GS
2/21/13
Item No. 20

AN ORDINANCE 2013-02-21-0135

AWARDING A REVENUE CONTRACT TO LIQUID ENVIRONMENTAL SOLUTIONS OF TEXAS, LLC FOR USED COOKING OIL COLLECTION SERVICES FOR THE DEPARTMENTS OF AVIATION, PARKS & RECREATION, AND CULTURE & CREATIVE DEVELOPMENT WITH EXPECTED ANNUAL REVENUE OF $9,000.00.

* * * * * *

WHEREAS, in November 2012, the City issued a request for proposals (RFP) for cooking oil collection services for San Antonio International and Stinson Municipal Airports (Aviation Department); Farmer's Market Plaza (Culture & Creative Development Department) and the Commander's House (Parks & Recreation Department); and

WHEREAS, the proposal submitted by Liquid Environmental Solutions of Texas, LLC was evaluated by the selection committed and found satisfactory; and

WHEREAS, City staff recommends that the City award a contract to Liquid Environmental Solutions of Texas, LLC, **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee is hereby authorized to execute a contract with Liquid Environmental Solutions of Texas, LLC for used cooking oil collection services for a term of three (3) years with two (2) one-year renewal options. The contract in substantially final form is set out in **Attachment I** to this Ordinance.

SECTION 2. Funds generated by this Ordinance from locations at San Antonio International Airport will be deposited into Fund 51001000, Internal Order 233000000002 and General Ledger 4407719.

SECTION 3. Funds generated by this Ordinance from locations at Stinson Municipal Airport will be deposited into Fund 51001000, Internal Order 233000000014 and General Ledger 4407719.

SECTION 4. Funds generated by this Ordinance from locations managed by the Culture & Creative Development will be deposited into Fund 29604001, Internal Order 228000000147 and General Ledger 4407719.

SECTION 5. Funds generated by this Ordinance from locations managed by the Parks and Recreation Department will be deposited into Fund 11001000, Internal Order 226000000000 and General Ledger 4401810.

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SECTION 6. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 7. This Ordinance shall take effect immediately upon passage by eight (8) affirmative votes; otherwise it shall be effective ten (10) days after its passage.

PASSED AND APPROVED this 21st day of February, 2013.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Michael D. Bernard, City Attorney

Request for COUNCIL ACTION

City of San Antonio

Agenda Voting Results - 20

Name:	9, 10, 12, 13, 15, 16A, 16B, 17, 18, 19, 20, 21, 25, 26A, 26B, 26C
Date:	02/21/2013
Time:	09:56:55 AM
Vote Type:	Motion to Approve
Description:	An Ordinance awarding a revenue contract to Liquid Environmental Solutions of Texas, LLC for used cooking oil collection services for the departments of Aviation, Parks and Recreation and Culture & Creative Development with expected annual revenue of $9,000.00. [Ed Belmares, Assistant City Manager; Frank Miller, Director, Aviation]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				x
David Medina Jr.	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7	x					
W. Reed Williams	District 8		x			x	
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

ATTACHMENT I

CITY OF SAN ANTONIO

COOKING OIL COLLECTION SERVICES CONTRACT

FOR VARIOUS FACILITIES

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Contract is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 2013 and **Liquid Environmental Solutions of Texas, LLC**, acting by and through its authorized representative ("Contractor"), both of which may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Contract, the following terms shall have meanings as set out below:

"City" is defined in the preamble of this Contract and includes its successors and assigns.

"Contractor" is defined in the preamble of this Contract and includes its successors.

"Director" shall mean the Director of City's Aviation Department.

"Facilities" shall mean those locations from which Contractor must collect cooking oil for recycling purposes pursuant to this Contract.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Contract, the term of this Contract shall be three (3) years commencing upon issuance of a notice to proceed by the Aviation Director or his designee. City shall have the option to extend this Contract for two (2) additional one-year periods.

III. SCOPE OF SERVICES

Contractor agrees to provide the services described in this Article III entitled Scope of Services and pay City the Privilege Fee(s) in Article IV.

3.1 Overview. Contractor shall be provide the necessary equipment, materials and labor to safely and legally collect and recycle used cooking oil from the Facilities.

3.2 Start Up Services. Within two weeks of the passage of an Ordinance approving this Contract, the Contractor shall meet with the Managing Departments and conduct an initial site visit to determine Facility specific service needs. The Managing Departments and Contractor shall work together to determine the minimum size and number of regulation compliant service containers to be provided by the Contractor at no charge to the City for use at the Facilities. Contractor will work with the Managing Departments to set up scheduled or on-site collections and site specific requirements. Collections shall be scheduled during City's normal working days and hours unless other days/hours are required by City. Service containers shall be delivered and agreed upon services shall commence within one week of the initial site visit.

