

**MAINTENANCE AGREEMENT
FOR ANNUAL OFFSITE REBUILDING AND REPAIR OF
JWC INLINE SLUDGE GRINDERS AND SCREENING COMPACTORS**

On this _____ day of _____, 2016, the CITY OF RIVERSIDE, a California charter city and municipal corporation, hereinafter referred to as "City", and JWC ENVIRONMENTAL, LLC, a Delaware limited liability company authorized to do business in California, 2600 S. Garnsey Street, Santa Ana, California 92707, hereinafter referred to as "Contractor", mutually agree as follows:

1. Contractor shall furnish all labor, materials, tools, and equipment necessary to perform the Annual Offsite Rebuilding and Repair of JWC Inline Sludge Grinders and Screening Compactors in accordance with Contractor's Proposal (hereinafter the "Work"). Contractor agrees to perform the Work more particularly described in Exhibit "A", attached hereto and incorporated herein by reference.

2. This Agreement shall be effective on the date first written above and shall remain in effect until June 30, 2017, unless otherwise terminated pursuant to the provisions herein.

3. City shall pay Contractor the Contract Price in an amount not to exceed One Hundred Eighty Thousand Dollars (\$180,000), which includes all applicable taxes and freight costs, for the performance of all of the Work according to the terms and conditions contained or referred to herein.

4. Contractor and all subcontractors are required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720 et seq. of the California Labor Code and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination of prevailing rates is available online at www.dir.ca.gov/dlsr/DPreWageDetermination.htm and is referred to and made a part hereof; the wage rates therein ascertained, determined and specified are referred to and made a part hereof as though fully set forth herein. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)] No

contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

5. Contractor warrants to the City that: (i) the materials furnished under this Agreement will be of good quality and new unless otherwise permitted by the Contract Documents; (ii) the Work will be of good quality and free from defects; and (iii) the Work will conform to the requirements of the Contract Documents.

6. Contractor shall, and hereby does, warrant all Work for a period of one (1) year commencing from the date of acceptance by the City, and shall repair or replace any and all such Work, together with any other Work which may be displaced in so doing, that may prove defective in workmanship and/or materials, without expense whatsoever to City.

7. If Contractor fails to commence corrections within forty-eight (48) hours after receipt of written notice from City, City will proceed to have defects repaired and made good at the expense of Contractor, plus fifteen percent (15%) for City's overhead and administrative expense. City may charge such costs against any payment due Contractor. If, in the opinion of the City, defective work creates a dangerous or hazardous condition or requires immediate correction or attention to prevent further loss to the City or to prevent interruption of operations of the City, the City may take immediate action, give notice, make such correction, or provide such attention and the cost of such correction or attention shall be charged against the Contractor. Such action by the City will not relieve the Contractor of the warranties required by this Agreement.

8. Contractor shall obtain in the name of City, or transfer or assign to City or City's designee prior to City's acceptance of the Work, any and all warranties or guarantees which Contractor obtained from any other person or entity other than Contractor, including, but not limited to, subcontractors and manufacturers, and further agrees to perform the Work in such a manner so as to preserve any and all such warranties.

9. Contractor shall complete all of the Work of the Contract within four (4) weeks per grinder, once equipment is received.

10. Contractor shall not be compensated for any extra materials used or time expended, over and above the contract price, unless prior written approval for the same has been granted by City.

11. Contractor understands that the Work performed under this Agreement constitutes doing business in the City of Riverside, and Contractor agrees that Contractor will register for and pay a business tax pursuant to Chapter 5.04 of the Riverside Municipal Code and keep such tax certificate current during the term of this Agreement.

12. Contractor acknowledges and agrees that with respect to any business tax or penalties thereon, utility charges, invoiced fee or other debt which is owed, or which becomes owed, by Contractor to City, City reserves the right to withhold and offset said amounts from any payments, refunds or reimbursements owed by City to Contractor under the Contract. Notice of such withholding and offset shall promptly be given to Contractor by City in writing. In the event of a dispute as to the amount owed or whether such amount is owed to City, City will hold such disputed amount until either the appropriate appeal process has been completed or until the dispute has been resolved.

13. In the performance of this Agreement, Contractor and Contractor's employees, subcontractors and agents, shall act in an independent capacity as independent contractors, and not as officers or employees of the City of Riverside. Contractor acknowledges and agrees that the City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance to Contractor, or to Contractors employees, subcontractors and agents. Contractor, as an independent contractor, shall be responsible for any and all taxes that apply to Contractor as an employer.

14. Except as to the sole negligence, active negligence or willful misconduct of the City, Contractor shall indemnify and hold the City, and its employees, officers, managers, agents and council members, harmless from any and all loss, damage, claim for damage, liability, expense or cost, including attorneys' fees, which arises out of, or is related to, or is in any manner connected with the performance of Work, activities, operations or duties of Contractor, or anyone employed by or working under Contractor, and from all claims by anyone employed by or working under Contractor for services rendered to Contractor in the performance of this Agreement, notwithstanding that the City may have benefited from their services. This indemnification provision shall apply to any acts or omissions, willful

misconduct or negligent conduct, whether active or passive, on the part of Contractor or of anyone employed by or working under Contractor.

