

AGREEMENT TO PERFORM NON-PROFESSIONAL SERVICES

This agreement for the provision of Digester Nos. 1 & 2 Cleaning Services ("Agreement") is made and entered in this 16th day of June, 2015 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and O.C. Vacuum, Inc. ("Contractor"). City and Contractor are sometimes individually referred to herein as a "Party" and, together, as "Parties." In consideration of the mutual promises contained herein, City and Contractor agree as follows:

ARTICLE 1 – ENGAGEMENT OF CONTRACTOR

- 1.1 City hereby engages Contractor to perform cleaning services for the digester nos. 1 & 2 at the Redlands Wastewater Treatment Plant (the "Services").
- 1.2 The Services shall be performed by Contractor in a professional manner, and Contractor represents that it has the skill and the professional expertise necessary to provide the Services to City at a level of competency presently maintained by other practicing professional Contractors in the industry providing like and similar types of Services.

ARTICLE 2 – SERVICES OF CONTRACTOR

- 2.1 The Services that Contractor shall perform are more particularly described in Exhibit "A," entitled "Scope of Services," which is attached hereto and incorporated herein by reference.
- 2.2 Contractor shall comply with applicable federal, state and local laws and regulations in the performance of this agreement including, but not limited to State prevailing wage laws.

ARTICLE 3 – RESPONSIBILITIES OF CITY

- 3.1 City shall make available to Contractor information in its possession that may assist Contractor in performing the Services.
- 3.2 City designates Chris Diggs, Interim Municipal Utilities and Engineering Director, as City's representative with respect to performance of the Services, and such person shall have the authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to performance of the Services.

ARTICLE 4 – PERFORMANCE OF SERVICES

- 4.1 The Services shall be completed within seventy (70) calendar days from the Effective Date of this Agreement. The Services shall be performed in two phases. In phase one, digester no. 2 will be in cleaning activity for up to a maximum of twenty (20) calendar days. Immediately after cleaning digester no. 2, there will be a period of thirty (30) calendar days in which time City will perform necessary evaluation and inspection of the Services on digester no. 2. In phase two, digester no. 1 will be in cleaning activity, which will be for up to a maximum of twenty (20) calendar days.

- 4.2 If Contractor's Services include deliverable electronic visual presentation materials, such materials shall be delivered in a form, and made available to the City, consistent with City Council adopted policy for the same. It shall be the obligation of Contractor to obtain a copy of such policy from City Staff.
- 4.3 During the term of this Agreement, City may request that Contractor perform Extra Services. As used herein, "Extra Services" means any work that is determined necessary by City for the proper completion of the Services, but which the Parties did not reasonably anticipate would be necessary at the time of execution of this Agreement. Provided the Extra Services do not exceed twenty percent (20%) of the compensation to be paid by City to Contractor for the Services, such Extra Services may be agreed to by official in accordance with Chapter 2.16 of the Redlands Municipal Code. Contractor shall not perform, nor be compensated for, Extra Services without such written authorization from City.

ARTICLE 5 – PAYMENTS TO CONTRACTOR

- 5.1 The total compensation for Contractor's performance of the Services shall be in the amount of Eighty Thousand Seven Hundred Twenty Dollars (\$80,720.00).
- 5.2 Contractor shall submit monthly invoices to City describing the Services performed during the preceding month. Contractor's invoices shall include a brief description of the Services performed, the dates the Services were performed, the number of hours spent and by whom, and a description of reimbursable expenses related to the project. City shall pay Contractor no later than thirty (30) days after receipt and approval by City of Contractor's invoice.
- 5.3 Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the date of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; (iii) on the actual delivery date if deposited with an overnight courier; or (iv) on the date sent by facsimile, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; in each case properly posted and fully prepaid to the appropriate address set forth below, or such other address as a Party may provide notice in accordance with this section:

City
Chris Diggs
Interim Municipal Utilities and
Engineering Director, City of Redlands
35 Cajon Street, Suite 15A
P.O. Box 3005 (mailing)
Redlands, CA 92373

Contractor
David Carrasco
Manager
O.C. Vacuum, Inc.
8549 Ilex St.
Fontana, CA 92335

