

V-F

CONTRACT FOR THE DISPOSAL OF  
WASTEWATER TREATMENT PLANT SLUDGES

THE STATE OF TEXAS

KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF HARRIS

030883

THIS CONTRACT FOR THE DISPOSAL OF WASTEWATER TREATMENT PLANT SLUDGE ("Municipal Sludge") and for other related services as specified herein, is made and entered into as of the date of countersignature herein by and between the CITY OF HOUSTON, a municipal corporation, principally situated in Harris County, Texas ("City") and PROFESSIONAL SERVICES GROUP, INC., (PSG), a MINNESOTA corporation, with headquarters in Houston.

The initial addresses of the parties are as follows:

PSG

City

Professional Services  
Group, Inc.  
14950 Heathrow Forest Pkwy.  
Suite 200  
Houston, Texas 77032

Director  
Department of Public Utilities  
P.O. Box 1562  
Houston, Texas 77251

W I T N E S S E T H:

WHEREAS, the City has requested qualified firms to submit proposals for the disposal of Municipal Sludge from the City's wastewater treatment plants; and

WHEREAS, PSG has indicated its willingness to contract with the City based on PSG qualifications and capabilities; and

WHEREAS, the City finds that the proposal submitted by PSG for disposal of Municipal Sludge is the most advantageous for the City; and

WHEREAS, the City and PSG are able and desire to enter into this agreement under the terms of the laws and regulations of the State of



Texas and the United States; and

WHEREAS, the City and PSG agree that the recitals set-out in this Preamble are true and correct and shall constitute a part of this contract;

NOW, THEREFORE, the City and PSG agree to the terms and conditions of the Contract. This Contract contains the following parts:

<u>Description</u>	<u>No. of Pages</u>	<u>Location</u>
Part One - Signature pages	3	This document
Part Two - Definitions	3	Attached
Part Three - Disposal of Municipal Sludge and Excess and Off-Specification Hou-Actinite	7	Attached
Part Four - Billing and Allocation of Funds	6	Attached
Part Five - General Conditions	10	Attached

IN WITNESS THEREOF, the City and PSG have made and executed this Contract in multiple copies, each of which is an original.

ATTEST/SEAL

PROFESSIONAL SERVICES GROUP, INC.

By: [Signature]  
Name: DEBBI KNEIPP  
Title: SECRETARY

By: [Signature]  
Name: Michael M. Stump  
Title: President

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

[Signature]  
City Secretary

[Signature]  
By: [Signature]  
Name: Kathryn J. Whitmire  
Title: Mayor

DATE COUNTERSIGNED:

COUNTERSIGNED:

\_\_\_\_\_

[Signature]  
City Controller [Signature]  
12/13/90

APPROVED:

APPROVED AS TO FORM:

[Signature]  
Director of Public Utilities

[Signature]  
Sr. Assistant City Attorney

PART TWO

Definitions

"BFI" means Browning-Ferris, Inc.

"City" is identified in the Preamble hereof.

"City Representative" means Branch Manager Process Operations or such other person as may be designated by the Director to serve as "City Representative" during the Contract term.

"Contract" means this document.

"Contract Term" is defined in Section 5.05.

"Cost Adjustment" means the factor equal to A/B

Where:

"A" is the Index value of the "Consumer Price Index" for All Urban Consumers, U.S. City Average, All items (1982-1984 three-year average = 100) as published in the CPI Detailed Report by the Bureau of Labor Statistics of the Department of Labor of the United States of America ("Index") for the month immediately preceding the month during which the computation is required to be performed.

"B" is the Index value of such Index for the month of July 1990.

In case the Bureau of Labor Statistics revises the Index, adjustments to the foregoing formula shall be made on the basis of correction factors supplied by the Bureau of Labor Statistics, or the Bureau of Labor Statistics shall be requested to compute Index figures on the basis in effect as of the date this Contract is countersigned by the City Controller.

The Cost Adjustment shall be computed once each year during the month which is the anniversary of the date of countersignature by the City Controller of this Contract.

"Director" means the Director of the City's Department of Public Utilities.

"Emergency Situations" hereunder shall include severe weather conditions, major accidents and unavoidable or unusual operating

problems which preclude the co-disposal of Municipal Sludge at the BFI McCarty site.

"Force Majeure" is defined in section 5.14.

