

CITY OF GREENSBORO

PROFESSIONAL SERVICES CONTRACT

This contract made and entered into this the _____ day of _____, 2015, by and between the City of Greensboro, a municipal corporation of the State of North Carolina (hereafter referred to as the City) and American Process Group, Inc. (hereafter referred to as the Contractor).

WITNESSETH:

Professional Services Rendered

In consideration of the monetary payment hereinafter described in the City's Request for Proposal (RFP) "2014 Ferric Sludge Dewatering Project", attached hereto as Attachment A and fully incorporated herein by reference, the Contractor shall provide for three years of residual management services associated with the removal, dewatering to an 18% minimum dryness, hauling and disposal of up to 1,800 tons of Ferric sludge from the waste lagoon at the Lake Townsend Water Treatment Plant, Browns Summit, North Carolina.

Relationship

The Parties to this contract agree that the Contractor is a professional, and that the relationship created by this contract is that of employer and independent business corporation. The Contractor is not an employee of the City of Greensboro, and is not entitled to the benefits provided by employer to its employees, including, but not limited to, group insurance and pension plan. The Contractor may practice its profession for others during those periods when the Contractor is not performing work under this contract for the City. City may, during the term of this contract, engage other independent contractors to perform the same work that Contractor performs hereunder.

Supervision and Inspection

In the performance of the work contemplated in this agreement, the Contractor is an independent contractor with the authority to control and direct the performance of the details of the services that are the subject of this contract. However, the work contemplated in this agreement must meet the approval of the City and shall be subject to City's general rights of inspection and supervision to secure the satisfactory completion thereof. As per the City's RFP Attachment A, the moisture content of the sludge is to be a minimum of 18% dryness. The Project Manager and/or Lake Townsend Water Plant staff may take a minimum reading twice daily or as deemed necessary throughout the duration of the project. The Contractor shall record a reading per truckload sent to the disposal site. Disposal of the Ferric sludge from the Ferric sludge lagoon at the Lake Townsend Treatment Plant shall be considered adequate and complete only upon inspection and approval by the City's Project Manager. Site restoration shall be considered adequate and complete only upon inspection and approval by the City's Project Manager.

Specific Duties & Responsibilities

The Contractor shall provide all services and specifications as listed in the City's Request for Proposal "2014 Ferric Sludge Dewatering Project" Attachment A and as outlined in Contractor's proposal, attached hereto as Attachment B and incorporated herein by reference.

Assistance by Others

Services required by the Contractor from other technical personnel shall be the sole responsibility of the Contractor and the cost thereon shall be borne by the Contractor, except for items noted to be provided by the City in the proposal.

Schedule

The Contractor shall perform the work based on its estimated schedule as detailed in Attachment B. No work should be initiated without the authorization of the City. It is anticipated that the Contractor shall begin work at the Lake Townsend Water Treatment Plant on or after **March 2, 2015** upon receiving a Notice to Proceed, and be completed on or before **June 30, 2015**. The Contractor shall contact the City's Project Manager by **March 2, 2015** to verify start date. Prior to mobilizing on-site the Contractor shall contact the Lake Townsend Water Treatment Plant by **March 2, 2015** to verify start date.

Compensation

The City agrees to pay the Contractor an amount not to exceed **\$659,158**. The Contractor will be paid as detailed in Attachment A, attached hereto and made a part hereof. Payments on this contract are contingent upon sufficient appropriations being approved by City Council in succeeding fiscal years. Bills for fees or other compensation for Services or expenses shall be submitted to the City in detail sufficient for a proper preaudit and postaudit thereof. Contractor will complete project work by **June 30, 2015**. Any additional work days needed to complete the original contract beyond the targeted completion date shall be subject to daily liquidated damages paid to the City of Greensboro at a rate of **\$500** per workday until the contract is completed.

The proposed work shall be broken down as detailed in Attachment B. The total contract amount is for \$659,158 (\$135,250 for mobilization & demobilization and up to 1,800 tons at \$291 per dewatered ton. No payment shall be made for unsuccessful attempts to dewater the sludge. The total contract amount shall not increase without written approval from the City. The dewatered tonnage listed is an estimated number for dewatered sludge volume within the lagoon.

Non-Appropriation Clause

The automatic renewal clause shall not apply to this contract should the Greensboro City Council fail to appropriate funds for the additional term of the contract for the ensuing fiscal year. If this non appropriation occurs the contract shall become void.