The parties expressly agree that any payment, attorneys' fees, costs or expense that the City incurs or makes to, or on behalf of, an injured employee under the City's self-administered workers compensation is included as a loss, expense or cost for the purposes of this Section, and that this Section shall survive the expiration or early termination of the Agreement.

15. Contractor agrees, at its cost and expense, to promptly defend the City and the City's employees, officers, managers, agents and council members (collectively the "Parties to be defended") from and against any and all claims, allegations, lawsuits or other legal proceedings which arise out of, are related to, or are in any manner connected with: 1) the Work, activities, operations, or duties of Contractor, or of anyone employed by or working under the Contractor, or 2) any breach of this Agreement by Contractor. This duty to defend shall apply whether or not such claims, allegations, lawsuits or proceedings have merit or are meritless, or which involve claims or allegations that any of the Parties to be defended were actively, passively or concurrently negligent, or which otherwise assert that the parties to be defended are responsible, in whole or in part for any loss, damage or injury. Contractor agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel acceptable to the City.

16. Contractor expressly agrees to and shall indemnify, defend, release and hold the City and its employees, officers, managers, agents and council members harmless from and against any liability, loss, fine, penalty, fee, charge, lien, judgment, damage, entry, claim, cause of action, suit, proceeding (whether legal or administrative), remediation, response, removal, or clean-up, and all costs and expenses associated therewith, and all other costs and expenses (including, but not limited to, attorney's fees, expert fees, and court costs) in any way related to the collection, processing, disposal, treatment, transportation, manufacture, or use of any hazardous substances associated with the performance of Work under this Agreement by Contractor, its employees, subcontractors and agents. This indemnity, defense and hold harmless obligation shall survive the expiration or termination of this Agreement.

17. Limitation of Liability. In no event shall the Contractor be liable for lost profits or other special, indirect or consequential damages. **Contractor's Indemnity obligations shall be limited to the limits of the Contractor's insurance where Contractor's insurance is**

applicable. Where Contractor's insurance is not applicable, the Contractor's Indemnity obligations shall not exceed two (2) times the purchase order amount.

18. Hazardous substances shall mean any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to CERCLA, 42 U.S.C. § 9601, *et seq.*; The Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); The Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; The Clean Water Act, 33 U.S.C. § 1251, *et seq.*; The Hazardous Waste Control Act, California Health and Safety Code ("H. & S.C.") § 25100, *et seq.*; the Hazardous Substance Account Act. H. & S.C. § 25330. *et seq.*; the California Safe Drinking Water and Toxic Enforcement Act. H. & S.C. § 25249.5. *et seq.*; Underground Storage of Hazardous Substances H. & S.C. § 25280. *et seq.*; the Carpenter- Presley-Taruier Hazardous Substance Account Act (H. & S.C. § 25300 *et seq.*); The Hazardous Waste Management Act, H. & S.C. § 25170.1, *et seq.*; Hazardous Materials Response Plans and Inventory H. & S.C. § 25001 *et seq.*; or the Porter-Cologne Water Quality Control Act, Water Code § 13000, *et seq.*, all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material. as now or at any time hereafter in effect, (b) substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes, (c) petroleum, crude oil or any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) polychlorinated biphenyls (PCB), radon gas, urea-formaldehyde, asbestos and lead.

19. The City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where items collected in the City are taken for disposal, as well as where they are not taken, to be matters of concern. Contractor shall provide Certificates of Assured Destruction and maintain data retention and preservation systems which can establish where Hazardous Substances collected in the City is disposed (and therefore establish where they are not disposed) and provide a

quarterly report to City identifying items collected by Contractor for each calendar quarter in tons and the facilities where the tons were processed or disposed. Contractor agrees to notify the City's Risk Manager and the City Attorney at least ninety (90) days before destroying such records. This provision shall survive the early termination of this Agreement.

20. Contractor shall obtain and maintain during the term of the agreement, insurance coverage for personal property of others for the full replacement value thereof without deduction for depreciation, and with a deductible not to exceed one thousand dollars (\$1,000.00) per occurrence.

21. Subject to the terms and conditions hereof, the Contractor warrants until one year after commissioning (written notification to Contractor by City required) of the Services or until 18 months after delivery of such Services to City, whichever is earlier, that said Service will be free of defects in material and workmanship. If (a) the Contractor receives written notification of such defect during the warranty period and the defective item's use is discontinued promptly upon discovery of alleged defect, and (b) if the City forwards the item to the Contractor's nearest service/repair facility, transportation and related insurance charges prepaid. The Contractor will cause any items whose defect is covered under this warranty to either be replaced or be repaired at no cost to the City. The foregoing warranty does not cover repairs required due to repair or alteration other than by the Contractor's personnel, accident, neglect, misuse, transportation or causes other than ordinary use and maintenance in accordance with the Contractor's instructions and specifications. In addition, the foregoing warranty does not cover any items, or components thereof, which are not directly manufactured by the Contractor. To the extent a warranty for repair or replacement of such items or components not manufactured directly by the Contractor is available to City under agreements of the Contractor with its vendors; the Contractor will make such warranties available to City. Costs of transportation of any covered defective item to and from the nearest service/repair center and related insurance will be paid or reimbursed by City. Any replaced item will become the property of the Contractor. Any replacement items will be warranted only for any remaining term of the original limited warranty period and not beyond that term.