"Hazardous Waste" is any material supplied by the City to PSG, under the terms of this agreement, which is identified or listed as a "hazardous waste" according to applicable federal or Texas law. "Applicable law" as used herein includes regulations of any federal or state agency having jurisdiction over the handling and/or disposal of wastes.

"Hou-Actinite" is defined as heat-dried sludge produced from Type A Plants. These plants produce an organic nitrogen soil amendment from the raw activated sewage sludge.

"Municipal Sludge" is dewatered sludge from Type B Plants meeting the specifications provided in Section 3.01, but excluding all Hazardous Waste.

"Original Allocation" is defined in Part Four.

"PFRP" means Process to Further Reduce Pathogens.

"PSRP" means Process to Significantly Reduce Pathogens.

"PSG" is identified in the Preamble hereof.

"Stabilized Sludge" means treated by a process to certify the sludge as either PSRP or PFRP classified as defined by 40 CFR Part 257.

"Ton" means 2,000 pounds avoirdupois.

"Type A Plants" include the City's 69th Street, Sims Bayou and Almeda Sims wastewater treatment plants.

"Type B Plants" include all City wastewater treatment plants existing in October 1990, except Type A plants. Sludge from Type B plants will be made available to PSG for transport at the following Type B plants:

Northgate, Imperial Valley, Beltway, Greenridge, Southeast, Keegans Bayou, Upper Brays Bayou, Chocolate Bayou, W.C.I.D. No. 51 and Sagemont.

"Unspent Funds" is defined in Part Four.

PART THREE

Disposal of Municipal Sludge and  
Excess and Off-Specification Hou-Actinite

3.01 -- In General

(a) During the Contract Term, beginning on the date specified in the Director's notice to proceed, PSG is obligated to accept from the City, and the City is obligated to provide to PSG, pursuant to the terms of this Contract, all Municipal Sludge from the City's Type B Plants and sand and grit from the City's Type A and B plants, of the following texture and composition: (i) lime stabilized sludge (with fifteen (15) days minimum aerobic digestion) with a minimum consistency of not less than 10 percent (10%) solids by weight, (ii) aerobically digested stabilized sludge with a minimum consistency of not less than ten percent (10%) solids by weight, and (iii) Municipal Sludge generated by Type B Plants with a minimum consistency of not less than ten percent (10%) solids by weight that are not qualified as PSRP or PFRP, but which are to be treated by PSG to qualify for PSRP or PFRP classifications or are disposed by PSG in landfill sites. PSG agrees, subject to Section 5.04, to accept such material for landfilling, except as provided herein. For the Contract Term, PSG is obligated to accept, and the City is obligated to provide to PSG, the entire output of Municipal Sludge from the City's Type B Plants. The City covenants and agrees to operate these facilities continuously, except for unavoidable delays, for the Contract Term.

(b) During the Contract Term, beginning on the date specified in the Director's notice to proceed, PSG is obligated to accept from the City,

and the City may provide to PSG, pursuant to the terms of this Contract, all excess, damaged and/or off-specification Hou-Actinite from Type A plants, except Hazardous Waste. PSG agrees, upon notice from the Director, to dispose of Hou-Actinite in the same manner as Municipal Sludge. The parties agree that PSG's performance hereunder is subject to the City's continuing ability to provide Hou-Actinite eligible for transport to and landfilling at BFI's Type I sanitary landfill on McCarty Drive in eastern Harris County, Texas. Said landfill is subject to state, federal and local laws, regulations, policies and permits. In the event of any changes or proposed changes in said laws, regulations, policies and permits which may affect sludge disposal at said landfill, PSG shall inform the Director as soon as it may have notice of the same. PSG will provide the City's Representative with a proposal containing disposal alternatives for such material to include, if appropriate, measures to be undertaken by the City to render said material acceptable for landfilling at the BFI McCarty site. In the event the City and PSG may not agree on a mutually acceptable disposal alternative, PSG shall be relieved of any obligation to dispose of Hou-Actinite.

### 3.02 -- Loading of Municipal Sludge

(a) It is imperative that the Municipal Sludge be collected, transported and sent to disposal on a twenty-four (24) hour a day, seven (7) day per week basis under peak loading conditions. PSG shall be required to provide the personnel and equipment necessary to collect, transport and dispose of the Municipal Sludge on a twenty-four (24) hour on-call basis.

