INVITATION TO BID# 18-016

SPECIFICATIONS AND CONTRACT DOCUMENTS FOR

SLUDGE TRANSPORT AND DISPOSAL

BID SUBMISSION DEADLINE & OPENING:
Wednesday, February 14, 2018
at 1:40 P.M. CST
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INVITATION TO BID

Date: January 29, 2018

Dear Bidder:

The Harlingen Waterworks System (HWWS) will accept competitive sealed bids for BID# 18-016 - SLUDGE TRANSPORT AND DISPOSAL.

Sealed Bids must be submitted to the office of the Administrative Assistant, located at 134 E. Van Buren, 2nd Floor, Harlingen, Texas 78550 on or before 1:40 P.M. CST on WEDNESDAY, FEBRUARY 14TH, 2018. No Late Bids will be accepted.

Sealed bids will be publicly opened and read aloud at 1:40 P.M. CST on WEDNESDAY, FEBRUARY 14TH, 2018 at the office of the Administrative Assistant, 134 E. Van Buren, 2nd Floor, Harlingen, Texas 78550. All Bidders are invited to attend the opening.

Bidding and Contract Documents, including Technical Specifications may be obtained from the Harlingen Waterworks System’s website: https://www.hwws.com/bids/.

We request bidders carefully read the “Instructions to Bidders” which are enclosed. Questions concerning this Bid may be directed via e-mail or fax to:

Name: Jon M Hedegard
Title: Wastewater Services Assistant
E-Mail: jhedegard@hwws.com
Fax: (956) 440-6525

The Harlingen Waterworks System reserves the right to refuse and reject any or all bids, waive any or all formalities or technicalities, hold bids for a period of 60 days without taking action, and accept the bid to be the best and most advantageous to the Harlingen Waterworks System.

Sincerely,

Jon M Hedegard
Wastewater Services Assistant
INSTRUCTIONS TO BIDDERS

1. THE BID

Competitive sealed bids will be received for BID #18-016 - SLUDGE TRANSPORT AND DISPOSAL at the office of the Administrative Assistant, located at 2nd Floor, 134 E. Van Buren, Harlingen, Texas 78550 until 1:40 P.M. CST on WEDNESDAY, FEBRUARY 14TH, 2018. Late bids will not be accepted.

For clarification, interpretation, and or questions, bidders shall send all inquiries to Jon M Hedegard, Wastewater Services Assistant, no later than 5:00 P.M. CST on Thursday, February 8, 2018.

E-Mail: jhedegard@hwws.com
Fax: (956) 440-6525

If applicable, final addenda will be posted on HWWS’ website at https://www.hwws.com/bids/ no later than 5:00 P.M. CST on Friday, February 9, 2018.

2. DESCRIPTION

a. The bid is for providing the service of TRANSPORTING AND DISPOSING OF LIQUID AND OR DEWATERED FILTER PRESSED MUNICIPAL WASTEWATER TREATMENT PLANT SLUDGE IN A PERMITTED SOLID WASTE LANDFILL.

b. Sludge disposal must be at a Texas Commission on Environmental Quality (TCEQ) permitted solid waste landfill.

c. Successful bidder will furnish all vehicles, containers, equipment, materials, labor, permits, licenses and will pay all associated fees to perform the service.

d. The term of the contract will be for an initial twelve (12) month period; with the option to extend the contract for two (2) additional consecutive one-year periods.

3. BID DOCUMENTS

a. Detailed specifications and bid forms may be obtained on the Harlingen Waterworks System’s website at https://www.hwws.com/bids/.

b. All bids must be submitted on the forms provided and are subject to all requirements of the Standard Form of Agreement.

c. Where in this bid package “SLUDGE TRANSPORT AND DISPOSAL” is used, its meaning shall be “providing the service of transporting and disposing of wastewater sludge in a permitted solid waste landfill for an initial twelve (12) month period, with the option to extend the contract for two (2) additional consecutive one-year periods, as specified”.

4. **BIDDER’S RESPONSIBILITIES**

   a. Bidders should carefully examine all documents in the Bid Packet thoroughly to ensure the SLUDGE TRANSPORT AND DISPOSAL bid offered complies with all requirements.

   b. Should the bidder find discrepancies in, or omissions from bid forms, specifications or other documents, or should he/she be in doubt as to their meaning, he/she shall immediately notify the HWWS Bid Administrator John Hedegard at jhedegard@hwws.com and obtain clarification by addendum prior to submitting any bid.

   c. Any variation from the specifications must be clearly stated on a separate sheet, attached to, and made a part of the bid. If there are no exceptions, the successful bidder will be required to provide the service, as specified in the bid.

   d. Bids must be submitted on the attached “Bid Sheet #18-016”. All the requested information must be filled in clearly and completely to avoid possible disqualification of the bid submitted.

   e. All bids submitted must include the following items:
      - ACKNOWLEDGEMENT OF ADDENDUM
      - BID FORM
      - BID REFERENCE FORM
      - STATEMENT OF QUALIFICATIONS
      - CONFLICT OF INTEREST QUESTIONNAIRE (FORM CIQ)
      - W-9 or W-8BEN FORM
      - CERTIFICATION AND AUTHORIZATION OF BID
      - STANDARD FORM OF AGREEMENT - must sign and submit two (2) originals

      **FAILURE TO COMPLY WITH BID REQUIREMENTS MAY DISQUALIFY BIDDER.**

   f. Prospective bidders shall make careful examination of the site of the project, soil and water conditions to be encountered, improvements to be protected, and methods of ingress and egress to HWWS properties.

   g. Certificate of Interested Parties Form 1295 **will be required to be electronically submitted by awarded bidder ONLY.** HWWS will notify awarded bidder to complete an electronic form 1295 upon execution of contract.

5. **EXCEPTIONS OR CHANGES**

   a. No bid may be altered or amended after the bid deadline date, although any bid may be withdrawn and resubmitted before that date.

   b. Any bids received after the bid date and time specified in the bid packet will be returned unopened (if properly identified).

   c. No changes or alterations will be allowed to the bidder’s instructions and specifications unless specifically changed by an addendum.
6. **UNIT PRICE**
Bidders must ensure that all calculations are correct. Calculation errors may be cause to reject a bid. Bid in units of quantity specified, extend and show total (as requested). In the event of discrepancies in extension, unit prices will govern. Bids subject to unlimited price increase will not be considered. HWWS shall honor only the unit prices stated on the Bid Sheet Form. Therefore, it should incorporate any and all costs at time of submittal. No partial bids will be accepted.

7. **CORRECTIONS MADE TO BIDS**
Alterations, erasures, or other corrections in the bid must be initialed by bidder guaranteeing authenticity.

8. **TIME FOR RECEIVING BIDS**
Bids received prior to the advertised hour of opening shall be securely sealed. The officer appointed to open the bids shall decide when the specified time has arrived and no bid received thereafter will be considered.

9. **OPENING OF BIDS**
HWWS shall, at the time and place fixed for the opening of bids, open each bid and publicly read it aloud, irrespective of an irregularities therein. Bidders and other interested individuals may be present.

10. **WITHDRAWAL OF BIDS**
Bids may be withdrawn by written request dispatched for delivery in the normal course of business prior to the bid opening. No bids may be withdrawn after opening time without acceptable reason in writing and only after approval by the Harlingen Waterworks System.

11. **THE HWWS RESERVATIONS**
   a. HWWS reserves the right to hold all bids for a period of sixty (60) days without taking action from the date of bid opening. These days shall be utilized for the purpose of reviewing the bids and investigating the bidder’s qualification prior to the contract award.
   b. Bidders are required to hold their bids firm for same period of time. If no action is taken within sixty (60) days all bids will be rejected.
   c. HWWS reserves the right to reject any or all bids, to waive defects and formalities in such bids, and to award the contract to the bidder it considers has submitted the best and most advantageous bid.
   d. HWWS reserves the right to waive or take exception to any part of these specifications when in the best interest of the HWWS.
12. SUBMISSION OF BID

a. Bidders shall submit two (2) copies of their response, one marked “ORIGINAL” and one marked “COPY” individually.

b. Bidders shall submit with the bid, two (2) executed (signed) originals of the Standard Form of Agreement.

c. Bids must be delivered or mailed to the Harlingen Waterworks System, Attn: Administrative Assistant, 134 E Van Buren, Harlingen, Texas 78550 in a sealed envelope on or before the bid opening date Wednesday, February 14, 2018 at 1:40 P.M. CST. Late bids will not be accepted.

d. Bids received prior to the advertised hour of opening shall be securely sealed. The officer appointed to open the bids shall decide when the specified time has arrived and no bid received thereafter will be considered.