Invoices

1. Submittal

Invoices to the City for compensation shall be submitted not more often than monthly. Invoices shall be based on 100% of the work completed during the preceding month. All invoices shall be submitted to the Project Manager at the address below:

**Brian Boyd
City of Greensboro
Department of Water Resources
2602 S. Elm-Eugene Street**

Greensboro, NC 27406

The Contractor's fees shall be payable as follows:

An original invoice showing all services provided by the Contractor on the project by task during the previous month shall be submitted not more often than monthly to the City by the 10th of each month. Invoices shall be based on 100% of the work completed during the preceding month. The City will make payment to the Contractor within thirty days (30) of receipt of the invoice.

2. Receipts Required

Where invoices are based in part on reimbursable expenses, the Contractor shall collect and maintain receipts for said expenses and shall make the receipts available to the City, if requested. The requirement to retain receipts shall generally follow the established rules of the Federal Internal Revenue Service regarding what type of expenditure must be supported by receipts for income tax purposes.

3. Disputed Items

If any items in any invoices submitted by the Contractor are disputed by City for any reason, including the lack of supporting documentation, City shall temporarily delete the item(s) and shall promptly notify the Contractor of dispute and request clarification and/or remedial action. After the dispute has been settled, the Contractor shall include the disputed item on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only. The undisputed portion of the invoices shall, however, be paid within the normal 30-day period.

Payment of Taxes and Insurance

The Contractor assumes full responsibility for the payment of all assessments, payroll taxes, or contributions, whether State or Federal, as to all employees engaged in the performance of work under this contract. In addition, the Contractor agrees to pay any and all gross receipts, compensation, transaction, sales, use, or other taxes and assessments of whatever nature and kind levied or assessed as a consequence of the work performed or on the compensation paid under this contract.

Insurance

During the performance of the services under this Agreement, the Contractor shall maintain the following insurance:

1. General Liability Insurance, including but not limited to coverage for all premises and non-premises operations, independent contractors, broad form property damage coverage, including explosion, collapse and underground property damage hazards, personal injury liability protection including coverage relating to employment of persons, contractual liability protection, and products and completed operations coverage. This insurance shall provide bodily injury limits

of not less than \$1,000,000 for each occurrence and not less than \$2,000,000 in the aggregate, and with property damage limits of not less than \$500,000 for each occurrence and not less than \$500,000 in the aggregate. The General Liability Insurance shall name the City of Greensboro as an additional insured, and the insurance shall be primary and non-contributory to any other insurance that may be available to the City.

2. Professional Liability Insurance with limits of not less than \$1,000,000 for each occurrence and not less than \$2,000,000 in the aggregate. This Professional Liability Insurance shall provide coverage for the claims concerning the Contractor's errors and omissions for the scope of services provided to the City under this Agreement, including but not limited to, claims concerning the preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications, and claims relating to supervisory, inspection, architectural or engineering activities.
3. Automobile Liability Insurance, covering owned, non-owned, hired vehicles and trailers using in connection with this project. This insurance shall provide bodily injury and property damages limits of not less than \$1,000,000 combined single limit/aggregate.
4. Worker's Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$100,000 for each occurrence. In case any work is sublet under this Agreement, the Contractor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the subcontractor's employees to be engaged in such work. This Agreement shall be void and of no effect unless the Contractor shall secure and keep in effect during the term of this Agreement the Contractor's compliance with the provisions of the Worker's Compensation laws of the State of North Carolina.

Contractor shall furnish certificates of insurance and a copy of the insurance policies for all of the insurance coverages described herein within ten (10) days after this Agreement is ratified and certified copies of any amendments and/or renewals to the policies which occur thereafter. At least thirty (30) days written notice shall be given to the City prior to any cancellation, modification or non-renewal of any insurance required under this Agreement.

Amendments

Alterations, deletions, and/or additions to the terms and conditions of this contract may only be made by the mutual written consent of the parties.

Conflict of Interest

No officer, employee or agent of the City, and no sub-grantee or sub-recipient of any federal or state funds from the City shall participate in the selection or in the award or administration of a contract supported by federal, state, or City funds if a conflict of interest, real or apparent, would

be involved. Such a conflict of interest would arise when any of the following persons or entities has a financial or other interest in the firm selected for the award:

- (i) The employee, officer, agent;
- (ii) Any member of his immediate family;
- (iii) His or her partner; or
- (iv) An organization which employs, or is about to employ, anyone listed in (i) through (iii) above.

The grantee's or sub-grantee's officers, employees or agents will not solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements except as may be allowed in the City's Gift Policy, B-20.

