

## AGREEMENT FOR ODOR AND CORROSION CONTROL SERVICES

This Agreement for Odor and Corrosion Control Services hereinafter referred to as the "Agreement" made and entered into at Tampa, Florida, this 21<sup>st</sup> day of February, 2018, by and between the City of Tampa, a municipal corporation organized and existing under the Laws of the State of Florida, hereinafter referred to as "City", the address of which is the Municipal Office Building being at 306 E. Jackson Street, 2E, Tampa, Florida 33602 and Evoqua Water Technologies LLC, hereinafter referred to as "Contractor", the address of which is 2650 Tallevast Road, Sarasota, Florida 34243.

In consideration of the mutual stipulations, agreements, and covenants herein contained, the parties hereto have agreed and hereby agree with each other or their executors, administrators, heirs or successors, and assigns, as follows:

### **FIRST:**

Contractor shall at its own cost and expense furnish all material, equipment, tools, and labor of every description necessary for and to carry out in good, firm, substantial and workmanlike manner the following scope of services as specified in the Contract Documents consisting of this Agreement and:

1. City's Request for Proposals (RFP) #52111317 for Odor and Corrosion Control Services, including but not limited to, the Scope of Services, General Conditions, Addendum No. 1, Addendum No. 2, Insurance Requirements, and any and all attachments
2. Contractor's Proposal in response to RFP #52111317 for Odor and Corrosion Control Services, including but not limited to, Contractor's Proposer's Affidavit, Contractor's Proposal Signature Form, Contractor's Cost Proposal
3. Insurance Requirements

This Agreement and the other Contract Documents shall, to the extent possible, be interpreted as consistent among each other. If there is any inconsistent provision, the terms and conditions of this Agreement shall have precedence over the other Contract Documents, and the other Contract Documents shall have precedence in the order of priority listed above with the first listed document having the highest priority among the other Contract Documents.

### **SECOND:**

This contract shall commence immediately upon the execution of this Agreement by both parties and shall continue through completion of the contract in accordance with the Contract Documents subject to the termination provisions therein. The initial term of this contract shall be for five (5) years with an option to extend the contract for five (5) additional one-year terms upon mutual agreement of the parties.

The City, through its Director of Purchasing, has the option and reserves the right to unilaterally extend the original contract term or any renewal term for up to three (3) additional thirty (30) day periods, at the same terms and conditions herein. Notice of the City's intent to renew shall be provided by the City in writing to Contractor prior to the expiration of the contract, or the renewal period if the contract has been previously renewed.

### **THIRD:**

Upon the faithful performance of the contract work provided by Contractor, City shall pay Contractor for work performed and labor furnished at the prices set forth in Contractor's Proposal

### **FOURTH:**

Contractor shall comply with the Florida public records law (Chapter 119, Florida Statutes), including Section 119.0701, Florida Statutes, if such laws are applicable to the Contractor's performance under this Agreement.

### **FIFTH:**

Contractor releases and agrees to defend, indemnify and hold harmless the City, its officers, elected and appointed officials, employees, and/or agents (collectively, "City Indemnified Parties") from and against any and all losses, liabilities, damages, penalties, settlements, judgments, charges, or costs (including without limitation attorneys' fees, professional fees, or other expenses) of every kind and character arising out of any and all claims, liens, demands,

obligations, actions, proceedings or causes of action of every kind and character cause by or resulting from, directly or indirectly, in whole or in part, by any act, negligence, recklessness, wrongful misconduct, omission or other conduct of Contractor or any tier of subcontractor/subconsultant/supplier, agent, employee, or anyone for whom Contractor may be liable, in connection with, arising directly or indirectly out of the execution or performance of the obligations assumed under or incidental to this contract hereof (singularly or collectively "Claims"), even if it is alleged that the City Indemnified Parties were negligent, unless such injuries or damages are ultimately proven to be solely the result of grossly negligent or willful acts or omissions on the part of the City Indemnified Parties. Without limiting the generality of the foregoing, any and all such Claims, including but not limited to personal injury, disease, sickness, death, damage to property, natural resources, or the environment (including destruction or loss of use, costs of hazardous or toxic substance cleanup and disposal), defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or any actual or alleged violation of common law, any applicable law, statute, ordinance, administrative order, rule, or regulation or decree of any court, shall be included in the indemnity hereunder and, to the extent required, the defined term "Claims". Contractor further agrees to investigate, handle, respond to, provide defense (including without limitation attorney fees, paralegal fees, and expert fees to and through appellate, supplemental, or bankruptcy proceedings) for and defend any such Claim at its sole cost and expense through counsel approved in writing by the City and agrees to bear all other costs and expenses related thereto, even if the Claims are groundless, false, or fraudulent. Contractor shall advance or promptly reimburse to a City Indemnified Party any and all costs and expenses incurred by such City Indemnified Party in connection with investigating, preparing to defend, settling, or defending any legal proceeding for which the City Indemnified Party is entitled to indemnification hereunder. This obligation shall in no way be limited in any nature whatsoever by any limitation on the amount or type of Contractor's insurance coverage.