3.3 Collection. a) The Contractor shall be solely responsible for the collection and recycling of used cooking oil from the Facilities and ensure that all work is performed in accordance with general trade practices used within the industry. Contractor shall assume ownership of used cooking oil collected at the time of collection.

b) Contractor shall manage the used cooking oil collection frequency to prevent the service containers from exceeding 90% capacity. Contractor shall monitor service collection history data to determine the most effective service collection frequency and work with Managing Departments to adjust scheduled service as needed.

c) On each collection visit, Contractor will:

1) Report arrival to Facility contact person, if requested by Managing Department;

2) Pump and accurately record the volume of used cooking oil collected, in pounds;

3) Inspect the area around the service container(s) for stains, spills or signs of overflow and, if present, immediately wipe down and remove any residue;

4) Provide notice to Facility contact person of completion and verify volumes pumped, if requested by Managing Department

c) The initial facilities subject of this Contract are listed below. City reserves the right to add or delete Facilities

Facility Name	Facility Address	Managing Department
San Antonio International Airport - Terminal A	9800 Airport Blvd, San Antonio, TX 78216	Aviation
San Antonio International Airport - Terminal B	9710 Airport Blvd, San Antonio, TX 78216	Aviation
Stinson Municipal Airport	8535 Mission Road, San Antonio, TX 78214	Aviation
Farmers Market Plaza Building	612 W. Commerce, San Antonio, TX 78207	Culture & Creative Development
Commander's House	645 S. Main, San Antonio, TX 78204	Parks and Recreation
Special Events	Various	Various

3.4 Regulatory Compliance Contractor shall comply with all federal, state, and local laws and regulations governing the collection, transportation and recycling of used cooking oil and any activities performed by Contractor in fulfillment of its obligations under this Contract. Contractor shall be responsible for obtaining, maintaining, and providing City with copies of all required licenses, permits, registrations, and insurance.

3.5 Equipment.

a) The Contractor's trucks, trailers and/or service containers shall be easily identifiable and display Contractor's name and/or license number. The Contractor's vehicles shall be equipped with resources necessary to properly contain and clean any spills. Service containers must be properly labeled and shall be provided to City at no cost and shall remain property of successful Contractor during term of contract. Service container labels shall include the company name, contact information, and description of the tank.

b) Contractor must replace any damaged or missing labels at no additional cost to the City. Contractor shall repair, clean, or remove damaged or vandalized service containers as needed and as requested. Contractor shall replace service containers and/or provide additional service containers within 48 hours of receipt of City's request for same. Contractor shall provide double wall service containers upon request. Delivery, set up, replacement, and removal of service containers shall be provided to City at no cost.

c) The City of San Antonio reserves the right to inspect all Contractor's equipment and facilities at any time during the term of this contract.

IV. PRIVILEGE FEE, PAYMENT &PERFORMANCE GUARANTEE

4.1 Privilege Fee. Contractor shall pay a Privilege Fee for the right to pickup and recycle cooking oil (also referred to herein as "yellow oil") from the Facilities, as described below.

a) Contractor shall pay to the City, for each month of the Term, a Privilege Fee that shall equal **forty-five percent (45%) of market rate** per pound net yellow oil collected. Net yellow oil collected shall equal the gross volume yellow oil collected minus twenty-five percent (25%) deduction to account for anticipated /impurities.

b) The market rate per pound of yellow oil shall be the rate published by Jacob Publishing Company in the Gulf Coast Index on the last Monday of the preceding month. For months in which the published market rate shall equal $0.10 or less per pound, the Privilege Fee due shall be zero dollars ($0.00) for that specific month.

c) The Privilege fee shall be due and payable remitted without prior notice or demand by 15th day of the month for the prior calendar month. s after the expiration of each calendar month. for the immediately preceding calendar month, and shall be accompanied by a monthly report indicating the applicable market rate and shall list and sub-total as applicable, by location and department.

4.2 Miscellaneous charges. City reserves the right to assess charges in connection with the ordinary use or access to city facilities or the performance of regulated activities, as such may be established by Ordinance including, but not limited to, airport security badges, hazardous materials permit, waste disposal fees, etc.

4.3 Place of Payment All fees due hereunder shall be paid by Contractor by check payable to the City of San Antonio, which shall be delivered or mailed, postage prepaid to the address in this section or to such other address as may be designated in writing by Director.