22. Contractor and all subcontractors are required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720 et seq. of the

California Labor Code and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination of prevailing rates is available on-line at www.dir.ca.gov/dlsr/DPreWageDetermination.htm and is referred to and made a part hereof; the wage rates therein ascertained, determined and specified are referred to and made a part hereof as though fully set forth herein.

23. Contractor shall keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Contractor, or in any way affect the performance of Work by Contractor pursuant to this Agreement. Contractor shall at all times observe and comply with all such laws, ordinances and regulations, and shall be solely responsible for any failure to comply with all applicable laws, ordinances and regulations.

24. This Agreement may be modified or amended only by a written agreement and/or change order executed by the Contractor and City.

25. The City may terminate Contractor's performance of this Agreement upon five (5) calendar day's written notice if:

- (1) Contractor fails promptly to begin the Work; or
- (2) Contractor fails to perform the Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein, or refuses to remove and replace rejected materials or unacceptable Work; or
- (3) Contractor discontinues performance of the Work; or
- (4) Contractor fails to make payment to subcontractors for materials or labor in accordance with applicable law; or
- (5) Contractor disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction; or
- (6) Contractor otherwise is guilty of breach of a provision of this Agreement; or
- (7) Contractor becomes insolvent, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors and fails to provide City with adequate assurances of Contractor's ability to satisfy its contractual obligations.

A receiver, trustee, or other judicial officer shall not have any right, title, or interest in or to this Agreement. Upon that person's appointment, City has as its option and sole discretion, the right to immediately cancel the Agreement and declare it null and void.

26. This Agreement shall be binding upon City and its successors and assigns, and upon Contractor and its permitted successors and assigns, and shall not be assigned by Contractor, either in whole or in part, without the prior consent of the City.

27. Except as provided in Section 12940 of the California Government Code, during Contractor's performance of the Agreement, Contractor shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical handicap, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex or sexual orientation, genetic information, gender, gender identity, or gender expression, in the selection and retention of employees and subcontractors and the procurement of materials and equipment. Contractor shall also comply with the requirements of the Americans with Disabilities Act in the performance of the Agreement.

28. Service of any notices, bills, invoices or other documents required or permitted under the Contract shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

<u>City</u>	<u>Contractor</u>
City of Riverside Director of Public Works 3900 Main Street Riverside, California 92522	JWC Environmental, LLC Attn: Chris Burt 2600 S. Garnsey Santa Ana, CA 92707

29. This Agreement shall be governed by the laws of the State of California without regard to choice of law principles thereof. Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Riverside. State of California and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county. In the event either party hereto shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition of this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs thereof, including reasonable attorneys' fees, to be set by the court in such action.

30. No action or failure to act by the City shall constitute a waiver of any right or duty afforded City under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically provided in this Agreement or as may be otherwise agreed in writing.

31. The individuals executing this Agreement and the instruments referenced herein on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions hereof and thereof.

32. Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement and the remainder of the Agreement shall continue in full force and effect.

33. This Agreement contains the entire Agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are not representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

(Signatures on Following Page)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day and year first above written.

CITY OF RIVERSIDE, a California
charter city and municipal corporation

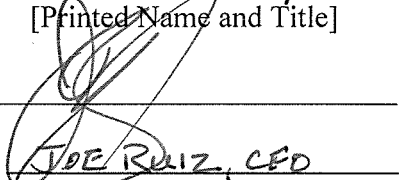
JWC ENVIRONMENTAL, LLC,
a Delaware limited liability company
authorized to do business in California

By: _____
City Manager

By: 

KENNETH RIEGLE, PRESIDENT
[Printed Name and Title]

Attest: _____
City Clerk

By: 
JOE RUIZ, CFO
[Printed Name and Title]

Certified as to Availability of Funds:

By: 
Finance Director

APPROVED AS TO FORM:


By: 
Deputy City Attorney

EXHIBIT “A”

- Refurbish damaged JWC in-line sludge grinders to like-new condition
- Inspect, repair, and replace grinders and associated parts, as needed

WORKERS' COMPENSATION CERTIFICATION

I am aware of the provisions of Section 3700 of the Labor Code which require 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 of this contract.

DATED: 3/8/2016

JWC ENVIRONMENTAL, LLC

By: _____

JOE RUIZ, CFO

[Printed Name and Title]