e. HWWS will not be responsible in the event that the U.S. Postal Service or any other courier system fails to deliver the sealed bid to HWWS Administrative Assistant’s office by the given deadline above. Electronic transmission or facsimile responses will not be accepted.

f. The sealed bid envelope must include the following Bid Documents. Failure to comply with these bid requirements may disqualify bidder:

   - ACKNOWLEDGEMENT OF ADDENDUM
   - BID FORM (SHEET)
   - BID REFERENCE FORM
   - STATEMENT OF QUALIFICATIONS
   - CERTIFICATION AND AUTHORIZATION OF BID
   - CONFLICT OF INTEREST QUESTIONNAIRE (FORM CIQ)
   - W-9 or W-8BEN FORM
   - STANDARD FORM OF AGREEMENT -must execute (sign) and submit two (2) ORIGINALS


g. The sealed bid envelope must be clearly marked as follows:

   SEALED BID # 18-016
   Project Name: SLUDGE TRANSPORT AND DISPOSAL
   Due Date & Time: WEDNESDAY, FEBRUARY 14, 2018 at 1:40 PM CST

h. The Harlingen Waterworks System may consider as irregular, any bid on which there is an alternation of or departure from the Bid Sheet and Certification and Authorization of Bid and, at its option, may reject any irregular bid.
13. EVALUATION CRITERIA

The Bid award may be based on, but not necessarily limited to, the following factors:

   a. Conformity to specifications;
   b. The unit price, including payment discount terms;
   c. The reputation of the bidder and of the bidder’s services;
   d. The quality of the bidder’s services;
   e. The extent to which the services meet the HWWS needs;
   f. The bidder’s past relationship with the HWWS;
   g. The geographical location(s) of bidder’s facilities will be given due consideration in
      the evaluation and award of bid. Delivery terms;
   h. Payment terms;
   i. The total long-term cost to the HWWS to acquire the bidder’s services;
   j. Any relevant criteria specifically listed in this request for bid;
   k. Bidder’s safety record.

14. MINIMUM REQUIREMENTS

These are the minimum requirements that will be acceptable to the Harlingen Waterworks
System. Any bid that does not meet the minimum requirements specified will be rejected.
NOTICE TO BIDDERS

1. INTERPRETATIONS OR ADDENDA

No oral interpretations will be made to any bidder. Each request for an interpretation shall be sent via email or fax to the Wastewater Services Assistant, Jon Hedegard at jhedegard@hwws.com. Last day for questions is Thursday, February 8, 2018 at 5:00 P.M. CST. Each interpretation made will be in the form of an Addendum to the bid documents and will be posted on HWWS website at www.hwws.com no later than Friday, February 9, 2018 at 5:00 P.M. CST prior to bid deadline. It is the bidder’s responsibility to make inquiry as to any addenda issued. All such addenda shall become part of the bid documents and all bidders shall be bound by such addenda.

2. INSPECTION OF SITE

Each bidder should visit the site of the proposed work and fully acquaint himself with the existing conditions there and should fully inform himself as to the facilities involved, the difficulties and restrictions attending the performance of the contract. The bidder should thoroughly examine and familiarize himself with the technical specifications and all other contract documents. The contractor by the execution of the contract shall in no way be relieved of any obligation under it due to his failure to receive or examine any form or legal document or to visit the site or acquaint himself with the conditions there existing. HWWS will be justified in rejecting any claim based on lack of inspection of the site prior to the bid.

3. SPECIFICATIONS

HWWS requires Contractor(s)/Vendor(s) of these services to meet all specifications. In the event the Bidder is unable to meet all specified obligations of this Contract, HWWS may award contract to the Bidder whose bid is considered to be the next best and most advantageous to HWWS.

4. STATEMENT OF BIDDERS QUALIFICATIONS

Each bidder shall submit a statement of the bidder's qualifications. Harlingen Waterworks System shall have the right to take such steps as it deems necessary to determine the ability of the bidder to perform his obligations under the contract, and the bidder shall furnish HWWS all such information and data for this purpose as it may request. The right is reserved to reject any bid where an investigation of the available data does not satisfy HWWS that the bidder is qualified to carry out properly the terms of the contract.
5. INSURANCE REQUIREMENTS

Contractor/Vendor is responsible for procuring and maintaining insurance coverage for the following claims:

(a) Claims for workers' compensation, which will be in the amount required by the laws of the State of Texas;

(b) Claims by Contractor's employees for bodily injury, sickness, disease, or death;

(c) Claims by any person other than Contractor's employees for bodily injury, sickness, disease, or death;

(d) Claims for personal injury sustained by any person as a direct or indirect result of Contractor's employment of the person or sustained by any other person;

(e) Claims for damage to property (other than the work) because of injury to or destruction of tangible property, including loss of use;

(f) Claims for damages for personal injury, death, or property damage resulting from Contractor's use and/or maintenance of any motor vehicle; and

(g) Claims for contractual liability arising from Contractor's obligations under this Agreement.

Contractor/Vendor will, at its expense, purchase and maintain insurance on all of its operations including the following:

(a) Comprehensive General Liability:

$1,000,000 each occurrence, $1,000,000 aggregate coverage

$1,000,000 for products and completed operations

(b) Commercial Automobile Liability

$500,000 each occurrence, $500,000 aggregate coverage

All insurance coverage will be occurrence coverage and will be with an insurance carrier rated A-1 or better in the most current edition of A.M. Best's ratings guides.

Contractor/Vendor will name the Harlingen Waterworks System and the City of Harlingen as additional insureds under the general liability and automobile liability policies.
Certificates of Insurance

(a) Contractor/Vendor will provide HWWS with Certificates of Insurance and an endorsement naming the Harlingen Waterworks System and the City of Harlingen as additional insureds before commencing work on the Project.

(b) The Certificates will provide that no coverage will be canceled, renewed, refused, or materially changed for the duration of this Agreement unless at least thirty (30) days prior written notice is given to the HWWS.

Contractor/Vendor will be responsible for any delay caused by failure to provide the required insurance and will not be entitled to any extensions of time for any such delay.

Waiver of Subrogation - the Waterworks and Vendor waive all rights against each other for damages caused by perils to the extent such perils are covered by insurance, except such rights as they may have to insurance proceeds.

Waiver of Subrogation Endorsement - Vendor will require the insurance policies provided pursuant to this agreement to contain a provision waiving subrogation, whether in the policy or by endorsement.

6. CONFLICT OF INTEREST QUESTIONNAIRE:

Chapter 176 of the Texas Local Government Code requires entities seeking to contract and/or contracting with local government entities, such as cities, for the sale of goods or services, and their agents, to complete, sign and file a Conflict of Interest Questionnaire (Form CIQ) with the Harlingen Waterworks System. A blank CIQ Form is enclosed and should be completed, signed and submitted with the bid.

a. If the bidder or a principal of the bidder has a business relationship with HWWS or with a HWWS Official, the name of the HWWS contact or HWWS Official must be disclosed on the enclosed CIQ Form.

b. If the bidder or a principal of the bidder has no business relationship with the City or a City Official, write/type in “none” on the form and write/type in the name of the bidder and person acting for the bidder and sign the CIQ Form.

7. CERTIFICATE OF INTERESTED PARTIES FORM 1295

In 2015, the Texas Legislature adopted House Bill 1295. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least $1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.
To implement the law, the Texas Ethics Commission (TEC) adopted new rules necessary to prescribe the disclosure of interested parties form, and post a copy of the form on the TEC’s website [https://www.ethics.state.tx.us/tec/1295-Info.htm](https://www.ethics.state.tx.us/tec/1295-Info.htm). The commission adopted the Certificate of Interested Parties form, Form 1295, on October 5, 2015. The commission also adopted new rules as part of Chapter 46 of the Texas Administrative Code on November 30, 2015.

On January 1, 2016, TEC made a new filing application available on their website for business entities to use to create and file Form 1295. Business entities will enter the required information on Form 1295 within the application and print a copy of the completed Form 1295, which will include a certification of filing with a unique certification number. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. The completed Form 1295 with the certification of filing must be included with the signed contract to the governmental body or state agency in order for the governmental body to execute the contract.

In 2017, the legislature amended the law to require Form 1295 to include an “unsworn declaration” which includes, among other things, the date of birth and address of the authorized representative signing the form. The change in the law applies to contracts entered into, renewed, or amended on or after January 1, 2018. The unsworn declaration, including the date of birth and address of the signatory, replaces the notary requirement that applied to contracts entered into before January 1, 2018.