City of San Antonio
ATTN: Accounts Receivable
457 Sandau Rd.
San Antonio, TX 78216

4.4 Time of Payment. Privilege Fees for each month of operations shall be due and payable by the fifteenth (15th) day of the month for the prior month. Miscellaneous charges shall be due within 15 days of invoicing.

4.5 Late Payment Charges. If fees required to be paid to the City hereunder are not made when such are due, including amounts identified as a result of any audit findings, are delinquent for a period of thirty (30) days or more from the date when such payment is due to City, Contractor shall pay City late fees thereon, from the date such fees or charges became payable to the date of payment at the rate of one and one-half percent (1.5%) per month; provided, however, that if the maximum rate then provided by law is less than one and one-half percent (1.5%) per month, then the rate shall be such maximum legal rate. City may, but is not obligated to, provide Contractor

with a written reminder when invoiced fees or charges have not been received within thirty (30) days of the due date. The parties hereto agree that such late payment charge represents a fair estimate of expenses the City will incur by reason of any such late payment. The City's acceptance of partial payments or late payment charges shall not constitute a waiver of Contractor's default with respect to Contractor's nonpayment nor prevent the City from exercising all other rights and remedies available to the City under this Contract or at law.

4.6 Performance Guarantee. Contractor shall deliver to the Aviation Director on or before the execution of this Contract and shall keep in force throughout the term hereof either an irrevocable letter of credit in favor of City drawn upon a bank satisfactory to City or a surety bond payable to City. The foregoing shall be in form and content satisfactory to the Aviation Director, shall be conditioned on satisfactory performance of all terms, conditions and covenants contained herein during the term hereof and shall stand as security for payment by Contractor of all valid claims by City hereunder. If a bond shall be delivered, it shall be issued by a sound indemnity company authorized to do business in Texas. The amount of the irrevocable letter of credit or surety bond to be delivered by Contractor to the Director on or before the date of the execution of this Contract shall be FIVE THOUSAND DOLLARS ($5,000.00). The amount of the irrevocable letter of credit or surety bond shall be adjusted as necessary so that such amount shall at all times equal half of the total Privilege Fees payable by Contractor to City during the immediately preceding 12-month period but in no event shall the irrevocable letter of credit or surety bond be reduced to less than FIVE THOUSAND DOLLARS ($5,000.00).

V. RECORDS RETENTION & REPORTING BY CONTRACTOR

5.1 Contractor's Records. (a) Contractor shall keep and maintain full and accurate books and source documents, in accordance with generally accepted accounting principles ("GAAP"), of all collections, sale, recycling and disposal of cooking oil performed under this Contract and of the operations of each subcontractor, joint venture partner or licensee and shall require and cause all such parties to prepare and keep books, source documents, records and accounts sufficient to substantiate those kept by Contractor (collectively, "Records"). The Records to be kept by Contractor at its principal business office in the United States shall include, without limitation, true copies of all federal, state and local sales and use tax returns and reports, daily collections and receipts from all sales and records of any and all transactions conducted pursuant to this Contract.

(b) Contractor shall retain any and all documents produced as a result of services provided hereunder for a period of five (5) years (hereafter referred to as "retention period") from the date of termination of the Contract If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Contractor to return the documents to City at Contractor's expense prior to or at the conclusion of the retention period. In such event, Contractor may retain a copy of the documents.

(c) Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Contractor understands and agrees that City will process and handle all such requests.

5.2 Reports by Contractor. (a) Contractor shall deliver to City:

(a) within 15 days after the expiration of each calendar month, a written statement on a form reasonably satisfactory to the Director signed by an officer of Contractor, showing the Gross collections made from the Facilities and the Privilege Fee due to City, if any ("Monthly Report" or "Monthly Statement"). At a minimum the Monthly Statement shall include the following information:

collection dates,
location of collections,
quantity of yellow oil collected by location, subtotaled by Department for the month,
quantity yellow oil collected by location for contract period to date
details of any spills/clean-ups during collection service.
Dollar value of collections
Dollar value of dockage/impurities deduction
City % market price

Monthly reports must be submitted each and every month even if no payment is due.