The parties agree that to the extent the written terms of this indemnification are deemed by a court of competent jurisdiction to be in conflict with any provisions of Florida law, in particular Sections 725.06 and 725.08, Florida Statutes, the written terms of this indemnification shall be deemed by any court of competent jurisdiction to be modified in such a manner as to be in fully and complete compliance with all such laws and to contain such limiting conditions or limitations of liability, or to not contain any unenforceable or prohibited term or terms, such that this indemnification shall be enforceable in accordance with and to the maximum extent permitted by Florida law. Further, whenever there appears in this contract (or any other documents made a part hereof) an indemnification within the purview of Section 725.06, Florida Statutes, the monetary limitation on the extent of the indemnification under such provision shall be \$1 Million Dollars or a sum equal to the total contract price, service cost, or project value whichever is greater.

The obligation of Contractor under this Section is absolute and unconditional; it is not conditioned in any way on any attempt by a City Indemnified Party to collect from an insurer any amount under a liability insurance policy, and is not subject to any set-off, defense, deduction, or counterclaim that the Contractor might have against the City Indemnified Party. The duty to defend hereunder is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Successful Proposer, the City, and any City Indemnified Party. The duty to defend arises immediately upon presentation of a Claim by any party and written notice of such Claim being provided to Contractor. Contractor's defense and indemnity obligations hereunder will survive the expiration or earlier termination of this contract.

Contractor agrees and recognizes that the City Indemnified Parties shall not be held liable or responsible for any Claims which may result from any actions or omissions of Contractor in which the City Indemnified Parties participated either through providing data or advice and/or review or concurrence of Contractor's actions. In reviewing, approving or rejecting any submissions by Contractor or other acts of Contractor, the City in no way assumes or shares any responsibility or liability of Contractor or any tier of subcontractor/subconsultant/supplier, under this contract.

In the event the law is construed to require a specific consideration for such indemnification, the parties agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnification and the providing of such indemnification is deemed to be part of the specifications with respect to the services provided by the Contractor.

#### **SIXTH:**

Contractor shall not transfer or assign this contract without the prior written approval of City; and, during the progress of the work, Contractor shall comply with all applicable Federal, State, County and City laws, ordinances, codes, rules and regulations.

**SEVENTH:**

Contractor shall purchase and maintain at all times during the Term of this Agreement policies of Insurance in accordance with the provisions of the City's RFP #52111317, Exhibit I - City of Tampa Insurance Requirements.

**EIGHTH:**

Time is of the essence in performance of this contract. Contractor specifically agrees that all work performed under the terms and conditions of the Contract Documents shall be completed within the time limits set forth in the Contract Documents.

**NINTH:**

Unless this Agreement expressly provides otherwise or permits it to be given orally, each notice, demand, request, approval, statement, and other communication required or permitted by this Agreement will be valid only if it is (1) in writing (whether or not the applicable provision states that it must be in writing), (2) delivered in person or by telecopy, commercial courier, or first-class, postage prepaid, United States mail (certified or registered), and (3) addressed by the sender to the intended recipient as follows:

With copies to:

(a) If to the City:

Mr. Eric Weiss  
Wastewater Department  
2545 Guy Verger Blvd  
Tampa, Florida 33605  
(813) 274-8039 (telephone)

with a copy to:

City of Tampa Attorney  
City Attorney's Office  
315 E. Kennedy Boulevard  
5th Floor - City Hall  
Tampa, Florida 33602  
(813) 274-8996 (telephone)  
(813) 274-8809 (telecopy)

(b) If to the Contractor:

Ms. Jennifer R. Miller, Vice President  
2650 Tallevast Road  
Sarasota, Florida 34243  
(941) 359-7930 (telephone)

A validly given notice, consent, demand, approval, statement, or other communication (other than checks and other forms of payment) will be effective on the earlier of its receipt, if delivered personally or by telecopy or commercial courier, or the fifth (5<sup>th</sup>) day after it is postmarked by the United States Postal Service, if delivered by postage prepaid, United States mail. Each party promptly shall notify the other party of any change in its mailing address or telecopy number for notices.

**TENTH:**

The laws of the State of Florida govern all matters arising out of or relating to this Agreement, including, without limitation, its interpretation, construction, performance, and enforcement. The parties hereto submit to the exclusive jurisdiction and venue of the state and federal courts located in Hillsborough County, Florida.

**ELEVENTH:**

The parties may execute this Agreement in counterparts. Each executed counterpart of this Agreement shall constitute an original document. All executed counterparts, together, shall constitute the same agreement.

**TWELFTH:**

This Agreement may be amended only by written instrument specifically referring to this Agreement and executed by both parties with the same formalities as this Agreement.