ARTICLE 6 – INSURANCE AND INDEMNIFICATION

- 6.1 Insurance required by this Agreement shall be maintained by Contractor for the duration of its performance of the Services. Contractor shall not perform any Services unless and until the required insurance listed below is obtained by Contractor. Contractor shall provide City with certificates of insurance and endorsements evidencing such insurance prior to commencement of the Services. Insurance policies shall include a provision prohibiting cancellation or modification of the policy except upon thirty (30) days prior written notice to City.
- 6.2 Workers' Compensation and Employer's Liability insurance in the amount that meets statutory requirements with an insurance carrier acceptable to City, or certification to City that Consultant is self-insured or exempt from the workers' compensation laws of the State of California. Consultant shall provide City with Exhibit "B," entitled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference.
- 6.3 Contractor shall secure and maintain comprehensive general liability insurance with carriers acceptable to City. Minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for public liability, property damage and personal injury is required. City shall be named as an additional insured and such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City.
- 6.4 Contractor shall have business auto liability coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit bodily injury liability and property damage liability. This coverage shall include all Contractor owned vehicles used in connection with Contractor's provision of the Services, hired and non-owned vehicles, and employee non-ownership vehicles. City shall be named as an additional insured and such insurance shall be primary and non-contributing to any insurance or self insurance maintained by City.
- 6.5 Consultant shall defend, indemnify and hold harmless City and its elected officials, employees and agents from and against any and all claims, losses or liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by any negligent act or omission by, or the willful misconduct of, Consultant, or its officers, employees and agents in performing the Services.

ARTICLE 7 – CONFLICTS OF INTEREST

- 7.1 Contractor covenants and represents that it does not have any investment or interest in any real property that may be the subject of this Agreement or any other source of income, interest in real property or investment that would be affected in any manner or degree by the performance of Contractor's Services. Contractor further covenants and represents that in the performance of its duties hereunder, no person having any such interest shall perform any Services under this Agreement.
- 7.2 Contractor agrees it is not a designated employee within the meaning of the Political Reform Act because Contractor:

- A. Does not make a governmental decision whether to:
- (i) approve a rate, rule or regulation, or adopt or enforce a City law;
 - (ii) issue, deny, suspend or revoke any City permit, license, application, certification, approval, order or similar authorization or entitlement;
 - (iii) authorize the City to enter into, modify or renew a contract;
 - (iv) grant City approval to a contract that requires City approval and to which City is a party, or to the specifications for such a contract;
 - (v) grant City approval to a plan, design, report, study or similar item;
 - (vi) adopt or grant City approval of, policies, standards or guidelines for City or for any subdivision thereof.
- B. Does not serve in a staff capacity with City and, in that capacity, participate in making a governmental decision or otherwise perform the same or substantially the same duties for City that would otherwise be performed by an individual holding a position specified in City's Conflict of Interest Code under Government Code section 87302.

- 7.3 In the event City officially determines that Contractor must disclose its financial interests, Contractor shall complete and file a Fair Political Practices Commission Form 700, Statement of Economic Interests, with the City Clerk's office pursuant to the written instructions provided by the City Clerk.

ARTICLE 8 – GENERAL CONSIDERATIONS

- 8.1 In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees, including fees for the use of in-house counsel by a Party.
- 8.2 Contractor shall not assign any of the Services, except with the prior written approval of City and in strict compliance with the terms and conditions of this Agreement.
- 8.3 Records, drawings, designs, cost estimates, electronic data files, databases and any other documents developed by Contractor in connection with its performance of the Services, and any copyright interest in such documents, shall become the property of City and shall be delivered to City upon completion of the Services, or upon the request of City. Any reuse of such documents, and any use of incomplete documents, shall be at City's sole risk.
- 8.4 Contractor is for all purposes under this Agreement an independent contractor and shall perform the Services as an independent contractor. Neither City nor of its agents shall have control over the conduct of Contractor or Contractor's employees, except as herein set forth. Contractor shall supply all necessary tools and instrumentalities required to perform the Services. Assigned personnel employed by Contractor are for its account only, and in no event shall Contractor or personnel retained by it be deemed to have been employed by City or engaged by City for the account of, or on behalf of City. Contractor shall have no authority, express or implied, to act on behalf of City in any capacity

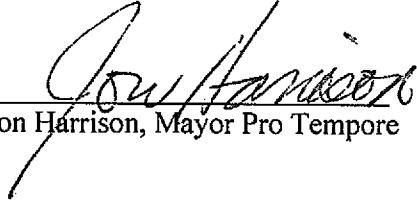
whatsoever as an agent, nor shall Contractor have any authority, express or implied, to bind City to any obligation.

