



**CITY OF COLUMBIA**  
**AGENDA MEMORANDUM**

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**MEETING DATE:** June 21, 2016

**DEPARTMENT:** Utilities and Engineering

**FROM:** *Joey Jaco, Director of Utilities and Engineering*

**SUBJECT:** 2016-2017 Metro WWTP NPDES Monitoring and and Sludge Cake Lab Testing

**PRESENTER:** Joey D. Jaco, P.E.

**FINANCIAL IMPACT:**

**ORIGINAL BUDGET:** \$50,000.00

**CLEAN WATER 2020?:** No

**FEMA DR-SC4241?:** No

Recommend the City enter into agreement for testing services with Rogers & Callcott for National Pollutant Discharge Elimination System (NPDES) testing and Sludge Cake testing for the City's Metropolitan Wastewater Treatment Plant (MWWTP). Environmental monitoring programs have been developed for compliance with general provisions of the Clean Water Act and the City's Wastewater Services Ordinance. These monitoring programs involve testing, which we are currently unable to perform in-house. This work is recommended as a result of a Request for Proposal (RFP) for Environmental Testing (ENGRFP0018-14-15).

Funding for laboratory services is provided for in the MWWTP Operating Budget (5516208-638305) for FY 2017. This agreement is being presented now since work must commence by the laboratory on July 1, 2016 per the City's Metro NPDES Permit.

This work will benefit all four City Council Districts. The Legal Department has approved the Agreement and the Director of Utilities & Engineering and Assistant City Manager for Operations recommend approval.

## AGREEMENT FOR LABORATORY SERVICES

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Columbia, South Carolina, hereafter referred to as the City and Rogers & Callcott, Columbia, South Carolina hereafter referred to as the Laboratory, for Laboratory to render certain environmental testing services for the City from July 1, 2016 through June 30, 2017.

For and in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

### I. Scope of Services

A. The Laboratory shall provide daily monitoring and reporting as required under the City's SCDHEC National Pollutant Discharge Elimination System (NPDES) Permit for its Metropolitan Wastewater Treatment Plant (Plant) as may be required by the South Carolina Department of Health and Environmental Control (SCDHEC) and/or requested by the City described in Attachment A attached hereto.

B. The Laboratory shall provide analyses for Metro National Pollutant Discharge Elimination System (NPDES) Permit Sludge Cake as further described in Attachment B attached hereto.

C. The Laboratory shall use the appropriate Environmental Protection Agency (EPA) approved procedures for all analyses performed under this Agreement.

D. The Laboratory shall list all sub-contractor's, including minority and female owned firms, providing services under this Agreement. The list shall be submitted in the format provided in Attachment C hereto. Any proposed changes must be submitted to the City, including the reasons for the proposed changes, prior to initiation of any action by the Laboratory.

E. The Laboratory shall maintain current certification by the South Carolina Department of Health and Environmental Control (SCDHEC) to perform any analyses required under this Agreement. Should the Laboratory, for any reason, lose its certification by the SCDHEC to perform any analyses required under this Agreement, the Laboratory shall immediately notify the City of the loss of such certification. For the purposes of this notification, immediate shall mean within one (1) business day of the day the Laboratory received notification from the SCDHEC that certification has been revoked.

## II. Special Services

The City may, from time to time, request that the Laboratory perform analyses that are not specified in the above-described Scope of Services (Special Services). The City shall provide written authorization to the Laboratory to perform any Special Services in the form of a Change Order to this Agreement. If the Laboratory fails to obtain prior written authorization to perform any Special Services, the City is under no obligation to compensate the Laboratory for Special Services performed.

## III. Term of Agreement

This Agreement shall be for the term of one (1) year from July 1, 2016 through June 30, 2017, unless earlier terminated as provided for herein.

## IV. Schedule for Completion of Services

Time is of the essence. The Laboratory shall not exceed the following deadlines in completing analyses under this Agreement:

A. For "routine" turnaround time, the Laboratory shall provide sample analysis results to the City within fifteen (15) calendar days from the date the samples are collected by the Laboratory or delivered to the Laboratory by the City.