**ONLY AWARDED BIDDER(S) WILL BE REQUIRED TO COMPLETE AN ELECTRONIC FORM 1295 [https://www.ethics.state.tx.us/file/](https://www.ethics.state.tx.us/file/)**

8. **INDEMNIFICATION**

Contractor shall indemnify, defend and hold harmless HWWS, its affiliates and subsidiaries, from and against any and all claims, liabilities, losses, damages, cost or expense (including but not limited to reasonable attorney’s fees) arising out of, resulting from or occurring in connection with the performance of the contract and/or supplies that is (I) attributable to any bodily or personal injury, sickness, diseases or death of any person or any damage or injury to or destruction of real or personal property including the loss of use thereof; and (II) caused in whole or in part by any negligent, strict liability or other act or omission of their respective agents or employees or any other party for whom any of them may be liable regardless of whether such is caused in part by the negligent, strict liability or other act or omission of a party or parties indemnified hereunder. This indemnification shall extend to claims occurring after any contract is terminated as well as while it is force.

9. **EEOC GUIDELINES**

During the performance of this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, national origin, age, religion, gender, marital or veteran status, or physically challenging condition.
10. TAX IDENTIFICATION NUMBER (TIN)

In accordance with IRS regulations, a W-9 Form, or a W-8BEN Form, in cases of a foreign vendor, will be required of all vendors doing business with the Harlingen Waterworks System. If a W9 or W8 form is not made available to HWWS, the first payment will be subject to backup withholding at a rate of 24% depending on the U.S. status and the source of income as per IRS Regulations. **The W9 or W8BEN form must be included with the Bid.** Sample forms are attached.

11. TAXES

The Harlingen Waterworks System is exempt from Federal Excise Tax, State Tax, and Local Taxes. Do not include tax in the bid. If it is determined that tax was included in the bid it will not be included in the tabulation of any awards. Tax exemption certificates will be furnished upon request.

12. INVOICING

All invoices and payment applications must be submitted itemized as to quantity, material description, and applicable discount (if any). In addition, invoices must show HWWS Purchase Order Number and all detailed information included in the Technical Specifications, Specific Requirements, Section B, Item #11.

13. PAYMENT

Payment shall be made within thirty (30) days after the HWWS has approved the invoice / application for payment or after service has been performed, whichever occurs later. HWWS agrees that the terms of this Contract and all rights otherwise reserved by law, shall constitute the sole, controlling contract terms.

14. TERMINATION OF AGREEMENT

The contract may be terminated by HWWS, at its option, upon thirty (30) days written notice. If the services furnished do not conform to the standard set forth herein, or if the servicing of the Contract do not conform to the requirements detailed herein, the HWWS has the right to terminate the contract by giving the Contractor THREE (3) calendar days written notice. The Contractor shall be compensated for the services satisfactorily performed prior to the termination date.
REQUIREMENT FOR DISCLOSURE OF CONFLICT OF INTEREST

In accordance with Chapter 176 of the Texas Local Government Code, Respondent shall submit a Conflict of Interest Questionnaire as detailed below:

1. The CONFLICT OF INTEREST QUESTIONNAIRE (FORM CIQ) is required to be filed within 7 business days of:
   
i. Beginning contract discussions or negotiations with HWWS; or
   
   ii. Responding to a Request for Proposal, Invitation to Bid, or a correspondence or other writing related to a potential agreement with HWWS.

2. A person required to file a conflict of interest must file an updated questionnaire not later than September 1\textsuperscript{st} of each year that a contractual relationship or negotiation is pending with HWWS.

The CONFLICT OF INTEREST QUESTIONNAIRE (FORM CIQ) is to be completed and submitted to HWWS, located at 134 E. Van Buren, Attn: Administrative Assistant Office, Harlingen, Texas 78550

COMPLETION AND SUBMISSION OF FORM CIQ ARE THE SOLE RESPONSIBILITY OF THE PROSPECTIVE RESPONDENT.
### CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

1. **Name of vendor who has a business relationship with local governmental entity.**

2. **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3. **Name of local government officer about whom the information is being disclosed.**

4. **Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A).** Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

<table>
<thead>
<tr>
<th>Subpart</th>
<th>Description</th>
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<tbody>
<tr>
<td>A.</td>
<td>Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</td>
</tr>
<tr>
<td>B.</td>
<td>Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</td>
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</table>

5. **Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

6. **Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).**

7. **Signature of vendor doing business with the governmental entity**

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Form provided by Texas Ethics Commission

www.ethics.state.tx.us

Revised 11/30/2015
CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): “Business relationship” means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:
(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
(B) a transaction conducted at a price and subject to terms available to the public; or
(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):
(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
(2) the vendor:
    (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that
        (i) a contract between the local governmental entity and vendor has been executed; or
        (ii) the local governmental entity is considering entering into a contract with the vendor;
    (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:
        (i) a contract between the local governmental entity and vendor has been executed; or
        (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)
(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
(1) the date that the vendor:
    (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
    (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
(2) the date the vendor becomes aware:
    (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
    (B) that the vendor has given one or more gifts described by Subsection (a); or
    (C) of a family relationship with a local government officer.
CERTIFICATE OF INTERESTED PARTIES

1. Name of business entity filing form, and the city, state and country of the business entity’s place of business.

2. Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

3. Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

4. | Name of Interested Party | City, State, Country (place of business) | Nature of interest (check applicable) |
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<tbody>
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<td>Controlling</td>
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</table>

5. Check only if there is NO Interested Party.

6. UNSWORN DECLARATION

   My name is ____________________________________________________________, and my date of birth is _______________________.

   My address is ____________________________________________________________
   (street) (city) (state) (zip code) (country)

   I declare under penalty of perjury that the foregoing is true and correct.

   Executed in __________________________, County, State of ________________, on the _____ day of ____________, 20____.
   (month) (year)

   ____________________________
   Signature of authorized agent of contracting business entity
   (Declarant)
### Part I: Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see What Name and Number To Give the Requester for guidelines on whose number to enter.

<table>
<thead>
<tr>
<th>1</th>
<th>Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Business name/disregarded entity name, if different from above</td>
</tr>
</tbody>
</table>

**Part II: Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

**Purpose of Form**

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.
**Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)**

**Part I  Identification of Beneficial Owner (see instructions)**

1. Name of individual who is the beneficial owner
2. Country of citizenship
3. Permanent residence address (street, apt. or suite no., or rural route). **Do not use a P.O. box or in-care-of address.**
   - City or town, state or province. Include postal code where appropriate.
   - Country
4. Mailing address (if different from above)
   - City or town, state or province. Include postal code where appropriate.
   - Country
5. U.S. taxpayer identification number (SSN or ITIN), if required (see instructions)
6. Foreign tax identifying number (see instructions)
7. Reference number(s) (see instructions)
8. Date of birth (MM-DD-YYYY) (see instructions)

**Part II  Claim of Tax Treaty Benefits (for chapter 3 purposes only) (see instructions)**

9. I certify that the beneficial owner is a resident of within the meaning of the income tax treaty between the United States and that country.
10. Special rates and conditions (if applicable—see instructions): The beneficial owner is claiming the provisions of Article and paragraph of the treaty identified on line 9 above to claim a % rate of withholding on (specify type of income):
   Explain the additional conditions in the Article and paragraph the beneficial owner meets to be eligible for the rate of withholding:

**Part III  Certification**

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

- I am the individual that is the beneficial owner (or am authorized to sign for the individual that is the beneficial owner) of all the income to which this form relates or am using this form to document myself for chapter 4 purposes,
- The person named on line 1 of this form is not a U.S. person,
- The income to which this form relates is:
  - (a) not effectively connected with the conduct of a trade or business in the United States,
  - (b) effectively connected but is not subject to tax under an applicable income tax treaty, or
  - (c) the partner’s share of a partnership’s effectively connected income,
- The person named on line 1 of this form is a resident of the treaty country listed on line 9 of the form (if any) within the meaning of the income tax treaty between the United States and that country, and
- For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.

Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which I am the beneficial owner or any withholding agent that can disburse or make payments of the income of which I am the beneficial owner. **I agree that I will submit a new form within 30 days if any certification made on this form becomes incorrect.**

**Sign Here**

---

Signature of beneficial owner (or individual authorized to sign for beneficial owner)  
Date (MM-DD-YYYY)  
Print name of signer  
Capacity in which acting (if form is not signed by beneficial owner)
ACKNOWLEDGEMENT OF ADDENDUM

SLUDGE TRANSPORT AND DISPOSAL

Any interpretation, correction, or change to the invitation to bid will be made by ADDENDUM. Changes or corrections will be issued by the Harlingen Waterworks System. It is the responsibility of the bidders to visit the Harlingen Waterworks System’s website at https://www.hwws.com/bids/ to ascertain if any addenda have been issued and to obtain, execute, and include them with the bid.