- 8.5 Unless earlier terminated as provided for below, this Agreement shall terminate upon completion and acceptance of the Services by City; provided, however, this Agreement may be terminated by City, in its sole discretion, by providing not less than ten (10) days prior written notice to Contractor of City's intent to terminate. If this Agreement is terminated by City, an adjustment to Contractor's compensation shall be made, but (1) no amount shall be allowed for anticipated profit or unperformed Services, and (2) any payment due Contractor at the time of termination may be adjusted to the extent of any additional costs to City occasioned by any default by Contractor. Upon receipt of a termination notice, Contractor shall immediately discontinue its provision of the Services and, within five (5) days of the date of the termination notice, deliver or otherwise make available to City, copies (in both hard copy and electronic form, where applicable) of project related data, drawings, specifications, reports, summaries and such other information and materials as may have been accumulated by Contractor in performing the Services. Contractor shall be compensated on a pro-rata basis for Services completed up to the date of termination.
- 8.6 Contractor shall maintain books, ledgers, invoices, accounts and other records and documents evidencing costs and expenses related to the Services for a period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor pursuant to this Agreement. Such books shall be available at reasonable times for examination by City at the office of Contractor.
- 8.7 This Agreement, including the Exhibits incorporated herein by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein, and any prior negotiations, written proposals or verbal agreements relating to such matters are superseded by this Agreement. Except as otherwise provided for herein, any amendment to this Agreement shall be in writing, approved by City and signed by City and Contractor.
- 8.8 This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, duly authorized representatives of City and Contractor have signed in confirmation of this Agreement.

CITY OF REDLANDS

By:


Jon Harrison, Mayor Pro Tempore

O.C. VACUUM, INC.

By:


David Carrasco, Manager

ATTEST:

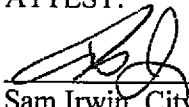

Sam Irwin, City Clerk

EXHIBIT "A"

SCOPE OF SERVICES

Contractor shall perform cleaning services that include, but are not limited to, as described below:

- Remove all sludge from digesters 1 and 2 to the existing sludge drying beds and clean all internal surfaces free from sludge, dirt and debris. Sand and grit shall be removed from the inside of the digester completely.
- Perform confined space entry per City of Redlands Injury and Illness Prevention Policies and Procedures, or other City approved plan.
- Install scaffolding and lighting to provide proper illumination for cleaning and inspection.
- Pressure wash (or other City approved method), clean, flush the digester, and restore it to a condition acceptable by the City with no visible debris inside the digester and no deposits on the digester walls, floor and roof/ceiling.
- Interior surfaces shall be cleaned with no debris remaining and all the existing coating shall be removed in order to perform a concrete integrity inspection.
- City staff will bring the sludge level to a level below the existing hatch opening.

EXHIBIT "B"

WORKERS' COMPENSATION INSURANCE CERTIFICATION

Every employer, except the State, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations, a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

CHECK ONE

☒ I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work and activities required or permitted under this Agreement. (Labor Code §1861).

_____ I affirm that at all times, in performing the work and activities required or permitted under this Agreement, I shall not employ any person in any manner such that I become subject to the workers' compensation laws of California. However, at any time, if I employ any person such that I become subject to the workers' compensation laws of California, immediately I shall provide the City with a certificate of consent to self-insure, or a certification of workers' compensation insurance.

I certify under penalty of perjury under the laws of the State of California that the information and representations made in this certificate are true and correct.

O.C. Vacuum, Inc.

Date: 6-10-15

By: David Carrasco

David Carrasco