B. For "expedited" turnaround time, the Laboratory shall provide sample analysis results to the City within forty-eight (48) hours from the time the samples are collected by the Laboratory or delivered to the Laboratory by the City, unless specified otherwise in the Proposal Form attached hereto and incorporated herein as Attachment A and Attachment B attached hereto.

## V. Compensation

A. The Laboratory's compensation for analyses performed under this Agreement shall be in accordance with Attachment A. In exchange for providing services described, the Laboratory's compensation under this Agreement shall not exceed Forty-Nine Thousand Nine Hundred Twenty-Eight Dollars and 60/100 (\$49,928.60) Dollars, without written Change Order to this Agreement.

B. The Laboratory's compensation for analyses performed under this Agreement shall be in accordance with Attachment B. In exchange for providing services described, the Laboratory's

compensation Metro NPDES Sludge Cake analyses under this Agreement shall not exceed One Hundred Sixty and no/100 (\$160.00) Dollars, without written Change Order to this Agreement.

C. The Laboratory's total compensation under this Agreement shall not exceed Fifty Thousand Eighty-Eight Dollars and 60/100 (\$50,088.60), without written Change Order to this Agreement.

D. The Laboratory shall submit invoices no more frequently than monthly for services rendered. Each invoice submitted must describe the services for which payment is requested and show payment calculations. The Laboratory shall not submit invoices for and shall not be entitled to be paid and shall not receive payment for analyses that have not been performed in accordance with appropriate EPA approved procedures and/or analyses that have been rejected or are not suitable for submission and use by the City in order to fulfill the City's daily monitoring and reporting as required under the City's SCDHEC NPDES Permit for the Plant. Without limiting in any manner the liabilities and obligations assumed by Laboratory under any other provision of this Agreement, the City shall be entitled to a refund or future credit, as the case may be, for any and all analyses that are not performed in accordance with the requirements of this Agreement. Each invoice must also clearly identify any portion of the fee invoiced for subcontracted services, including any such services that are specified in the Summary of Proposed Subconsultants shown on Attachment C hereto, and identify if the subcontractor is a Minority or Female Business Enterprise. Each invoice shall bear the signature of the Laboratory, which signature shall certify that the information contained in the invoice is true and accurate and that the invoice amount is currently due and owing. The City will not pay interest or penalty on any past due amount.

#### VI. Indemnification and Insurance

A. The Laboratory shall indemnify, defend, hold harmless and reimburse the City, its agents and employees from and against any and all losses, liabilities, expenses, and all claims for damages to the extent caused by the negligence, errors or omissions of laboratory, its subcontractors, officers, agents and employees, or relating to or arising out of the performance or failure to perform by Laboratory, its subcontractors, officers, agents and employees of any of the Laboratory's obligations under this Agreement. Losses, liabilities, expenses and claims for damages shall include, but not be limited to, civil and criminal fines and penalties, loss of use and/or services, bodily injury, death, personal injury, or injury to real or personal property, defense costs, legal fees and costs, and attorney's fees. Laboratory shall

not be responsible for any liability attributable solely to negligence by the City or its employees pertaining to the services provided for by the Laboratory. However, the burden is upon the Laboratory to prove, by clear and convincing evidence that the City or its employee is responsible.

B. The Laboratory shall promptly notify the City of any civil or criminal actions filed against the Laboratory or of any notice of violation from any federal or state agency or of any claim as soon as practical as relates to the services provided under this Agreement. The City, upon receipt of such notice, shall have the right at its election to defend any and all actions or suits or join in the defense.

C. The Laboratory shall furnish the City with a certificate showing satisfactory proof of carriage of the insurance required hereunder and such insurance shall be approved by the City prior to the Laboratory and any subconsultant of the Laboratory commencing any services under this Agreement and this insurance shall remain in effect throughout the term of this Agreement and any renewals. Insurance shall remain in effect for the duration of the project and for a period of one (1) year after completion. The City of Columbia shall be the Certificate Holder and shall be named as an Additional Insured.