Bidder acknowledges receipt of the following addendum or addenda.

No. 1 ________ No. 2 ________ No. 3 ________ No. 4 ________ No. 5 ________

Respectfully submitted by,

By: _________________________________________________

Signature of Duly Authorized Representative

Printed Name: __________________________________________

Title: _________________________________________________

Company Name: _________________________________________

Date: _________________________________________________
**HWWS #18-016 BID FORM (SHEET)**

**SLUDGE TRANSPORT AND DISPOSAL**

Bids must be in strict accordance with all terms, conditions and specifications **within this Bid Request**. To be accepted, bidders must thoroughly complete all blanks in the following Bid Sheet Section. (Please type or write legibly in ink). Bidders must ensure that all calculations are correct. Calculation errors may be cause to reject a bid. If there are discrepancies in unit price and total, unit price will prevail.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Qty.</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>De-Watered Sludge Cake (20 Yd. containers)</td>
<td>250</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>2.</td>
<td>Liquid Sludge (per M/gallons)</td>
<td>XXX</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>3.</td>
<td>Annual Sampling &amp; Testing Fees</td>
<td>XXX</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

**BID TOTAL**

---

- **TO PROVIDE THE SERVICE OF TRANSPORTING AND DISPOSING OF WASTEWATER SLUDGE IN A PERMITTED SOLID WASTE LANDFILL, FOR AN INITIAL TWELVE (12) MONTH PERIOD; WITH THE OPTION TO EXTEND THE CONTRACT FOR TWO (2) ADDITIONAL, CONSECUTIVE ONE-YEAR PERIODS, AS SPECIFIED**.

- The maximum response time is not to exceed (48) forty eight hours to designated site(s) after receiving order by telephone, fax, or e-mail.

- **SLUDGE TRANSPORT AND DISPOSAL SERVICE** will be originated at:
  Harlingen Waterworks System  
  Wastewater Treatment Plant #2  
  504 South 54th Street  
  Harlingen, Texas 78550

- Pick up shall be made Monday through Friday, between the hours of 7:00 a.m. to 3:00 p.m., unless otherwise requested.

Respectfully submitted this _____ day of __________________, 20___

Company Name: ______________________________________________________

Representative’s Signature: _____________________________________________

---

Page 21 of 48
## BID REFERENCE FORM
### SLUDGE TRANSPORT AND DISPOSAL

The following information shall be required to accompany all bid submittals. Please list SIMILAR / LIKE projects for local municipalities / agencies that your company has completed work for.

<table>
<thead>
<tr>
<th>No.</th>
<th>City of ___________________________</th>
<th>Project Name: ___________________________</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>City of ___________________________</td>
<td>Project Name: ___________________________</td>
</tr>
<tr>
<td></td>
<td>Total dollar value $_______________</td>
<td>Date of Completion: __________</td>
</tr>
<tr>
<td></td>
<td>Agency Contact: ___________________</td>
<td>Phone#: _______________________________</td>
</tr>
<tr>
<td></td>
<td>List Subcontractor and contact information:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>a. ________________________________________________________________</td>
<td></td>
</tr>
<tr>
<td></td>
<td>b. ________________________________________________________________</td>
<td></td>
</tr>
<tr>
<td></td>
<td>c. ________________________________________________________________</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>City of ___________________________</td>
<td>Project Name: ___________________________</td>
</tr>
<tr>
<td></td>
<td>Total dollar value $_______________</td>
<td>Date of Completion: __________</td>
</tr>
<tr>
<td></td>
<td>Agency Contact: ___________________</td>
<td>Phone#: _______________________________</td>
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<td>c. ________________________________________________________________</td>
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<tr>
<td>3.</td>
<td>City of ___________________________</td>
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</tr>
<tr>
<td></td>
<td>Total dollar value $_______________</td>
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<td></td>
<td>b. ________________________________________________________________</td>
<td></td>
</tr>
<tr>
<td></td>
<td>c. ________________________________________________________________</td>
<td></td>
</tr>
</tbody>
</table>
CERTIFICATION AND AUTHORIZATION OF BID #18-016

SLUDGE TRANSPORT AND DISPOSAL

The undersigned hereby certifies that he/she has fully read and understands this “Request for Bid” and has full knowledge of the scope, quantity, and quality of the services and materials to be furnished, including the careful examination of the Standard Form of Agreement, Instructions to Bidders, Specifications, and Bid Sheet and intends to adhere to the provisions described herein. It is further agreed that the quantities of services to be furnished may be increased or decreased as may be considered necessary, at the unit price set forth on the Bid Sheet. The undersigned also affirms that they are duly authorized to submit the Bid Sheet, that the Bid Sheet has not been prepared in collusion with any other vendor, and that the contents of the Bid Sheet have not been communicated to any other Vendor prior to the official opening of this Bid.

I have read and agree to comply with all of these requirements.

FIRM’S REPRESENTATIVE: _____________________________________________
(Signature)

TYPE/PRINT NAME: ________________________________________________

TITLE: ___________________________________________________________

COMPANY NAME: _________________________________________________

MAILING ADDRESS: _______________________________________________

CITY, STATE, & ZIP CODE: __________________________________________

TELEPHONE NO.: _________________________________________________

FAX NO.: _________________________________________________________

E-MAIL ADDRESS: _________________________________________________

DATE: ___________________________________________________________
TECHNICAL SPECIFICATIONS
SLUDGE TRANSPORT AND DISPOSAL

The purpose of these specifications is to describe the minimum requirements of the Harlingen Waterworks System (HWWS) Request for Bids TO PROVIDE THE SERVICE OF TRANSPORT AND DISPOSAL OF WASTEWATER SLUDGE IN A PERMITTED SOLID WASTE LANDFILL, FOR AN INITIAL TWELVE (12) MONTH PERIOD; WITH THE OPTION TO EXTEND THE CONTRACT FOR TWO (2) ADDITIONAL, CONSECUTIVE ONE-YEAR PERIODS, AS SPECIFIED”.

Sludge disposal must be at a Texas Commission on Environmental Quality (TCEQ) permitted solid waste landfill.

Presently, HWWS activated sludge wastewater plant produces an average monthly yield of 5,100,000 gallons of liquid sludge @ 1.8% - 2.2% solids; and 125 dry tons/168 loads (6.2 cubic yards per) of filtered pressed sludge cake @ 12% - 18% solids content. The de-watered/supernatant off the sludge cake is then reprocessed at the head-works. These quantities are estimates based on historical sludge production; and are not intended to set forth minimum or maximum quantities of this contract; and shall not be construed as such.

HWWS does not intend to utilize beneficial re-use (land application) for this contract term. HWWS requests that if beneficial re-use opportunities return to areas that could potentially provide savings in disposal fees, Contractor shall notify HWWS accordingly, for consideration of future contract term.

HWWS utilizes surface application of wastewater plant sludge when weather conditions and dedicated land conditions allow. Sludge transport and disposal services are utilized when surface application is not possible.

The quantities subject to the Invitation to Bid are not guaranteed for the term of the contract. The estimates included here are for acquainting the bidder with possible quantities to be expected during the contract period.

This contract is intended for routine and continuous usage. HWWS reserves the right to solicit separate bids if large projects occur.

GENERAL REQUIREMENTS:
The services to be furnished in this agreement will be for transport and disposal of liquid and/or dewatered, filter pressed municipal wastewater treatment plant sludge, as required to provide proper treatment of the effluent.

Solid Waste Disposal Sites must meet TCEQ 30 TAC Chapter 312 & 330, and U.S. EPA 40 CFR Part 503 Sewage Sludge Use and Disposal regulations. Bids will only be considered from companies who have been involved in sludge transport for a period of more than three (3) years.
**SPECIFIC REQUIREMENTS:**

A. Contractor’s transport vehicle(s) must meet the following requirements:
   1. A holding capacity of 5,000 gallons or greater for liquid sludge; and 20-30 cubic yard containers for filtered belt pressed sludge cake.
   2. Liquid sludge trucks must be equipped with a transfer pump large enough to permit loading and unloading of sludge in a reasonable amount of time (30-60 minutes).
   3. Liquid sludge trucks must have adequate means of loading and unloading aerobically digested sludge to and from existing plant digesters. It is the responsibility of the hauler to provide all the necessary transfer equipment including: Pumps, hoses, adapters, etc., to hook up to the existing system at plant site(s).
   4. Vehicle(s) must be currently licensed and must meet all state, federal, county, and Department of Transportation requirements.
   5. Vehicle(s) must be of sound quality and in good working order.
   6. Vehicle(s) must have the company name and company phone number on the tractor, trailer and sludge containers.