Trailers and/or containers will be furnished by PSG to provide



adequate loading and hauling capabilities from the site of the wastewater treatment plants. All vehicles will meet the requirements promulgated by the Texas Department of Health and U.S. Department of Transportation. Containers shall be waterproof to prevent dropping waste materials during transportation.

Each trailer and/or container used by PSG shall be red-lined to indicate: the level for 23 tons of Municipal Sludge and (ii) the level for 21 tons of Hou-Actinite.

Red lining shall be verified by the City representative prior to the use of each type of trailer and/or container utilized by PSG. City scales at the Type A Plants will be made available for verification of red-lining. Thereafter the City Representative may require on a random basis re-verification of red lines no more than 12 trailers or containers per year at no cost to the City. Additional re-verifications of red lines will be at a cost of twelve dollars (\$12) times the Cost Adjustment each.

(b) City agrees to provide suitable loading facilities at Type B Plants and will ensure easy access for collection of Municipal Sludge. City shall also assign specific areas for storage of trailers and/or containers. PSG personnel, while on City property, will follow all reasonable written rules and regulations established by the Director; failure to do so may be considered a breach of this Contract.

All disposal equipment will be kept clean and free of Municipal Sludge and loading areas will remain free of spilled waste material. No routine cleaning of PSG's equipment will be allowed at City sites.


(c) PSG is hereby placed on notice that the operation of all Type B wastewater treatment plants in the production of Municipal Sludge is

variable; it is impossible to predict or maintain a consistent production rate.

It should be noted that the peak load conditions are not anticipated to occur regularly. If, for any reason, PSG is temporarily unable to meet these requirements, it will immediately notify the City Representative and inform the City Representative of the reason for delay, the time the delay began and its expected duration. This information will be utilized to determine if PSG is satisfactorily meeting the requirements of this Contract. Additionally, the City shall maintain an operational log which will detail the transport activities. If decisions are required as to which facility will be serviced, the City Representative shall establish necessary priorities.

### 3.03 -- Disposal Activities

(a) PSG agrees to dispose of all Municipal Sludge and excess or off-specification Hou-Actinite collected hereunder, in compliance with all legal requirements imposed by Federal, State and local agencies, and in particular with the regulations of the Texas Department of Health. Disposal shall be made in landfill sites permitted by the Texas Department of Health, except:

- (i) Either City or PSG may propose to dispose of Municipal Sludge by means of land application in accordance with regulations promulgated by the Texas Department of Health. In such event, PSG will provide the City a proposal presenting costs for land application and documentation and providing justification for such costs. No land application shall be made by PSG under this subsection (i) unless its cost proposal has been approved by the City. 
- (ii) During temporary Emergency Situations, for no more than 45 days, with notice to the City Representative, PSG may dispose of Municipal Sludge and Hou-Actinite by land application. If land application is made in accordance with this subsection (ii), base cost will be as specified

under Section 4.01(a) and PSG will conduct all sample testing at \$295 times the Cost Adjustment per sample and adjust the receiving soil for pH at a lime cost of \$30 times the Cost Adjustment per ton applied. PSG shall submit reports to the City regarding test results for such sampling with its monthly accounting required under Section 4.02(a).

- (iii) Municipal Sludge used for land application for beneficial use shall be processed by the City to meet PSRP or PFRP classifications. In addition, if stabilization is accomplished by application of lime, the Municipal Sludge shall be subject to approximately 15 days of aerobic detention for the purpose of additional stabilization.
- (iv) Where lime stabilization is applicable, the City shall initially lime stabilize the Municipal Sludge to a pH level as required by state and federal regulations. All lime stabilized loads of Municipal Sludge shall remain on the site of the City's treatment plant or other designated sites for two (2) hours after treatment and thereafter shall be tested for pH by the City. A load at the City's treatment plant failing the pH test shall be recycled back into the City's treatment plant.
- (v) PSG will not be responsible for all long-term environmental monitoring of land application sites.

3.04 -- Provision of Dewatering Facilities for Certain Plants.

(a) PSG shall provide mechanical dewatering services at Type B Plants as jointly determined by the City Representative and PSG. Current sites requiring such services at the startup of the Contract are:

Chocolate Bayou  
9600 Martin Luther King

Sagemont  
11700 Sage Arbor

W.C.I.D. No. 51  
4900 Gallagher

(b) PSG shall provide all dewatering equipment and necessary appurtenances, the maintenance of such equipment and training of City

operators. The City shall provide to PSG, without cost, polymers, water, drains, electrical service and the labor to start and stop the dewatering equipment, as well as suitable sites for PSG's dewatering equipment.