D. Commercial General Liability Insurance: Coverage at least as broad as Insurance Service Office Form CG 00 01 11 85 in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate combined single limit for bodily injury, personal injury, and property damage.

E. Worker's Compensation Insurance: The Laboratory shall procure and shall maintain during the life of this contract, Workman's Compensation Insurance for all of the employees to be engaged in work on the project under this contract, and in case any such work is sublet, the Laboratory shall require the subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Laboratory's Workmen's Compensation Insurance. The Laboratory shall not permit any person who is not protected by Worker's Compensation Insurance or a properly approved self-insured Worker's Compensation Program to perform any activity related to this contract.

VII. Permits and Licenses

A. The Laboratory shall be responsible for obtaining any certifications, permits and/or licenses as may be required of the Laboratory in performing the services required under this Agreement, including, but not limited to SCDHEC Laboratory Certification. The Laboratory shall be responsible for any costs relating to same.

B. The Laboratory shall procure a City of Columbia business license while performing services under this Agreement.

VIII. Duties Upon Termination

At termination of this Agreement, the Laboratory shall immediately provide the City with all records and data in any format the Laboratory is capable of producing and at no cost to the City, which were generated, created or received by the Laboratory in performance of the services required by this Agreement or as the City may deem necessary to perform the required services by the City or the Laboratory's successor. All records shall be free from any proprietary claims or interest. The Laboratory agrees to fully cooperate with the City and any successor to ensure an effective transition to continuously provide the required services.

IX. Termination of Agreement

The City may terminate this Agreement at any time upon any of the following grounds:

A. Failure by the City to appropriate funds for the performance of any of the services required in this Agreement in any annual budget.

B. The Laboratory fails to perform any of the services required in this Agreement and does not correct such deficiency within fifteen (15) days having been notified by the City of such deficiency.

C. Force Majeure.

D. The City shall, at its sole option and discretion, have the right to terminate this Agreement for any reason whatsoever. A termination for default under this Agreement, if wrongfully made, shall be treated as a termination for convenience under this clause.

E. Upon expiration of the term of this Agreement; and

F. By mutual agreement.

Notice of termination shall be sent by registered mail, return receipt requested. In the event of termination, the Laboratory shall only be entitled to the actual direct costs of all labor and material expended on the services required under this Agreement prior to the effective date of the termination or the Laboratory shall be entitled to be paid a pro-rata percentage of the total Agreement price which is equal to its percent of completion, whichever of the two methods provides the lowest sum to be paid to the Laboratory. In no event shall the Laboratory be entitled to anticipatory profit or damages for any termination under this Agreement. In no event shall the Laboratory be entitled to assert a claim in quantum meruit or any other measure of damages other than that stated herein.

X. Ownership of Data

All data or other information of any description generated by or used by the Laboratory or any subcontractor retained by the Laboratory and related to the services required by this Agreement shall be the property of the City and shall not be used by the Laboratory for any purpose whatsoever except to perform the services required by this Agreement.

XI. Notice

A. Written notice to the City shall be made by placing such notice in the United States Mail, postage prepaid and addressed to: Director of Utilities and Engineering, City of Columbia, Post Office Box 147, Columbia, South Carolina 29217.

B. Written notice to the Laboratory shall be made by placing such notice in the United States Mail, postage prepaid and addressed to: Rogers & Callcott, 215 Suite B Stonebridge Drive, Columbia, South Carolina 29210.

XII. Miscellaneous

A. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Laboratory.

B. The Laboratory shall be responsible for performance of all services required by this Agreement. The Laboratory does not act as the City's agent or employee.

C. The Laboratory will not assign or sublet its obligations to perform the services required by this Agreement without the written consent of the City.