B. Contractor must meet the following requirements:
   1. Contractor must be subject to 24-hour on call notice 365 days per year. Contractor must provide HWWS with normal, weekend and emergency telephone numbers.
   2. Contractor must haul liquid and/or de-watered sludge cake on an as needed basis to insure proper operation of the City’s wastewater treatment plant(s).
   3. Contractor shall provide proof of all licenses and certifications required by Federal and State Regulatory agencies to perform the hauling of both dewatered and liquid sludge.
   4. Contractor must show proof of and provide HWWS with copies of all federal, state, and local/City permits to include: U.S. EPA transport number; TCEQ permit number; and the county permit number.
   5. Contractor will be responsible for all spillage of product that includes liquid and dewatered solids, fuels, and lubricants.
   6. Contractor shall be responsible to ensure that all spills, or damages caused by spillage are corrected immediately at contractor’s own expense. Correction of spills or damages shall be executed in a manner approved by a representative of HWWS.
   7. Upon completion of loading of vehicle(s), Contractor shall be responsible for all sludge loaded onto vehicle during transport to solid waste landfill.
   8. Contractor shall be responsible for any and all damages that may be caused by their transport vehicle(s) while loading, transporting, and disposing of HWWS sludge.
   9. Contractor shall be responsible at no cost to HWWS, for the logistical support needed to remove and dispose of additional roll-offs, should plant operations require additional solids removal.
   10. Contractor will provide applicable annual and quarterly testing for each HWWS wastewater treatment plant for sludge disposed of at a solid waste land fill, as required by HWWS, TCEQ and EPA discharge permits:
       a. Toxicity Characteristic Leaching Procedure (TCLP) sludge analysis.
       b. Polychlorinated biphenyls (PCB’s)
       c. Specific oxygen uptake rate test (SOUR)
       d. Fecal Coliform tests.
SPECIFIC REQUIREMENTS, (continued):

11. Contractor will supply HWWS with a Municipal Sludge Manifest Ticket for each load of sludge transported. This manifest ticket must contain the following information:
   a. Name and address of site where sludge was generated.
   b. Name and address of hauler.
   c. Date and time of sludge pickup.
   d. Approximate volume of sludge load.
   e. Name, address, TCEQ and EPA registration numbers, where applicable, of site where sludge was finally deposited.
   f. Date and time of disposal.
   g. Signature verifying disposal date and time.

Copies of the completed manifest tickets will be submitted to HWWS with each monthly report (and Payment Application) as proof of proper disposal of sludge.

12. Contractor will submit to the HWWS Wastewater Services Director a comprehensive Annual Report. The report will be due by August 21st. The report will detail HWWS sludge disposal activities and all other disposal activities at each disposal site. The report will separate HWWS sludge disposal activities from the other disposal activities and will include the following information:

   a. Name and location of disposal site(s).
   b. Owner of disposal site(s).
   c. Disposal site(s) TCEQ, EPA registration number where applicable.
   d. Date(s) of disposal.
   e. Method of final disposal.
   f. Identity of hauler.
   g. Manifest numbers.
   h. Quantity (volume) of sludge hauled.
   i. Facility where sludge was generated.
   j. Toxicity Characteristic Leaching Procedure test result: Pass/Fail.
   k. Polychlorinated biphenyls (PCB’s) test results.
   l. Specific oxygen uptake rate (SOUR) test results.
   m. Fecal Coliform test results.
   n. Total number of loads, total cubic yards or gallons, and total dry tons transported from each wastewater plant.

Requirements applicable to land application only.

   o. Level of disinfection attained Class A or Class B.
   p. Cumulative total amount (lbs. per acre) of sludge deposited at each disposal site.
   q. Land usage of disposal site(s) where sludge was deposited, including crops grown.
HARLINGEN WATERWORKS SYSTEM
STANDARD FORM OF AGREEMENT

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ARTICLE 2 – SCOPE OF WORK
ARTICLE 3 – PERFORMANCE OF WORK
ARTICLE 4 – CONTRACTOR’S RESPONSIBILITIES
ARTICLE 5 – HWWS RESPONSIBILITIES
ARTICLE 6 – DELEGATION OR SUBCONTRACTING OF DUTIES
ARTICLE 7 – PRICE AND PAYMENT
ARTICLE 8 – APPLICATION OF PAYMENT AND SALES TAX
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ARTICLE 10 – CHANGES TO THE CONTRACT PRICE AND TIME
ARTICLE 11 – INDEMNIFICATION
ARTICLE 12 – CONTRACTOR’S INSURANCE
ARTICLE 13 – DAMAGES
ARTICLE 14 – RECOUSE BY HWWS
ARTICLE 15 – CONTRACT DISPUTES
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STANDARD FORM OF AGREEMENT

ARTICLE 1
GENERAL PROVISIONS

1.1.1 This Agreement, including all Attachments, Exhibits, and Schedules referenced herein (hereinafter the “Agreement”) is made this day of , 2018 (the “Effective Date”) by and between Independent Contractor, , with a principal place of business at and the Harlingen Water Works System (hereinafter referred to as “HWWS”) with a principal place of business at 134 E. Van Buren, Harlingen, Texas 78550 (collectively the “Parties”).

1.2 As used in this Agreement, the term “Service(s)” means “sludge transport and disposal in a permitted solid waste landfill” required by this Agreement and any contract documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by CONTRACTOR to fulfill CONTRACTOR’S obligations, as described in Technical Specifications and otherwise set forth in the contract documents.

1.3 The Contract Documents shall consist of all documents contained herein as stated in the Table of Contents, including the Instructions to Bidders, Notice to Bidders (Advertisement), Solicitation / Proposal, Ranking and Evaluation Criteria (when required), Addenda, signed Agreement, General Conditions of Agreement, Technical Specifications, and all modifications thereof incorporated in any of the documents before the execution of the Agreement.

ARTICLE 2
SCOPE OF WORK

2.1 HWWS has retained the CONTRACTOR to furnish and pay for all labor, materials, equipment, permits, expertise, skill and services referred to herein, and to perform the Service as an independent contractor for providing SLUDGE TRANSPORT AND DISPOSAL IN A PERMITTED SOLID WASTE LANDFILL.

2.2 The CONTRACTOR shall perform such services (hereinafter called the “Service”) under the direction of HWWS and in accordance with this Agreement and with local, state, and federal laws, approvals, ordinance, and regulations.
2.3 CONTRACTOR understands HWWS may not require or request the entire amount of the Services that are the subject of the Contract documents and will only request delivery when and in the amount needed as determined solely by the HWWS.

2.4 Attached specifications are made part of this proposal and executed by the CONTRACTOR and the HWWS. In the event of any inconsistency, conflict or ambiguity between the scope of work and the contract documents, the conflict(s) shall be brought to the Wastewater Services Assistant’s or the Wastewater Plant Superintendent’s attention prior to the Service being performed. Wastewater Services Assistant or Wastewater Plant Superintendent will provide the additional details or interpretation. Failure to do so will make the CONTRACTOR responsible for the cost of the Service. Do not proceed without verification from the Wastewater Services Assistant or Wastewater Plant Superintendent.

2.5 The Scope of Work shall consist of all work necessary or incidental to complete the Service in accordance with and reasonably inferable from the contract documents as being necessary to produce the intended results and as more particularly, though not exclusively, specified in 2.1.

ARTICLE 3
PERFORMANCE OF WORK

3.1 Date of Commencement. The Contract becomes effective when signed by both parties and will expire February 28, 2019. Two (2) one-year contract extensions are available upon agreement of both parties.

The CONTRACTOR shall commence performing the Services within forty-eight (48) hours of being notified by HWWS to start Service, unless otherwise set forth below.

3.2 Contract Performance. The CONTRACTOR shall use its best care, skill and diligence in supervising and directing the Service. The CONTRACTOR shall have responsibility and control over the performance of the Service, including the methods, techniques, means and sequences for coordinating and completing the various portions of the Service, unless the Agreement gives other specific instructions concerning these matters.

3.3 Time is of the Essence. Time is of the essence for both parties, and they mutually agree to see to the performance of their respective work and the work of
their subcontractors and suppliers so that the entire Service may be completed in accordance with the Contract.

3.4 **Saturdays, Sundays, Holidays, and Overtime.** Any work necessary to be performed after regular working hours, on Sundays, or legal Holidays, shall be performed without additional expense to the HWWS. The HWWS shall notify the CONTRACTOR if any work is to be performed on Sundays or Holidays.

3.5 **Independent Contractor Status**

3.5.1 CONTRACTOR is an independent contractor for all purposes. In conformity with the foregoing status of the parties, CONTRACTOR shall not hold itself out to be an employee or agent of HWWS or use the name of HWWS in its business in any way.