(c) PSG shall provide dewatering equipment at all three (3) sites within three (3) working days after the Director's authorization to proceed.

3.05 -- Additional Efforts to Maintain the Production of the Sludge Solids Train

Upon prior written approval from the Director, PSG shall purchase, repair, perform emergency maintenance and replace elements, components and complete systems in the solids processing trains in (i) the three (3) sites identified in Section 3.04 (a) or (ii) sludge dewatering facilities owned and operated by the City. PSG shall submit a written proposal to the Director presenting the costs to be incurred by City as a result of PSG's work. The Director will inform PSG in writing of its approval before PSG commences work.

3.06 -- Certain Requirements for Trailers/Containers

All trailers and any containers to be furnished by PSG shall be of such design and proportions that such containers can load Hou-Actinite or Municipal Sludge from the designated City wastewater treatment plants without modification to the City's existing loading equipment, discharge point or physical plant. Any modification to the loading equipment, discharge point or physical plant required due to the design or proportions of the containers shall be borne by PSG, unless otherwise agreed by the Director in writing.

All containers are to be clean and free of debris and products. The

City will not load any containers unless clean upon receipt.

3.07 -- Additional Type B Plants

The City Representative may add and/or delete Type B Plants from the Scope of Services under this Contract by giving notice to PSG; however, PSG shall be allowed a reasonable period not to exceed ninety (90) days to begin serving additional Type B Plants.

PART FOUR

Billing and Allocation of Funds

4.01 -- Cost of Services

(a) The cost of disposal for Municipal Sludge and Hou-Actinite, except disposal by land application for beneficial use under Section 3.03(a)(i), shall be determined by the formula

$$\text{Cost per ton} = (\$17.10 \times \text{Cost Adjustment})$$

(b) Generally determination of the number of tons in any given trailer or container shall be determined by reference to red lines marked in each trailer or container as required under Section 3.02(a). No PSG vehicle shall leave a City plant site until its load is verified on the bill of lading by the City's representative at the plant. In the event the load of Municipal Sludge or Hou-Actinite is significantly higher than the applicable red line, PSG may weigh the load at either a City scale or a certified Public Scale at PSG's cost, and billable tonnage will be based on the actual weight. The charge for any load released by the City site representative with a load of Municipal Sludge or Hou-Actinite below the applicable red line shall be based on the applicable full red line load (21 tons for Hou-Actinite and 23 tons of Municipal Sludge).

(c) It is a requirement of this Contract that the City provide PSG a minimum of 40,000 tons of Municipal Sludge and/or Hou-Actinite each contract year. In the event that during any contract year the City

provides less than 40,000 tons for disposal, the City shall pay PSG a sum equal to the difference between 40,000 tons and the actual tonnage disposed, times the applicable cost under subsection (a) above.

(d) The fee for rental and maintenance of three (3) units of dewatering equipment required under Section 3.04(a) shall be \$17,725 x Cost Adjustment.

PSG will provide the City a credit for downtime of the dewatering equipment if PSG fails to restore service within forty-eight (48) hours after the failure is discovered. The credit shall be one-thirtieth (1/30) of the monthly fee divided by three (3) units for each unit day the equipment is down. Downtime resulting from a Force Majeure shall not be eligible for the downtime credit.

Should the City reduce the number of required centrifuges below three within the first thirty (30) months of this Contract, the City shall pay PSG the unamortized cost of each centrifuge not used, which is stipulated by the parties to be \$30,000 minus the product of \$1,000 times the number of months for which the City has made payment for such centrifuge.

(e) In the event the City enacts legislation requiring the licensing or registration of equipment and vehicles used for the carriage of Municipal Sludge, the City's charge for such licensing or registration must be paid by PSG to the applicable City department but shall be carried as an amount due PSG as documented in its monthly accounting under Section 4.02(a).

#### 4.02 -- Monthly Accounting

(a) Within ten (10) days after the end of each month of the Contract Term, PSG shall provide the City Representative an accounting of all

charges owed by the City to PSG under the Contract. The accounting shall provide back-up documentation such as copies of trip manifests and certified weight measurements (when required), and a description of services performed by PSG for dewatering (minus days defined as downtime). The City shall make monthly payment to PSG within thirty (30) days of receipt by the City Representative of a complete PSG accounting as described herein. Approval of payment shall not be unreasonably withheld.