**THIRTEENTH:**

A waiver of any provision of this Agreement shall be valid and effective only if it is in writing and signed by or on behalf of the party granting the waiver. No delay or course of dealing by a party to this Agreement in exercising a power, right, or remedy under this Agreement will operate as a waiver of any power, right, or remedy of that party, except to the extent expressly set forth in a writing signed by or on behalf of that party. In addition, the written waiver by a party of a power, right, or remedy under any provision of this Agreement will not constitute a waiver of any succeeding exercise of the power, right, or remedy or a waiver of the provision itself. Any waiver shall be limited to the particular right so waived and shall not be deemed to waive any other right under this Agreement.

**FOURTEENTH:**

Any term, condition, covenant, or obligation which requires performance by a party subsequent to the termination of this Agreement, including, but not limited to audit rights and indemnification, shall remain enforceable against such party subsequent to such termination.

**FIFTEENTH:**

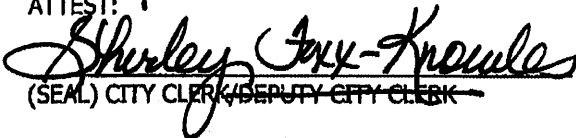
If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired or invalidated. Upon such determination that any term or other provision is invalid, void or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**SIXTEENTH:**

Contractor shall abide by, comply with, duly perform, and be bound by each and every one of the terms, provisions, and conditions contained in the Contract Documents.

**IN WITNESS WHEREOF**, the parties hereto have duly executed three (3) duplicate originals of this Agreement on the date set forth above.

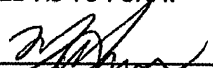
ATTEST:

  
(SEAL) CITY CLERK/DEPUTY CITY CLERK


CITY OF TAMPA

By:   
BOB BUCKHORN, MAYOR

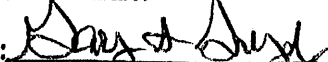
APPROVED AS TO FORM:


  
MARCELLA T. HAMILTON  
ASSISTANT CITY ATTORNEY

EVOQUA WATER TECHNOLOGIES LLC.

By:   
JENNIFER R. MILLER

TITLE: VICE PRESIDENT

WITNESS: 

WITNESS: 

*Agmt  
Bid*

RESOLUTION NO. 2018- 149

A RESOLUTION APPROVING THE PROPOSAL OF EVOQUA WATER TECHNOLOGIES LLC; APPROVING AN AGREEMENT BETWEEN THE CITY OF TAMPA AND EVOQUA WATER TECHNOLOGIES LLC FOR THE PROVISION OF ODOR AND CORROSION CONTROL SERVICES FOR THE NET AMOUNT AS PROPOSED AND AGREED UPON IN THE ESTIMATED AMOUNT OF \$26,260,840; AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL  
OF THE CITY OF TAMPA, FLORIDA:

Section 1. That the proposal of Evoqua Water Technologies LLC, for the furnishing of:

Odor and Corrosion Control Services  
RFP #52111317  
Estimated Expenditure: \$26,260,840

Such proposal being the best received therefor, is hereby approved; and the Director of Purchasing is hereby authorized to purchase it.

Section 2. That the Agreement between the City of Tampa and Evoqua Water Technologies, LLC, a copy of which is attached hereto and made part hereof, is authorized and approved in its entirety or in a form substantially similar thereof. The term of the Agreement shall be for a five-year period, and may be renewed on the same terms and conditions for five additional one-year periods.

Section 3. This will provide \$5,252,168 in FY2018, \$5,252,168 in FY2019 and \$5,252,168 in FY2020, \$5,252,168 in FY2021, \$5,252,168 in FY2022, subject to annual appropriation for the provision of Odor and Corrosion Control Services for use by the Wastewater Department from the Wastewater Operations Fund.

Section 4. That the Mayor of the City of Tampa is authorized and empowered to execute, and the City Clerk to attest and affix the official seal of the City of Tampa to, said Agreement on behalf of the City.

Section 5. That the other proper officers of the City of Tampa are authorized to do all things necessary and proper in order to carry out and make effective the provisions of this Resolution, which shall take effect immediately upon its adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA, ON FEB 15 2018

  
CHAIR/CHAIR PRO-TEM CITY COUNCIL

ATTEST:

  
CITY CLERK/DEPUTY CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY  
BY MARCELLA T. HAMILTON, ASSISTANT CITY ATTORNEY

*X2018- 961*



# CITY OF TAMPA

Bob Buckhorn, Mayor

Purchasing Department

Gregory K. Spearman, CPPO, FCCM  
Purchasing Director

February 20, 2018

Ms. Jennifer R. Miller  
Evoqua Water Technologies LLC  
2650 Tellevast Road  
Sarasota, FL 34243

Dear Ms. Miller,

The award for RFP 52111317, Odor and Corrosion Control Services has been approved per City Council Resolution Number 2018-149 on February 15, 2018.

The initial term of this contract shall be five (5) years with an option to extend the contract for five (5) additional one-year terms upon mutual agreement of the parties. The approved expenditure for the initial first year is \$5,252,168.

If you have any questions, please call me at (813) 247-3451, ext. 55298.

Sincerely,

Karon Johnson, CPPB  
Procurement Analyst

cc: Bid file  
Penny