3.5.2 All assistants and/or personnel supplied or used by CONTRACTOR shall be deemed employees or subcontractors of CONTRACTOR and will not be considered employees, agents, or subcontractors of HWWS for any purpose whatsoever. CONTRACTOR assumes full responsibility for the actions of all such assistants and/or personnel while performing Services under this Agreement and for the payment of their compensation including, if applicable, withholding of income taxes, and the payment and withholding of FICA taxes, workers' compensation, and unemployment compensation to the extent applicable to the personnel involved.

3.6 **Contractor Employees.** HWWS may require CONTRACTOR to remove from the project site such employees of CONTRACTOR as HWWS deems incompetent, careless, insubordinate or otherwise objectionable, or whose continued employment in connection with the Service is deemed by HWWS to be contrary to HWWS' best interest.

3.7 **Standard of Care.** The standard of care for all Services performed shall be the care and skill ordinarily used by the commercial transportation profession and/or drivers practicing under similar conditions.

**ARTICLE 4**

**CONTRACTOR’S RESPONSIBILITIES**

4.1 **Contractor Services.**
4.1.1 CONTRACTOR shall be responsible for providing the Service.

4.1.2 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Service and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

4.1.3 Prior to any service being performed, CONTRACTOR shall visit the HWWS wastewater treatment site to determine access points, driving routes, and equipment compatibility.

4.1.4 CONTRACTOR shall provide HWWS with a monthly report detailing
   a. the Services performed, including items referenced in Technical Specifications;
   b. discrepancies, conflicts, or ambiguities in the contract documents that require resolution;
   c. health and safety issues existing in connection with the Service;
   d. and other items requiring resolution so as to not jeopardize CONTRACTOR's ability to complete the Service for the contract price and within the contract specifications.

4.2 **Legal Requirements.**

4.2.1 CONTRACTOR shall perform the Service in accordance with all legal requirements imposed by local, state, and federal laws and regulations.

4.2.2 CONTRACTOR shall obtain and pay for all necessary permits, approvals, licenses, government charges, inspection fees, laboratory testing fees, landfill fees, and any other fees or charges required for the performance of the Service by any government or quasi-government entity having jurisdiction over the Service, except for permits, licenses and fees required of the HWWS in performance of the treatment of wastewater.

4.3 **CONTRACTOR's Services.**

4.3.2 Unless otherwise provided in the Contract Documents to be the responsibility of HWWS or a separate contractor, CONTRACTOR shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, and tools, to
permit CONTRACTOR to complete Service to be provided consistent with the Contract Documents.

4.3.3 CONTRACTOR shall perform all activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. CONTRACTOR shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of providing the service.

4.3.4 CONTRACTOR shall employ only Subcontractors who are duly licensed and qualified to perform the Service consistent with the Contract Documents. HWWS may reasonably object to CONTRACTOR’s selection of any licensed Subcontractor (if required to be licensed), provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that HWWS’s decision impacts CONTRACTOR’s cost and/or time of performance.

4.3.5 CONTRACTOR assumes responsibility to HWWS for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between HWWS and any Subcontractor or Sub-Subcontractor, including but not limited to any third party beneficiary rights.

4.3.6 CONTRACTOR shall coordinate the activities of all Subcontractors. If HWWS performs other work at the wastewater treatment site with separate contractors under HWWS’s control, CONTRACTOR agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Service can be completed in an orderly and coordinated manner without unreasonable disruption.

4.4 **Responsibilities with Respect to the Work.**

4.4.1 CONTRACTOR will provide supervision, inspector, labor, materials, tools, equipment, vehicles, containers, and subcontracted items necessary for the performance of the Service.

4.4.2 The CONTRACTOR further represents and warrants to HWWS that:
a. The Service will be performed using proven good practice, state-of-the-art systems and technology and accepted industry standards, codes of practice and regulations which are applicable to the Service as of the date of the Notice to Proceed or are reasonably foreseeable by an experienced contractor to be likely to be applicable during the execution of the work and which are consistent with the Performance Specification and the functional and other requirements of the Agreement, whether expressed or reasonably to be inferred therefrom; and

b. CONTRACTOR is fully experienced in the transport and disposal of sludge, and in performing services of similar scope, and that CONTRACTOR possesses a high level of skill and expertise commensurate with that experience which he will make available to the HWWS. In so doing, the CONTRACTOR recognizes and acknowledges that in entering into this Agreement HWWS is relying upon the skill, judgment and expertise of the CONTRACTOR in the performance of the Service and the coordination and planning thereof. Without prejudice to the generality of the foregoing, the CONTRACTOR warrants that:

i. The personnel to be employed by the CONTRACTOR in or about the performance of the Service will be properly skilled, competent and experienced having regard to the nature and extent of the Service; and

ii. CONTRACTOR is adequately and properly financed to meet all the financial obligations which he may be required to assume under the Agreement; and

iii. CONTRACTOR will perform its obligations under the Agreement in an expeditious manner and CONTRACTOR’S equipment is of sufficient quantity and quality so as to achieve performance of the Service under the terms of the Agreement; and

4.4.3 CONTRACTOR shall keep the premises in an orderly fashion and free from unnecessary accumulation of waste materials or rubbish caused by its operations. If CONTRACTOR damages HWWS property,
CONTRACTOR shall repair the property to its pre-existing condition unless HWWS directs otherwise.

4.4.4 CONTRACTOR shall give all notices and comply with all laws and ordinances legally enacted as of the date of execution of the Agreement governing the performance of the Service.

Provided, however, that CONTRACTOR shall not be responsible or liable for the violation of any code, law or ordinance caused by HWWS or existing on HWWS’ property prior to the commencement of the Service.

4.4.5 CONTRACTOR shall comply with all applicable federal, state, local and municipal laws and regulations that regulate the health and safety of its workers while providing the Service, and shall take such measures as required by those laws and regulations to prevent injury and accidents to other persons on, about or adjacent to the site(s) at which the Service is performed.

4.5 **Contractor's Obligations for Site Visitation**

4.5.1 CONTRACTOR acknowledges that it has visited the wastewater treatment site and visually inspected the general and local conditions which could affect performance of the Service. Any failure of the CONTRACTOR to reasonably ascertain from a visual inspection of the site, the general and local conditions which could affect the Service, will not relieve the CONTRACTOR from its responsibility to properly perform the Service without additional expense to HWWS.

4.5.2 CONTRACTOR shall be strictly responsible for the accuracy of the Service and for any loss or damage to HWWS or others by reason of the CONTRACTOR’S failure to perform its work correctly.

4.6 **Coordination and Cooperation.**

The CONTRACTOR shall:

a. cooperate with HWWS and all others whose work may interfere with the Service;

b. specifically note and immediately advise HWWS of any interference with the Service; and

c. participate in the preparation of work schedules involving the Service.
4.7 **Authorized Representative.** CONTRACTOR shall designate one or more persons who shall be the authorized CONTRACTOR’S representative(s). Such authorized representative(s) shall be the only person(s) to whom HWWS shall issue instructions, orders or directions, except in an emergency.

4.8 **Communication.** Unless otherwise provided in the contract documents, CONTRACTOR’s communications by and with the HWWS, separate contractors and/or other subcontractors and suppliers of HWWS, regardless of tier, shall be through HWWS.

4.9 **Tests and Inspections.** The CONTRACTOR shall schedule all required tests, approvals and inspections required to perform Service or portions thereof at appropriate times so as not to delay performance under this agreement. CONTRACTOR shall give proper written notice to all required parties of such tests, approvals and inspections.

The CONTRACTOR shall bear all expenses associated with permits, licenses, tests, inspections and approvals required of the CONTRACTOR by the contract documents. Required certificates of testing, approval or inspection shall, unless otherwise required by the contract documents, be secured by the CONTRACTOR and promptly delivered to HWWS.

**ARTICLE 5**  
**HWWS’ RESPONSIBILITIES**

5.1 HWWS shall provide CONTRACTOR full information regarding the requirements for the Service.

5.2 HWWS shall designate a representative who shall be fully acquainted with the Service, and who has authority to approve changes in the scope of the Service and render decisions promptly.
ARTICLE 6
DELEGATION OR SUBCONTRACTING OF DUTIES

6.1 The CONTRACTOR is prohibited from delegating, transferring, conveying, subcontracting, relinquishing or otherwise disposing of the whole or any part of its duties under this Agreement without the prior written approval of HWWS. HWWS’ approval shall not be unreasonably withheld.

6.2 A Subcontractor is a person or entity who has a direct contract with CONTRACTOR to perform any effort in connection with the Service. The term Subcontractor does NOT include any separate contractors employed by HWWS or such separate contractors’ subcontractors.