Any payments required to be made hereunder by either party which are not made within the time required hereunder shall carry a service charge of one percent (1%) for each month or a fraction thereof during the period of delinquency.

4.03 -- Allocated Funds; Limitation of City's Duties

(a) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of one million, five hundred thousand dollars (\$1,500,000) to be used to discharge its duties to pay money under this Contract (the "Original Allocation"). The parties recognize that the executive and legislative officers of the City, in the exercise of their sound discretion, may allocate supplemental sums of money for the purpose of this Contract. Because the City's officers are not obligated to make such supplemental allocations, the parties have agreed to certain procedures and remedies to be followed with respect thereto.



(b) A supplemental allocation will only be deemed to be made when the City sends a notice to PSG, signed by the Director and the City Controller, in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: Professional Services Group, Inc.  
FROM: City of Houston, Texas (the "City")  
DATE: [Date of notice]  
SUBJECT: Supplemental allocation of funds for the purpose of that certain "[title of this Contract]" by and between the City and PSG countersigned by the City Controller on (Date of Countersignature) (the Contract).

I, (name of City Controller), City Controller of the City of Houston, do hereby certify that the supplemental sum of \$\_\_\_\_\_, upon the request of the below signed Director, has been allocated for the purpose of the Contract specified above out of funds appropriated for such purpose by the City Council of the City of Houston. Such supplemental allocation has been charged to such appropriation.

The aggregate of all sums allocated for the purpose of such Contract, including the Original Allocation, other supplemental allocations (if any) and the supplemental sum specified herein, as of the date of this notice, is \$\_\_\_\_\_.

SIGNED:

(Signature of the City Controller)  
City Controller of the City

REQUESTED:

(Signature of the Director)  
Director

(c) The aggregate of the Original Allocation and all supplemental allocations effected by notice to PSG in substantially the foregoing form, if any, shall be the Allocated Funds. The City shall never be obligated to pay any money by, through or under this Contract in an aggregate amount which exceeds the level of allocated funds.

4.04 -- Suspension of Performance for Lack of Allocated Funds

(a) From time to time, PSG may, at its option, compute the unspent portion of the Allocated Funds (the "Unspent Funds") according to the following formula:

$$A - (B + C) = \text{Unspent Funds as of such time.}$$

In the foregoing formula:

"A" is the level of Allocated Funds as of such time.

"B" is the aggregate of all Contract charges actually paid by the City by, through or under this Contract prior to such time.

"C" is the aggregate of all Contract charges which have accrued prior to such time in accordance with Section 4.01 but have not been actually paid.

(b) The City shall, upon written request by PSG, provide an accounting of the data necessary to compute the Unspent Funds as such data is shown on the books and records of the City.

(c) If, as of any such time when a computation is made, the level of Unspent Funds is less than one hundred thousand dollars (\$100,000), then PSG shall be entitled to suspend its performance under this Contract by notifying the City at least thirty (30) days prior to the effective date of the suspension. Such effective date must be specified in PSG's notice to the City. After such notice is given, PSG may, in its sole discretion, extend such effective date to any later date by so notifying the City.

(d) After any notice of suspension is given and prior to the specified effective date, the City may prevent the suspension from taking effect by notifying PSG as to one or more supplemental allocations in an aggregate amount sufficient to raise the level of the Unspent Funds to at least one hundred thousand dollars (\$100,000)

(computed as of the dispatch of such notice of supplemental allocation). Whenever such a sufficient notice of supplemental allocation is given, the preceding notice of suspension shall lose its effectiveness and shall be treated as if it were never given.

(e) If prior to the specified effective date of any such suspension, the City fails to prevent such suspension from taking effect, then PSG shall be entitled to suspend its performance under this Contract as of the effective date. The City shall then be obligated to pay PSG the lesser of the following: (i) the Contract charges accrued prior to such suspension date, less any allowable credits and offsets or (ii) the Unspent Funds as of the date of suspension.

(f) Suspension and payment, as specified in this Section, shall be PSG's exclusive remedy in the event that the City fails or refuses to make the supplemental allocations necessary to prevent suspension of performance by PSG prior to the end of the Contract Term. No such failure or refusal shall constitute a default or breach of this Contract by the City and PSG waives any claim (other than its claim for payment as specified in this Section) it may have now or in the future for financial losses or other damages which may be occasioned by any such failure or refusal.