D. The Consultant certifies that it will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws (originally enacted as Section 3 of The South Carolina Illegal Immigration Reform Act, 2008 S.C. Act No. 280) and agrees to provide upon request any documentation required to establish either: (a) the applicability of Title 8, Chapter 14 to Consultant and any subconsultants or sub-subconsultants; or (b) the compliance with Title 8, Chapter 14 by consultant and any subconsultant or sub-subconsultant. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." Consultant agrees to include in any contracts with its consultants language requiring the subconsultants to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in any contracts with the sub-subconsultants language requiring the sub-subconsultant to comply with the applicable requirements of Title 8, Chapter 14.

E. In the event there are any disagreements between the City and the Laboratory with regard to any of the requirements, specifications or interpretation of this Agreement, the Laboratory agrees to defer to the reasonable interpretations of the City as, from time to time may be made by the City. Ambiguities in the terms of this Agreement, if any, shall not be construed against the City.

F. This Agreement shall be construed in accordance with the laws of the State of South Carolina. The Laboratory agrees to subject itself to the jurisdiction and venue of the Circuit Courts of Richland County, State of South Carolina as to all matters and disputes arising or to arise under this Agreement and the performance thereof. The City may seek attorney's fees and the Laboratory agrees to pay such fees as awarded by the Court or other body. No attorney's fees may be sought by, nor will be paid to, the Laboratory.

G. This Agreement represents the entire agreement between the City and the Laboratory and supersedes all prior communications, negotiations, representations or agreements, either written or oral. Only written Change Order signed by both the City and the Laboratory may amend this Agreement.

H. The failure of either the Laboratory or the City to insist upon the strict performance of any provision of this Agreement shall not be deemed to be a waiver of the right to insist upon strict performance of such provision or of any other provision of this Agreement at any time. Partial payment by the City shall not be construed as a waiver. Waiver of any breach of this Agreement shall not constitute waiver of a subsequent breach.

I. In the event any provision of this Agreement is determined to be void or unenforceable, all other provisions shall remain in full force and effect.

J. This Agreement is subject to City Council approval.

K. The Engineer is subject to the provisions of the 1991 Ethics Reform Act (8-13-100, et seq, South Carolina Code of Laws, 1976, as amended). Under this Act, City employees are prohibited from accepting anything of value from any person. "Anything of value" includes, but is not limited to, lodging, transportation, entertainment, food, meals, beverages, money, gifts, honorariums, discounts and interest-free loans.

Witness the parties' respective hands and seals on the date first written above.

CITY OF COLUMBIA, SOUTH CAROLINA

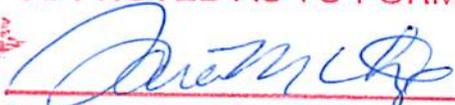
\_\_\_\_\_  
Witness By: \_\_\_\_\_  
City Manager

Rogers & Callcott

\_\_\_\_\_  
Witness By: \_\_\_\_\_  
Title:

RECOMMENDED BY: \_\_\_\_\_  
Director of Utilities and Engineering

RECOMMENDED BY: \_\_\_\_\_  
Assistant City Manager for Operations

APPROVED AS TO FORM  
  
Legal Department City of Columbia, SC

**ATTACHMENT A**  
**(Metro NPDES Monitoring)**

**Record of Negotiations**

**Routine Sampling Events**

Parameter	Unit Price	Frequency	Total Price	Price to Expedite	Expedited Reporting Time
pH	8.00	365	2920.00	8.00**	24 hr
Dissolved Oxygen	8.00	365	2920.00	8.00**	24 hr
Total Residual Chlorine	8.00	365	2920.00	8.00**	24 hr
Fecal Coliform	20.00	150	3000.00	20.00**	24 hr
E. coli	20.00	215	4300.00	20.00**	24 hr
Total Suspended Solids	8.00	365	2920.00	12.00	48 hrs-72 hrs
5-day Biochemical Oxygen Demand	16.00	1460*	23360.00	16.00**	7 days
Ammonia as N	10.00	365	3650.00	15.00	48 hrs-72 hrs
Total Copper (Cu)	8.00	12	96.00	12.00	48 hrs-72 hrs
Nitrate/Nitrite as N	15.00	12	180.00	22.50	48 hrs-72 hrs
Total Kjeldahl Nitrogen as N	20.00	12	240.00	30.00	48 hrs-72 hrs
Total Phosphorus	8.00	12	96.00	12.00	48 hrs-72 hrs
Total Mercury (low-level) Subcontract Analysis	406.60	1	406.60	NA	NA
<b>Subtotal:</b>			<b>47008.60</b>		

#Price includes unit analysis cost plus additional cost to expedite.