(b) Within ninety (90) calendar days of the anniversary of this Contract for each year the Contract is in effect and/or the termination of Contract, Contractor shall employ an independent certified public accountant, who shall prepare an audit of the gross yellow oil collections reported by Contractor for the immediately preceding contract year, and Contractor's calculation of the Privilege Fee paid to the City. The auditor, in its written report, shall certify that, in its opinion the Privilege Fee paid by the Contractor to the City during the preceding contract year was made in accordance with the terms of this Contract and correctly calculated. Such report shall also contain a list of the monthly gross and net collections as shown on the books and records of Contractor, which were used to compute the Privilege Fee made to City during the period covered by the audited statement. If Contractor fails to furnish any audited statement within the time required by this section, then Contractor shall pay within 10 days of written demand therefor by the City as an Additional Fee, a special handling fee of $100.00 per month until such statement is delivered to the Director. This remedy shall be in addition to other remedies provided herein or by law to the City.

VI. CITY'S RIGHT TO AUDIT

6.1 (a) Notwithstanding the acceptance by the City of payments, the City shall have the right to audit all Privilege Fees and other charges due hereunder. Contractor shall make available to the Director within thirty (30) days following the City's written request for the same at the Director's office in the Airport, or at other location designated by City, for the purpose of examination,

extracting and/or copying all books, source documents, accounts, records and reports filed with applicable government agencies of Contractor and any subcontractors, licensees and/or assignees, if any, in order to verify the amount of yellow oil collected from the Facilities and the amount of Privilege Fees due to City.

(b) For the purpose of verifying the gross and net collections of yellow oil as well as payment made to City hereunder, or any other reasonable business purpose, the City reserves the right to audit the Contractor's books and records of yellow oil collections, sales, and equipment used pursuant to this Contract at any time during the term of this Contract or , and any extensions thereof. If, as a result of such audit, it is established that the Contractor has understated its oil collections and/or the Privilege Fee by three percent (3%) or more in its Monthly Statements during the previous annual report period under this Contract, all reasonable expenses of said audit shall be borne by the Contractor, and any additional amounts due, shall immediately be paid by the Contractor to the City, with interest thereon at a rate of eighteen percent (18%) per annum, from thirty (30) days after the original date the Privilege Fee became due until such time as payment is made. If any audit shows that Contractor owes additional Privilege Fees, such owed amount and accrued interest shall be delivered to the City at the same time as the written audit results. Such interest shall not accrue with respect to disputed items being contested in good faith by Contractor

(c) If Contractor is not able to provide records as required under this Article, City reserves the right to review records/conduct an audit at Contractor's office within the continental United State of America, at Contractor's full expense. City shall be entitled and Contractor shall advance all expenses associated with conducting the audit.

VII. TERMINATION

7.1 For purposes of this Contract, "termination" of this Contract shall mean termination by expiration of the Contract term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Contract may be terminated by City upon thirty (30) calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Contract as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Contract:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Contract without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should Contractor default in the performance of this Contract in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have 15 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Contractor fails to cure the default within such 15 day cure period, City shall have the right, without further notice, to terminate this Contract in whole or in part as City deems appropriate, and to contract with another contractor to complete the work required in this Contract. City shall also have the right to offset the cost of said new Contract with a new contractor against Contractor's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets
7.4.2 Failing to perform or failing to comply with any covenant herein required
7.4.3 Performing unsatisfactorily
7.4.4 Failure to comply with airport security mandates
7.4.5 Failure to comply with environmental laws and/or regulations

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Contract shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Contract is terminated, Contractor shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Contractor, or provided to Contractor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Contract, Contractor shall submit to City its claims, in detail, for the monies owed by City for services performed under this Contract through the effective date of termination. Failure by Contractor to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Contractor of any and all right or claims to collect moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Contract.

7.8 Upon the effective date of expiration or termination of this Contract, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Contract.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Contract, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

VIII. NOTICES

Except where the terms of this Contract expressly provide otherwise, any election, notice or communication required or permitted to be given under this Contract shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express, UPS or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
ATTN: Airport Concessions Manager
9800 Airport Blvd.
San Antonio, TX 78216

If intended for Contractor, to:

Liquid Environmental Solutions of Texas, LLC
ATTN: Shang Goodwin, Account Executive
7651 Esters Blvd., Ste 200
Irving, TX 75063

Contractor's Billing Address:

Liquid Environmental Solutions
P.O. Box 203371
Dallas, TX 75320-3371

IX. AIRPORT SECURITY, SENSITIVE, SECURITY INFORMATION AND SAFETY PROGRAM

9.1 Airport Security.

9.1.1 To the extent Contractor will be responsible for work which necessitates entrance to the Air Operations Area or other secure area of the Airport, this Agreement is expressly subject to the airport security requirements of Title 49 of the United States Code, Chapter 449, as amended ("Airport Security Act"), the provisions of which govern airport security and are incorporated by reference, including without limitation the rules and regulations promulgated under it. Contractor is subject to, and further must conduct with respect to its Subcontractors and the respective employees of each, such employment investigations, including criminal history record checks, as the Aviation Director, the TSA or the FAA may deem necessary. Further, in the event of any threat to civil aviation, Contractor must promptly report any information in accordance with those

regulations promulgated by the FAA, the TSA and the City. Contractor must, notwithstanding anything contained in this Agreement to the contrary, at no additional cost to the City, perform under this Agreement in compliance with those guidelines developed by the City, the TSA and the FAA with the objective of maximum security enhancement.