(g) If, pursuant to this Section, PSG suspends its performance and the City thereafter makes a supplemental allocation of funds in an amount sufficient to pay all of the Contract charges accrued prior to such suspension (and not previously paid in full) plus at least one hundred thousand dollars (\$100,000), then PSG shall resume its performance.



PART FIVE

General Conditions

5.01 -- Insurance

Throughout the Contract Term, PSG shall carry and maintain the following insurance coverage with a company or companies satisfactory to the City Representative on policies of insurance that meet the requirements of the State of Texas. The City shall be named as an additional insured on all such policies for this Contract except for Workers' Compensation Insurance. Such insurance coverage shall have the minimum limits of liability in not less than the following amounts:

(a) Comprehensive General Liability Insurance for bodily injury and property damage with coverages extended for contractual liability and contractor's protective liability for work sublet:

Combined Limit Per Occurrence: \$1,000,000

(b) Comprehensive Auto Liability Insurance for bodily injury and property damage:

Combined Limit Per Occurrence: \$1,000,000

(c) Workers' Compensation with Employer's Liability including Broad Form all states' endorsement: \$100,000 per occurrence

5.02 -- Indemnification by PSG

Subject to the provisions of Section 5.03, PSG agrees that it will at all times defend, indemnify and hold harmless the City against any and all claims for bodily injury, death and property damage which arise in the course of PSG's performance of this Contract, with respect to which the City is not solely negligent.

In addition, subject to the provisions of Section 5.03, PSG agrees

to indemnify and insure the City from any claims for damages to persons or property which may hereafter arise as a result of its disposal of Municipal Sludge or Hou-Actinite in a sanitary landfill hereunder including, but not limited to all claims for contamination of groundwater, streams or other water as a result of the disposal of the material or its decomposition; nuisance claims arising from disposal or decomposition of the material; air contamination claims; claims involving the generation of explosive or dangerous gases; and any and all other claims which may arise from the operation of the sanitary landfill unless such claims arise and are attributable to the City's failure to provide Municipal Sludge or Hou-Actinite free of hazardous waste. The provisions of this Section 5.02 shall survive the termination of this Contract.

In addition, subject to the provisions of Section 5.03, PSG agrees to indemnify and insure the City from any claims for damages to persons or property or liability to a government agency which may hereafter arise as a result of its non-compliance with applicable laws in the disposal of Municipal Sludge or Hou-Actinite by means of land application hereunder including, but not limited to all claims for contamination of groundwater, streams or other water as a result of the disposal of the material or its decomposition; nuisance claims arising from disposal or decomposition of the material; air contamination claims; claims involving the generation of explosive or dangerous gases; and any and all other claims which may arise from PSG's non-compliance with applicable laws for land application unless such claims arise and are attributable to the City's failure to provide Municipal Sludge or Hou-Actinite free of hazardous waste.

5.03 -- Hazardous Waste

The delivery of Hazardous Waste by the City to PSG shall be considered a breach of this Contract and in addition to any other remedy PSG may have, the City agrees that: (i) PSG shall not be regarded as the owner of or as having taken title to the Hazardous Waste or any Products resulting therefrom; (ii) while PSG is in possession or control of the Hazardous Waste, PSG shall not be regarded as the agent of the City for all purposes at all times; (iii) PSG shall have the right to return to the City the Hazardous Waste; (iv) PSG shall have no responsibility for handling or disposal of the Hazardous Waste except to follow reasonable and lawful instructions which shall promptly be given by the City for handling and disposal, services for which PSG shall be paid a fair and reasonable compensation; and (v) the City shall be liable for all costs for all suits, claims, damages, losses and expenses (including but not limited to reasonable attorneys' fees) caused by, arising out of, resulting from or incidental to the delivery of Hazardous Waste. If the City has reason to believe that it may have delivered any Hazardous Waste to PSG, the City shall promptly notify PSG.

