-G          |   |
| F.W.S.D. #23   | 8219    | Kellett               | 455-G          |   |
| Homestead  | 5565    | Kirkpatrick           | 455-N          |   |
| Northeast  | 655     | Maxey Road            | 496-G          |   |
| Northwest  | 5423    | Mangum Road           | 451-C          |   |
| Sagemont   | 11700   | Sagearbor             | 576-Z          |   |
| Sims South   | 3005    | Galveston Road        | 535-L          |   |
| Southwest  | 4211    | Beechnut              | 531-P          |   |
| Turkey Creek   | 1147    | Enclave Parkway       | 488-G          |   |
| W.C.I.D. #111  | 10601   | Huntington Point      | 528-Y          |   |
| W.C.I.D. #047  | 7410    | Galveston             | 576-F          |   |
| West District  | 255     | Isolde                | 489-L          |   |
| White Oak  | 7103    | Gulf Bank Road West   | 411-N          |   |

**NOTES:**

1. Cake and/or liquid sludge from the above plants may be transported on an emergency basis.
2. Cake from the above noted cake producing plants may be land applied versus landfilled as an alternate bid item.

**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  
MWBE SUBCONTRACT TERMS**

## CITY OF HOUSTON CERTIFIED M/WBE SUBCONTRACT TERMS

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

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

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

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



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

I, Mike Brooks President, Organic Residuals as an owner or officer of  
(Name) (Print/Type) (Title)  
Terra Renewal LLC (Contractor)  
(Name of Company)

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

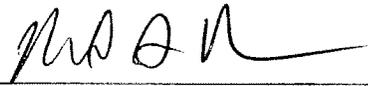
1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures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

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

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

Date August 17, 2009

Contractor Name Terra Renewal LLC

Signature 

Title President, Organic Residuals

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

Not Applicable

I, \_\_\_\_\_  
**(Name)(Print/Type)** **(Title)**

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

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

Not Applicable

I, \_\_\_\_\_  
**(NAME) (PRINT/TYPE)**

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

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CONTRACTOR NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE



**EXHIBIT H  
PRICING**

| Item #                                    | Description  | Qty  | U/M | Unit Price                       |
|---|--|------|-----|----------------------------------|
| <b>GROUP A: Contract Year One</b>         |  |      |     |                                  |
| 1   | Liquid Sludge Transportation - Northside   | 4175 | EA  | \$722,275.00                     |
| 2   | Liquid Sludge Transportation - Southside   | 1225 | EA  | \$127,400.00                     |
| 3   | Liquid Sludge Transportation - Emergency   | 600  | EA  | \$114,600.00                     |
| 4   | Non-Spec Pellet Transportation & Landfill Disposal   | 50   | EA  | \$27,000.00                      |
| 5   | Cake Transportation & Landfill Disposal  | 5300 | EA  | No Bid                           |
| 6   | Cake Transportation - Sims Bayou or Greenridge Cakes to Alameda Sims-<br>THIS IS A NO BID ITEM | 0    | EA  | No Bid                           |
| 7   | Cake Transportation -Other WWTP(s) Cakes to Alameda Sims-<br>THIS IS A NO BID ITEM             | 0    | EA  | No Bid                           |
| 8   | Rental of 9 Yard Tractors/Mules  | 12   | MON | \$79,620.00                      |
| 9   | Rental of 8 Non-Spec Pellet Transport Containers   | 12   | MON | \$23,556.00                      |
|   |  |      |     | <b>Sub-Total: \$1,094,451.00</b> |
| <b>GROUP A: Contract Year Two</b>         |  |      |     |                                  |
| 1   | Liquid Sludge Transportation - Northside   | 4175 | EA  | \$738,975.00                     |
| 2   | Liquid Sludge Transportation - Southside- THIS IS A NO BID ITEM<br>THIS IS A NO BID ITEM       | 0    | EA  | No Bid                           |
| 3   | Liquid Sludge Transportation - Emergency   | 600  | EA  | \$117,000.00                     |
| 4   | Non-Spec Pellet Transportation & Landfill Disposal   | 50   | EA  | \$27,550.00                      |
| 5   | Cake Transportation & Landfill Disposal  | 2750 | EA  | No Bid                           |
| 6   | Cake Transportation - Sims Bayou or Greenridge Cakes to Alameda Sims                           | 2900 | EA  | \$437,900.00                     |
| 7   | Cake Transportation -Other WWTP(s) Cakes to Alameda Sims                                       | 800  | EA  | \$128,800.00                     |
| 8   | Rental of 10 Yard Tractors/Mules   | 12   | MON | \$88,464.00                      |
| 9   | Rental of 8 Non-Spec Pellet Transport Containers   | 12   | MON | \$23,556.00                      |
|   |  |      |     | <b>Sub-Total: \$1,562,245.00</b> |
| <b>GROUP A: Contract Year Three</b>       |  |      |     |                                  |
| 1   | Liquid Sludge Transportation - Northside   | 4175 | EA  | \$751,500.00                     |
| 2   | Liquid Sludge Transportation -Southside - -<br>THIS IS A NO BID ITEM                           | 0    | EA  | No Bid                           |
| 3   | Liquid Sludge Transportation- Emergency  | 600  | EA  | \$119,400.00                     |
| 4   | Non-Spec Pellet Transportation & Landfill Disposal   | 50   | EA  | \$28,100.00                      |
| 5   | Cake Transportation & Landfill Disposal  | 2750 | EA  | No Bid                           |
| 6   | Cake Transportation - Sims Bayou or Greenridge Cakes to Alameda Sims                           | 2900 | EA  | \$446,600.00                     |
| 7   | Cake Transportation - Other WWTP(s) Cakes to Alameda Sims                                      | 800  | EA  | \$131,200.00                     |
| 8   | Rental of 12 Yard Tractors/Mules   | 12   | MON | \$106,152.00                     |
| 9   | Rental of 8 Non-Spec Pellet Transport Containers   | 12   | MON | \$23,556.00                      |
|   |  |      |     | <b>Sub-Total: \$1,606,508.00</b> |
| <b>GROUP A: YEAR FOUR OPTION YEAR ONE</b> |  |      |     |                                  |
| 1   | Liquid Sludge Transportation - Northside   | 4175 | EA  | \$768,200.00                     |
| 2   | Liquid Sludge Transportation - Southside - -<br>THIS IS A NO BID ITEM                          | 0    | EA  | No Bid                           |
| 3   | Liquid Sludge Transportation -Emergency  | 600  | EA  | \$121,200.00                     |
| 4   | Non-Spec Pellet Transportation & Landfill Disposal   | 50   | EA  | \$28,650.00                      |
| 5   | Cake Transportation & Landfill Disposal  | 2750 | EA  | No Bid                           |
| 6   | Cake Transportation - Sims Bayou or Greenridge Cakes to Alameda Sims                           | 2900 | EA  | \$455,300.00                     |
| 7   | Cake Transportation -Other WWTP(s) Cakes to Alameda Sims                                       | 800  | EA  | \$133,600.00                     |
| 8   | Rental of 12 Yard Tractors/Mules   | 12   | MON | \$106,152.00                     |
| 9   | Rental of 8 Non-Spec Pellet Transport Containers   | 12   | MON | \$23,556.00                      |
|   |  |      |     | <b>Sub-Total: \$1,636,658.00</b> |
| <b>GROUP A: YEAR FIVE OPTION YEAR TWO</b> |  |      |     |                                  |
| 1   | Liquid Sludge Transportation -Northside  | 4175 | EA  | \$784,900.00                     |
| 2   | Liquid Sludge Transportation - Southside - THIS IS A NO BID ITEM<br>THIS IS A NO BID ITEM      | 0    | EA  | No Bid                           |
| 3   | Liquid Sludge Transportation - Emergency   | 600  | EA  | \$124,200.00                     |
| 4   | Non-Spec Pellet Transportation & Landfill Disposal   | 50   | EA  | \$29,250.00                      |
| 5   | Cake Transportation & Landfill Disposal  | 2750 | EA  | No Bid                           |
| 6   | Cake Transportation - Sims Bayou or Greenridge Cakes to Alameda Sims                           | 2900 | EA  | \$464,000.00                     |
| 7   | Cake Transportation - Other WWTP(s) Cakes to Alameda Sims                                      | 800  | EA  | \$136,800.00                     |
| 8   | Rental of 12 Yard Tractors/Mules   | 12   | MON | \$106,152.00                     |
| 9   | Rental of 8 Non-Spec Pellet Transport Containers   | 12   | MON | \$23,556.00                      |
|   |  |      |     | <b>Sub-Total: \$1,668,858.00</b> |