\*\*No additional cost to expedite

\* Quantity updated per Addendum 3 from 365 to 730

\* Quantity updated per City of Columbia during negotiations from 730 to 1460 to include 730 duplicate samples for 5 day BOD per note 1 below.

+ Shipping for duplicate samples for 5-Day BOD Samples = 2920.00

Markup percentage for non-routine/emergency sampling above the unit price noted above: 50% Subcontract NA

List your laboratory's normal days/hours of operation below: M-F 8am-5pm

**NOTES:**

- I. The total in this cost sheet is for comparison purposes only. The actual number of samples per parameter may change during the contract term.
- II. The unit price includes sample pickup and/or collection and testing. Samples must be collected every day of the year at 10 a.m. ± 30 minutes.
- III. Non-routine/emergency sampling events apply to requests for sample collection and testing which fall outside of the laboratory's normal hours of operation. (i.e., outside of M-F, 8 am- 6 pm). Requests for additional sampling during normal business provided will receive pricing for routine sampling events as determined above.
- IV. Parameters with a sample quantity (frequency) of 12 as listed in Section I, will be collected on the 2nd Wednesday of every calendar month.
- V. Parameters with a sample quantity (frequency) of 1 as listed in Section I, will be collected on the 2nd Wednesday of calendar month January.
- VI. Any permit exceedences, missed holding times, or any other situation which may result in a noncompliance must be reported to the Metro WWTP verbally within 24 hours of becoming aware of the circumstance and followed up with a written notification within one business day of verbal notification.
- VII. Winning bidder must attend a mandatory site visit prior to providing services.
- VIII. All personnel must sign in and out at the front desk when on site.
- IX. The contract laboratory will supply owner with properly preserved bottles necessary for sample collection and analysis as per 40 CFR Part 136 Table 2.

**ATTACHMENT B  
(Metro NPDES Sludge Cake)**

**Routine Sampling Events**

Parameter	Unit Price	Frequency	Total Price	Price to Expedite #	Expedited Reporting Time
Metals (As, Cd, Cr, Pb, Ni)	40.00	4	160.00	60.00	48 hrs-72 hrs
<b>Subtotal:</b>			160.00		

#Price includes unit analysis cost plus additional cost to expedite.

Markup percentage for non-routine/emergency sampling above the unit price noted above: 50%

List your laboratory's normal days/hours of operation below: M-F 8am-5pm

**NOTES:**

- I. The total in this cost sheet is for comparison purposes only. The actual number of samples per parameter may change during the contract term.

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- II. The unit price includes sample pickup and/or collection and testing. Samples must be collected every day of the year at 10 a.m. ± 30 minutes.

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- III. Non-routine/emergency sampling events apply to requests for sample collection and testing which fall outside of the laboratory's normal hours of operation. (i.e.. outside of M-F, 8 am- 6 pm). Requests for additional sampling during normal business provided will receive pricing for routine sampling events as determined above.

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- IV. Parameters with a sample quantity (frequency) of 4 as listed in Section 1, will be collected on the 2nd Wednesday of calendar months October, January, April, and July.

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- V. Any permit exceedences, missed holding times, or any other situation which may result in a noncompliance must be reported to the Metro WWTP verbally within 24 hours of becoming aware of the circumstance and followed up with a written notification within one business day of verbal notification.

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- VI. Winning bidder must attend a mandatory site visit prior to providing services.

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- VII. All personnel must sign in and out at the front desk when on site.

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- VIII. The contract laboratory will supply owner with properly preserved bottles necessary for sample collection and analysis as per 40 CFR Part 136 Table 2.