5.04 -- Performance Bond

PSG shall furnish to the City a performance bond in the sum of one million, five hundred thousand dollars (\$1,500,000), an amount equal to the estimated annual value of the Contract, on a form approved by the City Legal Department, conditioned upon the faithful performance by PSG of this Contract and all of the covenants and stipulations therein contained. Any surety providing the Performance Bond must possess sufficient bonding capacity and be an approved surety as evidenced by appearing on the current list of accepted sureties on federal bonds

published by the U.S. Treasury Department. The Performance Bond will guarantee, for successive one (1) year periods of operations, PSG's obligations under this Contract. PSG shall furnish the initial Performance Bond within five (5) days of City Council approval of the Contract. The bond shall provide that the surety be required to provide the Director and PSG a sixty (60) day notice if such surety intends to cancel its bond at for any contract year. In the event of cancellation of the performance bond, PSG shall be obligated to furnish a replacement bond in the same form and amount as required above on or before the date of cancellation of the prior performance bond.

5.05 -- Term

This Contract shall be in force and effect, unless terminated earlier as provided herein, for a period of five (5) years beginning at the date of the Director's notice to proceed, which shall be after approval by City Council of this Contract but no later than forty-five (45) days after such approval; thereafter, the Contract shall be renewed automatically for terms of one (1) year each, unless cancelled by either party by giving one hundred eighty (180) days' notice of termination in writing to the other party (the "Contract Term").

5.06 -- Default and Termination

(a) In the event of the breach by either party of any obligation under this Contract, the non-breaching party shall have the right to terminate this Contract by the following procedure described in this Section.

Prior to the enforcement of its right, the aggrieved party shall give thirty (30) days' notice in writing to the defaulting party to cure or remedy said default. In the event that said default has not been



remedied or cured, at the end of said thirty (30) day period this Contract shall be terminated. Upon the exercise by a party of a right to terminate, such party shall also be entitled to recover its actual damages from the defaulting party; however, upon the City's proper termination of this Contract, the City shall be entitled to actual damages equal to the costs incurred by the City for disposing of the actual quantity of Municipal Sludge, which could have been delivered by the City to PSG hereunder, determined on a day-to-day basis, delivered to an alternate contractor during the period from the date of termination through the balance of the Contract Term minus the amount of compensation that would have been payable to PSG under the terms of this Contract.

(b) In the event there is a change of law or regulations after the Countersignature of this Contract, and PSG believes such change has a significant impact on its cost of providing service to the City, PSG shall notify the Director in writing requesting that PSG be compensated on the basis of actual cost (plus reasonable profit and overhead) directly relating to such change in regulation. After such notice, the cost provisions of this Contract may be modified by mutual agreement of PSG and the City. Only the City Council shall have the authority to agree to any such modification on the behalf of the City, and consent by City Council may be in the form of ordinance, motion or resolution. In the event there is no written agreement or consent by the City for such additional cost within ninety (90) days of notice from PSG, this agreement shall terminate.

5.07 -- Equal Employment Opportunity

The provisions of the City's Equal Employment Opportunity Ordinance,

codified Chapter 15 of the City's Code of Ordinances, are incorporated herein by reference.

5.08 -- Independent Contractor

The relationship of PSG to the City shall be that of an independent contractor; no principal-agent or employer-employee relationship is created by this Contract. By entering into this Contract with the City, PSG acknowledges that it will, in the performance of its duties under this Contract, be acting as an independent contractor; that no officer, agency or employee of PSG is, nor will be for any purpose, an employee of the City; and that no officer, agent or employee of the Contractor is entitled to any of the benefits and privileges of a City employee or officer under any provisions of the Statutes of the State of Texas or the Charter and Ordinances of the City.

5.09 -- Remedies, Cumulative

Except as expressly provided herein, the rights and remedies contained in this contract shall not be exclusive but shall be cumulative of all other rights and remedies, now or hereafter existing, whether by statute, at law or in equity; however, neither party shall terminate this Contract except in accordance with the provisions hereof.

5.10 -- Non-Waiver

Failure of the City or PSG to insist upon strict performance of any of the terms or conditions of this Contract, failure or delay to exercise any rights or remedies provided herein or by law or failure of the City or PSG to notify the other party promptly in the event of default shall not be construed as a waiver or relinquishment of the future strict performance of any such term or condition by the City or PSG or a waiver to any of either party's rights or remedies as to prior

or subsequent defaults hereunder.

5.11 -- Assignment

This Contract shall bind and benefit the respective parties and their legal successors and shall not be assignable, in whole or in part, by any party thereto without first obtaining the written consent of the other party; however, the foregoing shall not apply to assignment by PSG to any entity which results from an incorporation or other reorganization of PSG as long as the resulting entity is controlled by its current stockholders or their respective owners. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City.