6.3 For the purposes of this Agreement, no contractual relationship shall exist between HWWS and any Subcontractor.

6.4 CONTRACTOR shall be responsible for the management of its Subcontractors in their performance of their work.

6.5 CONTRACTOR shall be responsible for assuring the Subcontractors performance complies with the Agreement and the Service specifications.

ARTICLE 7
PRICE AND PAYMENT

7.1 Price. The price for the Service is $(BID Price) for the quantity of material transported and disposed of, as requested by HWWS subject to the provisions in the Agreement.

7.2 Payment.

7.2.1 On or before the 1st of each month, CONTRACTOR shall submit for HWWS’s review and approval Invoice(s), or Payment Application for Services performed as of the date of the Invoice. Invoice shall be in format agreed upon by HWWS personnel. Fully completed manifests for all services performed must accompany the application for payment, as per Section B, item #11 of the Technical Specifications.
7.2.2 The Application for Payment shall constitute CONTRACTOR's representation the Service has been performed consistent with the Contract Documents.

7.2.3 Provided that CONTRACTOR has performed in conformance with the Contract Documents, within 30 days of receipt of Invoice and all required supporting documentation, HWWS shall pay to CONTRACTOR the full price for the Service invoiced.

7.2.4 In the event of a dispute regarding the services provided, HWWS may withhold payment for each disputed item, until CONTRACTOR and HWWS have reached agreement to resolve such dispute. HWWS will not withhold payment of undisputed items.

7.3 **CONTRACTOR's Payment Obligations.**

7.3.1 CONTRACTOR will pay employees and subcontractors, in accordance with its contractual obligations to such parties. CONTRACTOR will impose similar requirements on Subcontractors to pay those parties with whom they have contracted. CONTRACTOR will indemnify and defend HWWS against any claims for payment as set forth in Article 11, hereof.

**ARTICLE 8**

**APPLICATION FOR PAYMENT AND SALES TAX**

8.1 **Application for Payment.** All applications for payment (invoices) MUST reference issued HWWS' Purchase Order Number.

Application for Payment shall be sent to:

Harlingen Waterworks System  
ATTN: Wastewater Superintendent  
PO Box 1950  
Harlingen, TX 78551

8.2 **State Sales Tax.** This Contract is issued by an organization which qualifies for exemption pursuant to the provisions of Article 20.04 (F) of the Texas Limited Sales, Exercise and Use Tax Act.
The CONTRACTOR performing this contract may purchase, rent or lease materials, supplies, equipment used or consumed in the performance of this Contract by issuing to his suppliers an exemption certificate. All state laws regarding sales tax shall be followed.

**ARTICLE 9**

**CHANGES AND DELAYS**

9.1 HWWS may direct CONTRACTOR in writing, and without invalidating this Agreement to make changes in the Service within the general scope of this Agreement, including additions, deletions or revisions.

CONTRACTOR shall make no changes in the Service **without** written direction from an authorized HWWS representative. If CONTRACTOR believes any written direction from HWWS constitutes a change, then CONTRACTOR shall provide written notice within ten (10) days of receipt of such written direction.

CONTRACTOR shall not be compensated for any change made without such written direction by an authorized HWWS representative. Any changes in the Service which are not in accordance with this Agreement shall be considered non-conforming, and at HWWS’s option, CONTRACTOR shall accept a reduction in the Price.

9.2 If CONTRACTOR is delayed in the performance of the Service due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom CONTRACTOR is responsible, the Contract Time(s) for performance shall be reasonably extended. By way of example, events that will entitle CONTRACTOR to an extension of the Contract Time(s) include acts or omissions of HWWS or anyone under HWWS’s control (including separate contractors), changes in the work, differing site conditions, hazardous conditions, wars, floods, labor disputes, unusual delay in transportation, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

9.3 If CONTRACTOR’S Service is delayed for any reason, including acts of HWWS, CONTRACTOR’S sole remedy shall be an extension of time equal to the period of delay, provided CONTRACTOR has given HWWS written notice of the commencement of the delay within forty-eight (48) hours of its occurrence. CONTRACTOR shall not be entitled to an extension of time, however, for delays
caused by CONTRACTOR, for delays that CONTRACTOR could have prevented or for delays which were foreseeable to the CONTRACTOR.

9.4 In addition to CONTRACTOR’s right to a time extension for those events set forth in Section 9.2 above, CONTRACTOR shall also be entitled to an appropriate relocation of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in Section 9.2 above that are beyond the control of both CONTRACTOR and HWWS, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

ARTICLE 10
CHANGES TO THE CONTRACT PRICE AND TIME

10.1 Change Orders.

10.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by HWWS and CONTRACTOR, stating their agreement upon all of the following:
1. The scope of the change in the Service;
2. The amount of the Relocation to the Contract Price; and
3. The extent of the Relocation to the Contract Time(s).

10.1.2 All changes in the Service authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. HWWS and CONTRACTOR shall negotiate in good faith and as expeditiously as possible the appropriate Relocations for such changes.

10.1.3 If HWWS proposes a change in the Service from CONTRACTOR and subsequently decides not to proceed with the change, a Change Order shall be issued to reimburse CONTRACTOR for reasonable costs incurred in the preparation of proposed revisions to the Contract Documents.

ARTICLE 11
INDEMNIFICATION

CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS HARLINGEN WATERWORKS SYSTEM, THE CITY OF HARLINGEN, AND THEIR AFFILIATES, SUBSIDIARIES, RELATED ENTITIES, COMMISSIONERS, TRUSTEES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES THEREOF, FROM
AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, LOSSES, DAMAGES, COSTS OR EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY’S FEES) ARISING OUT OF, RESULTING FROM OR OCCURRING IN CONNECTION WITH THE PERFORMANCE OF THE WORK MATERIALS DELIVERED THAT IS:

(1) ATTRIBUTABLE TO ANY BODILY OR PERSONAL INJURY, SICKNESS, DISEASES OR DEATH OF ANY PERSON;

(2) ATTRIBUTABLE TO ANY DAMAGE OR INJURY TO OR DESTRUCTION OF REAL OR PERSONAL PROPERTY INCLUDING THE LOSS OF USE THEREOF; AND

(3) CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENCE, STRICT LIABILITY, OR OTHER ACT OR OMISSION OF:

CONTRACTOR, ANY SUBCONTRACTOR OR SUPPLIER, THEIR RESPECTIVE AGENTS, REPRESENTATIVES, EMPLOYEES, OR ANY OTHER PARTY FOR WHOM ANY OF THEM MAY BE LIABLE REGARDLESS OF WHETHER SUCH IS CAUSED IN PART BY THE NEGLIGENCE, STRICT LIABILITY OR OTHER ACT OR OMISSION OF A PARTY OR PARTIES INDEMNIFIED HEREUNDER. THIS INDEMNIFICATION SHALL EXTEND TO CLAIMS OCCURRING AFTER THIS AGREEMENT IS TERMINATED AS WELL AS WHILE IT IS IN FORCE.

THE FOREGOING INDEMNIFICATION OBLIGATION SHALL NOT BE LIMITED IN ANY WAY BY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER WORKERS’ OR WORKMEN’S COMPENSATION ACTS, LIABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

ARTICLE 12
CONTRACTOR’S INSURANCE

12.1 CONTRACTOR’s Insurance Requirements.

12.1.1 CONTRACTOR is responsible for procuring and maintaining from insurance companies authorized to do business in Texas, and with a minimum rating set forth in the Agreement, the following insurance coverages for certain claims which may arise from or out of the performance of the Service and obligations under the Contract Documents:

a. Coverage for claims arising under workers’ compensation, disability and other similar employee benefit laws applicable to providing the Service;
b. Coverage for claims by CONTRACTOR’s employees for bodily injury, sickness, disease, or death;

c. Coverage for claims by any person, other than CONTRACTOR’s employees for bodily injury, sickness, disease, or death;

d. Coverage for claims of personal injury sustained by a person as a direct or indirect result of CONTRACTOR’s employment of the person or sustained by any other person;

e. Coverage for claims for damages because of injury to or destruction of tangible property, including loss of use;

f. Coverage for claims of damages because of personal injury or death, or property damage resulting from CONTRACTOR’S ownership, use and maintenance of any motor vehicle; and

g. Coverage for claims for contractual liability arising out of CONTRACTOR’s obligations under this agreement.