The Definitions for the terms Officer, Employee and Agent as used in this Section are as follows:

- a. **Officer** - An individual who is elected to or appointed to serve or represent the City of Greensboro, other than an employee or independent contractor of the City.
- b. **Employee** - Those individuals who are employed at will by the City of Greensboro for remuneration, whether full time or part time, benefited or non-benefited, and are charged with implementing City policies and City Council goals and objectives.
- c. **Agent** - Those individuals or companies who are authorized to act on behalf of the City and who provide services or products, whether contractual or not.

Termination for Convenience

The City, in its sole discretion, may terminate this Agreement in whole or in part whenever the City determines that said termination is in its best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination thirty (30) days before the effective date of the termination.

Failure to Comply With Terms of Contract

Should the Contractor fail to comply with the terms of this contract, the Contractor, upon actual or constructive notice of the default shall have thirty (30) days to remedy the default. Should the Contractor fail to remedy the default, the contract is terminated immediately upon the expiration of the thirty (30) days.

Rights

City retains the exclusive rights to cancel, stop or re-schedule any or all services associated with the Contract.

Non-Discrimination Requirements

In hiring, contracting, and all other acts, Contractor shall abide by all local, State and federal laws and regulations relevant to Minority/Women's Business Enterprises and shall not discriminate on the basis of sex, age, race, creed, color, religion, national origin, or disability.

Compliance With Applicable Law

Any term or condition of the Contract which by operation or existence is in conflict with applicable Local, State, or Federal Law shall be rendered void and inoperative. City and the Contractor agree to accept the remaining terms and conditions.

Indemnification

The Contractor does hereby agree to indemnify and save harmless the City of Greensboro, its officers, agents and employees against all claims, actions, lawsuits and demands, including reasonable attorney fees, made by anyone for any damages, loss or injury of any kind, including environmental, which may arise while the Contractor is performing, or as a result of, work pursuant to this Agreement.

Severance

Should any part of this contract be declared unenforceable, all remaining sections remain in force.

Non-Assignment

The Contractor without the written approval of the City shall not assign this contract.

Governing Law

This Agreement is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of North Carolina. Venue for any legal action resulting from this Agreement shall lie in Guilford County.

Scope of Agreement

This Agreement is intended by the parties hereto to be the final expression of their Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made.

Confidentiality

The Recipient will not disclose to any third party, or make any use of the Discloser's Confidential Information except as required by the North Carolina Public Records Act. The

Recipient will use at least the same standard of care to maintain the confidentiality of the Discloser's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information, but in no event less than reasonable care. The obligations hereunder will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after Recipient's receipt of that item. However, The City's obligations to maintain software as confidential will survive in perpetuity. "Discloser" means the party providing Confidential Information to the Recipient. "Recipient" means the party receiving Confidential Information from the Discloser. "Confidential Information" means non-public information of a party to this Agreement that is identified as or would be reasonably understood to be confidential and/or proprietary and is marked "confidential" and meets the requirements of North Carolina General Statutes 132-1.2. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Recipient; (ii) the Discloser regularly discloses to third parties without restriction on disclosure; (iii) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation; or (iv) is independently developed by the Recipient without access to Confidential Information.

Pursuant to the North Carolina Public Records Act, trade secrets or confidential information as defined by the North Carolina Public Records Act that are identified as such prior to disclosure to the Recipient is not public information and will not be released to the public by the Recipient except as set out below. Recipient will notify Discloser of any public records request, and if Discloser objects to Recipient disclosing any of the records responsive to the request, Discloser will notify the Recipient in writing within forty-eight (48) hours. If so notified, Recipient will not disclose the records until ordered to do so by a court of competent jurisdiction, and Discloser will enter an appearance as a party in-interest and defend Recipient in any claim, suit, mediation, litigation, or arbitration proceeding concerning the release of the records to which Discloser objected. Discloser will indemnify, save harmless, and pay any and all attorney's fees incurred by Recipient, and any attorney's fees Recipient is ordered to pay to any person(s) or organization(s) as a result of Discloser's objection to the release of the public records. Discloser will also indemnify, save harmless, and pay any and all claims for damages, court costs, or other fees Recipient incurs as a result of Discloser's objection to the release of the records requested pursuant to the North Carolina Public Records Act.

E-Verify

The Contractor certifies that it currently complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and that at all times during the term of this Agreement, it will continue to comply with these requirements. The Contractor also certifies that it will require that all of its subcontractors that perform any work pursuant to this Agreement to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. The terms "Contractor", "Sub-Contractor" and "comply" shall have the same meanings intended by Chapter 160A Section 20.1(b) of the North Carolina General Statutes. Violation of this section shall be deemed a material breach of this Agreement.