5.12 -- Address and Notice

All notices required or permitted hereunder shall be in writing (unless another medium is expressly authorized herein) and shall be deemed delivered at the earlier of when actually delivered or three (3) days after deposit in a United States Postal Service Post Office or receptacle with proper postage affixed (Certified Mail, Return Receipt Requested). Notices shall be addressed to each respective party at the address set out in Part One of this Contract or such other address as the party may have designated by notice similarly given the other party.

5.13 -- Non-Violation or Restrictions on Certain Business Transactions Related to South Africa or Namibia

Pursuant to Section 15-96 of the Houston, Texas, Code of Ordinances, PSG shall execute and submit to the City's Purchasing Agent, or have on file with the Purchasing Agent, a blanket or single-transaction affidavit of "Non-Violation of Restrictions on Certain Business Transactions Related to South Africa or Namibia" before commencing

performance of this Contract.

5.14 -- Force Majeure

In the event that the performance by either party of any of its obligations and undertakings hereunder shall be prevented, interrupted or delayed by acts of God, war, riot or civil commotion, compliance with any law, regulation or order of any governmental body or instrumentality thereof, whether now existing or hereafter created, or any similar events beyond its reasonable control, the performance by such party shall be excused for such period of time as such party is using due diligence to resume performance at the earliest possible time.

5.15 -- Minority and Business Enterprises

(a) It is the policy of the City to stimulate the growth of Minority and Women Business Enterprises by encouraging the full participation of Minority and Women Business Enterprises in all phases of its procurement activities and by affording them a full and fair opportunity to compete for all City contracts. The purposes and objectives of the City of Houston Ordinance No. 84-1309, passed August 22, 1984, relating to the Promotion of Opportunities of Minority and Women Business Enterprises and of City Council Motion No. 86-2204, passed August 5, 1986, relating to City-wide Percentage Goals for contracting with Minority and Women Business Enterprises, hereby incorporated into the bidding and Contract documents are:

- (1) To increase the capacity of local MBE and WBE firms providing goods and services,
- (2) To provide opportunities for local MBE and WBE firms to broaden and enhance their range of capacities, and
- (3) To increase opportunities for local MBE and WBE firms to serve

as contractors for the supply of goods and services to the City, in addition to acting as subcontractors to others.

(b) PSG agrees to use its best efforts to carry out this policy through award of subcontracts to Minority and Women Business Enterprises to the extent consistent with the efficient performance of this contract.

(c) Without limiting the generality of the foregoing, PSG agrees that it will make good faith efforts to award subcontracts or supply agreements of up to twelve percent (12%) of the value of this Contract (calculated on the basis of all amounts owed by the City, less amounts of items authorized to be purchased as capital equipment under Section 3.04 (c) of this Contract) to Minority or Women Business Enterprises certified by the City's Affirmative Action Division. While it is not a requirement of this Contract that the Project Manager, in fact, meet or exceed the Minority or Women Business Enterprise goals, it is a requirement that the Project Manager objectively demonstrate to the Director that PSG has exerted "Good Faith Efforts" to meet these goals as described by the City's Affirmative Action Division. To this end, the Project Manager shall maintain records showing (i) subcontracts and supply agreements with Minority Business Enterprises, (ii) subcontracts and supply agreements with Women Business Enterprises and (iii) those "Good Faith Efforts" made to identify and award subcontracts and supply agreements to Minority and Women Business Enterprises. The Project Manager shall be required to submit periodic reports of PSG's efforts under this Article to the Director of Affirmative Action in such form and manner and at such time or times (but not more than monthly) as the Director of Affirmative Action may prescribe.

5.16 -- Severability

The provisions of this Contract are severable and, if any provision or part of this Contract or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Contract and the application of such provision or part of this Contract to other persons or circumstances shall not be affected thereby.

5.17 -- Section Headings

All Section headings in this Contract are for ease of reference only and do not constitute a part of this Contract.

5.18 -- Sole Agreement

This Contract integrates and supersedes all prior negotiations, representations or agreements.

5.19 -- Amendment

Neither this Contract nor any provision hereof may be changed, modified or amended except by a written instrument signed by both of the parties hereto.

5.20 -- Subcontractors

No portion of this contract may be subcontracted by PSG without the consent of the Director, except BFI is hereby designated an acceptable subcontractor for transportation of Municipal Sludge and landfill operator.