|  |            |                        |
|--|------------|------------------------|
| GROUP B: CONTRACT YEAR ONE                               |            |                        |
| 1 Cake Transportation & Landfill Disposal                | 2700 EA    | \$1,425,600.00         |
| 2 Cake Transportation & Land Application - Eastside Cake | 1300 EA    | \$650,000.00           |
| 3 Cake Transportation & Land Application - Westside Cake | 1300 EA    | \$650,000.00           |
|  | Sub-Total: | \$2,725,600.00         |
| GROUP B: CONTRACT YEAR TWO                               |            |                        |
| 1 Cake Transportation & Landfill Disposal                | 750 EA     | \$414,750.00           |
| 2 Cake Transportation & Land Application - Eastside Cake | 700 EA     | \$357,700.00           |
| 3 Cake Transportation & Land Application - Westside Cake | 1300 EA    | \$664,300.00           |
|  | Sub-Total: | \$1,436,750.00         |
| GROUP B: CONTRACT YEAR THREE                             |            |                        |
| 1 Cake Transportation & Landfill Disposal                | 750 EA     | \$423,000.00           |
| 2 Cake Transportation & Land Application - Eastside Cake | 700 EA     | \$365,400.00           |
| 3 Cake Transportation & Land Application - Westside Cake | 1300 EA    | \$678,600.00           |
|  | Sub-Total: | \$1,467,000.00         |
| GROUP B: YEAR FOUR OPTION YEAR ONE                       |            |                        |
| 1 Cake Transportation & Landfill Disposal                | 750 EA     | \$444,000.00           |
| 2 Cake Transportation & Land Application - Eastside Cake | 700 EA     | \$372,400.00           |
| 3 Cake Transportation & Land Application - Westside Cake | 1300 EA    | \$691,600.00           |
|  | Sub-Total: | \$1,508,000.00         |
| GROUP B: YEAR FIVE OPTION YEAR TWO                       |            |                        |
| 1 Cake Transportation & Landfill Disposal                | 750 EA     | \$465,750.00           |
| 2 Cake Transportation & Land Application - Eastside Cake | 700 EA     | \$380,100.00           |
| 3 Cake Transportation & Land Application - Westside Cake | 1300 EA    | \$705,900.00           |
|  | Sub-Total: | \$1,551,750.00         |
| <b>Grand Total:</b>                                      |            | <b>\$16,257,820.00</b> |

**EXHIBIT "I"**  
**PAY OR PLAY PROGRAM**



City of Houston

Pay or Play Program  
Acknowledgement Form

**What this form does.** This form acknowledges your awareness of the Pay or Play program. Your signature affirms that you will comply with the requirements of the program if you are the successful bidder/proposer, and ensure the same on behalf of subcontracts subject to the Pay or Play Program.

If you cannot make this assurance now, do not return this form.

**For more information, contact the Contract Administrator.**

**Routing.** Return this form with your bid or proposal.

I declare under penalty of perjury under the laws of the State of Texas that if awarded a contract, I will comply with the requirements of the Pay or Play Program.

A handwritten signature in black ink, appearing to read "Mike Brooks", written over a horizontal line.

Signature

August 17, 2009

Date

Mike Brooks

Print Name

131290

City Vendor ID

Terra Renewal LLC

Company Name

479-498-0500

Phone Number

mike.brooks@terrarenewal.com

Email Address



FORM POP 2 (DOCUMENT 00630)

CERTIFICATION OF AGREEMENT TO COMPLY WITH PAY OR PLAY PROGRAM

Contractor Name: Terra Renewal LLC \$ 16,257,820
(Contractor/Subcontractor) (Amount of Contract)

Contractor Address: 201 S Denver Avenue Suite B Russellville AR 72801

Project No.: [GFS/CIP/AIP/File No.] S37-L23341

Project Name: [Legal Project Name] Biosolids transportation & land disposal/application for the public works & engineering department

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

- [ ] Yes [ ] No Contractor agrees to Pay \$1.00 per hour for work performed by covered employees, including compliance for covered subcontractors' employees and contract labor, under the contract with the City.
[X] Yes [ ] No Contractor agrees to offer health benefits to each covered employee, including compliance by the covered subcontractors 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.
[X] Yes [ ] No Contractor agrees to pay on behalf of some covered employees and contract labor and play on behalf of other covered employees, in accordance with program requirements, including subcontractors' employees, if applicable.
[X] Yes [ ] No If contract labor is utilized the Contractor agrees to report hours worked by the contract laborer and Pay \$1.00 per hour for work performed.
[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.

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

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

[Signature]
CONTRACTOR (Signature)

August 17, 2009
DATE

Mike Brooks President, Organic Residuals
NAME AND TITLE (Print or type)