12.1.2 CONTRACTOR shall at its expense, acquire and maintain such insurance on all of its operations as will protect it from claims that may arise out of or result from CONTRACTOR’S operations under this Agreement, including the following minimum coverages per occurrence:

a. Workers' Compensation: Statutory

b. Employer's Liability --

1) Each Accident $500,000
2) Disease, Policy Limit $500,000
3) Disease, Each Employee $500,000

c. General Liability --

1) General Aggregate: $1,000,000
2) Each Occurrence: $1,000,000
   (Bodily Injury and Property Damage)

d. Commercial Automobile Liability --
1) Bodily Injury:
   a) Each Occurrence $500,000
   b) Aggregate $500,000

2) Property Damage:
   a) Each Accident $500,000
   b) Aggregate $500,000

12.2 CONTRACTOR shall maintain at all times during the performance of the Services hereunder, Workman’s Compensation Insurance in accordance with the laws of the State of Texas.

12.3 All insurance coverages shall be occurrence coverage in amounts and for duration acceptable to HWWS with an insurance carrier rated A-1 or better in the most current edition of A.M. Best’s ratings guides.

12.4 CONTRACTOR shall name Harlingen Waterworks System and City of Harlingen as additional insured’s under the General Liability policy and Automobile Liability policy.

12.5 CONTRACTOR shall provide HWWS with Certificates of Insurance and additional insureds before commencing any work hereunder.

Prior to commencing any services hereunder, CONTRACTOR shall provide HWWS with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed for the duration of the Contract unless at least thirty (30) days prior written notice is given to HWWS.

12.6 Certificates of Insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to HWWS.

12.7 WAIVER OF SUBROGATION – HWWS and CONTRACTOR waive all rights against each other for damages caused by perils to the extent such perils are covered by insurance, except such rights as they may have to insurance proceeds.
12.8 **WAIVER OF SUBROGATION ENDORSEMENT** – CONTRACTOR will require the insurance policies provided pursuant to this agreement to contain a provision waiving subrogation, whether in the policy or by endorsement.

12.9 CONTRACTOR shall not enter upon the work site without first submitting to HWWS the Certificates of Insurance required by this agreement. Any delay caused by the failure to submit the Certificates of Insurance shall be solely for the CONTRACTOR’S account, and CONTRACTOR shall not be entitled to any extensions of time therefore, CONTRACTOR shall be responsible for any delays caused thereby.

**ARTICLE 13**

**DAMAGES**

13.1 **Limitation of Liability.** IN NO EVENT SHALL HWWS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, SPECULATIVE, REMOTE, OR CONSEQUENTIAL DAMAGES ARISING FROM, RELATING TO, OR CONNECTED WITH THE WORK, THE SUPPORT SERVICES, EQUIPMENT, MATERIALS, OR ANY GOODS OR SERVICES PROVIDED HEREUNDER.

13.2 **Other Damages.** To the extent HWWS incurs damages of any kind whatsoever, foreseeable or unforeseeable, by reason of CONTRACTOR’S delay in performance or other breach of CONTRACTOR’S obligations under this Agreement, HWWS shall be entitled to recover such damages from CONTRACTOR.

**ARTICLE 14**

**RECOURSE BY HWWS**

14.1 **Default.** If, in HWWS’s exclusive judgment, the CONTRACTOR is failing to satisfactorily perform any aspect of the Work including, but not limited to, failure to pay its creditors, HWWS may, at its sole option, take whatever steps it deems necessary to correct any deficiency, including but not limited to:

a. Requiring CONTRACTOR to correct, faulty or defective work done or materials furnished; and/or

b. Requiring CONTRACTOR to increase the number of workmen assigned to the perform the Service and to use overtime labor or work on Saturdays, Sundays or holidays to complete the Service on schedule; or
c. Terminating this Agreement and or performing the Service itself, or retaining others to do so.

14.2 **HWWS’s Right to Stop Work.**

HWWS may, without cause and for its convenience, order CONTRACTOR, in writing, to stop and suspend the Service wholly or in part for such period or periods of time as he may deem necessary due to unsuitable weather or other conditions considered unfavorable for the suitable prosecution of the work; or for the failure of the Contractor to carry out instructions or to perform any provisions of the Contract.

14.3 **HWWS’s Right to Perform and Terminate for Cause.**

14.3.1 If CONTRACTOR persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subcontractors, (v) perform the Service with promptness and diligence, or (vi) perform material obligations under the Contract Documents, then HWWS, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 14.3.2 and 14.3.3.

14.3.2 Upon the occurrence of an event set forth in Section 14.3.1 above, HWWS may provide written notice to CONTRACTOR that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within ten (10) days of CONTRACTOR’s receipt of such notice. If CONTRACTOR fails to cure, or reasonably commence to cure, such problem, then HWWS may give a second written notice to CONTRACTOR of its intent to terminate within an additional ten (10) day period. If CONTRACTOR, within such second ten (10) day period, fails to cure, or reasonably commence to cure, such problem, then HWWS may declare the Agreement terminated for default by providing written notice to CONTRACTOR of such declaration.

14.3.3 Upon declaring the Agreement terminated pursuant to Section 14.3.2 above, CONTRACTOR will only be entitled to be paid for Service performed prior to its default.

14.4 **Termination without Cause.** HWWS may terminate this Agreement at any time without cause. In the event that this Agreement is terminated by HWWS without
cause and prior to completion, HWWS’ sole liability to CONTRACTOR hereunder shall be limited to the actual Service performed by CONTRACTOR to the date of termination, which must be supported by reasonable and sufficient back-up data and documentation substantiating CONTRACTOR’S right to payment. Under no circumstances will the CONTRACTOR be entitled to recover lost profits or any damages from HWWS as a result of such early termination nor shall CONTRACTOR be entitled to any claim or lien against HWWS.

ARTICLE 15
CONTRACT DISPUTES

15.1 Dispute Avoidance and Resolution.

15.1.1 The parties are fully committed to working with each other throughout the contract period and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements.

If disputes or disagreements do arise, CONTRACTOR and HWWS each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Service.

15.1.2 CONTRACTOR and HWWS will first attempt to resolve disputes or disagreements at the field level through discussions between CONTRACTOR’s Representative and HWWS’s Representative.

15.1.3 If a dispute or disagreement cannot be resolved through CONTRACTOR’s Representative and HWWS’s Representative, CONTRACTOR’s Senior Representative and HWWS’s Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

15.2 Arbitration.

15.2.1 In the event of a dispute that cannot be resolved between the parties, the parties agree to select a mediator to assist in resolving the dispute. Each party to the mediation will pay an equal share of the cost of the mediation.

15.2.2 In the event the dispute cannot be resolved by mediation, the parties may agree to a binding or nonbinding arbitration or may choose to litigate the
dispute. Each party to an arbitration proceeding will pay an equal share of the cost.

15.3 **Duty to Continue Performance.**

15.3.1 Unless provided to the contrary in the Contract Documents, CONTRACTOR shall continue to perform the Service and HWWS shall continue to satisfy its payment obligations to CONTRACTOR, pending the final resolution of any dispute or disagreement between CONTRACTOR and HWWS.

**ARTICLE 16**
**MISCELLANEOUS PROVISIONS**

16.1 **Entire Agreement.** This Agreement, including the Bid specifications; CONTRACTOR’S bid and all attachments and exhibits hereto, represents the entire agreement between HWWS and CONTRACTOR and supersedes all prior negotiations, representations or agreements. This Agreement may be amended only by written instrument signed by both HWWS and CONTRACTOR.

16.3 **Successorship.** CONTRACTOR and HWWS intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

16.4 **Governing Law.** The Agreement and all Contract Documents shall be governed by the laws of the State of Texas, without giving effect to its conflict of law principles. For purposes of jurisdiction, venue shall be in Cameron County, Texas.

16.5 **Severability.** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

16.6 **No waiver.** The failure of either CONTRACTOR or HWWS to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.
16.7 **Headings.** The headings used in this Agreement, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

16.8 **Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

16.9 **Notice.** Final notice or other communications required or permitted hereunder shall be sufficiently given if personally delivered to the person specified below, or if sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To Contractor: Company Name: ____________________________

Address 1: __________________________________________________________________________

Address 2: __________________________________________________________________________

Address 3: __________________________________________________________________________

To HWWS: Harlingen Waterworks Systems
ATTN: Wastewater Services Director
134 E. Van Buren
Harlingen, Texas 78550
APPROVAL:

The Parties hereby execute this Agreement as of the date first set forth by the signatures of their duly authorized representatives:

CONTRACTOR                                             HARLINGEN WATERWORKS SYSTEM

By: _______________________________      By_____________________________
    (Signature)                                                     (Signature)
Name:_____________________________ Name: Timothy E. Skoglund, P.E
    (Print Name)                                                (Print Name)
Title:______________________________     Title: General Manager
Date:_____________________________       Date:_____________________________