9.1.2 Contractor must comply with, and require compliance by its Subcontractors, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons. Subject to the approval of the TSA, the FAA and the Aviation Director, Contractor must adopt procedures to control and limit access to the Airport Premises utilized by Contractor and its Subcontractors in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances. At all times during the Term, Contractor must have in place and in operation a security program for the Airport Premises utilized by Contractor that complies with all applicable laws and regulations. All employees of Contractor that require regular access to sterile or secure areas of the Airports must be badged in accordance with City and TSA rules and regulations.

9.1.3 Gates and doors located in and around the Airport Premises utilized by Contractor that permit entry into sterile or secured areas at the Airports, if any, must be kept locked by Contractor at all times when not in use, or under Contractor 's constant security surveillance. Gate or door malfunctions must be reported to the Aviation Director or the Aviation Director's designee without delay and must be kept under constant surveillance by Contractor until the malfunction is remedied.

9.2. Sensitive Security Information. In order for Contractor to provide the services subject of this Agreement it may be necessary for City to share certain Sensitive Security Information, as such is defined under various state statutes and federal regulations. Contractor agrees to guard any information received from City pursuant to this Agreement with utmost care and share such information only on a need-to know basis with its personnel and subcontractors especially when reviewing schematics, buildings plans, and other documents depicting access points to the airfield or critical infrastructure and security systems.

9.3 Safety Program. Contractor shall develop and adopt a safety plan to identify, report, and reduce/eliminate risks and hazards associated with performance of Contractor's duties under this Contract; Contractor shall file its safety plan with the Aviation Director. Contractor may satisfy this requirement by adopting the Airport's Safety Plan, also known as the SMS plan or manual. For further information, Contractor may call the Airport Safety Division at (210) 207-1656.

X. INSURANCE

10.1 Prior to the commencement of any work under this Contract, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Aviation Department, which shall be clearly labeled "*Cooking Oil Recycling* " in the

Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Contract until such certificate and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. In no instance will City allow modification whereby City may incur increased risk.

10.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors * c. Products/completed operations d. Personal Injury e. Contractual Liability f. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. g. Damage to property rented by you	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage g. $100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $5,000,000 per occurrence, to include AOA access

10.4 Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the City as additional insureds. Contractor shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

City of San Antonio
Aviation Department- Concessions Manager
9800 Airport Blvd,
Terminal A Suite 2091
San Antonio, Texas 78216

10.6 Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability polices;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of

coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this Contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Contract.

10.8 In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

10.9 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Contract.

10.10 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Contract.

10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Contract and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

10.12 Contractor and any subcontractors are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR' activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED

COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Contract. Persons retained to perform work pursuant to this Contract shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

12.2 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Contract. Compliance by subcontractors with this Contract shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees. Any references in this Contract to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

12.4 Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer or convey any interest in this Contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Contract in the event of default by the successor Contractor, assignee, transferee or subcontractor.

12.5 Any attempt to transfer, pledge or otherwise assign this Contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Contract, City may, at its option, cancel this Contract and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Contract. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Contract, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of "respondeat superior" shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Contract and that the Contractor has no authority to bind the City.

XIV. COMPLIANCE WITH NONDISCRIMINATION

14.1 Non-discrimination. Contractor shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities.

14.2 The Contractor agrees to include the above paragraph 14.1 in any subsequent subcontract covered that it enters to fulfill Contractor's obligations under this contract and cause those businesses to similarly include the statements in further subcontracts or agreements.

14.3 Contractor agrees that it will also submit, when requested by City, a report to the City, in a form acceptable to the City, describing the Contractor's subcontractor utilization for the entire Contract, and a breakdown of such utilization by location.

14.4 The Contractor's breach of its obligations under this Article XIV shall constitute an event of default and/or material breach by Contractor and shall entitle the City to exercise any and all of its contractual and legal remedies, including termination of this Contract.

14.5 The City reserves the right to apply any and all legal and contract remedies available under federal, state and local law, including but not limited to, responsibility determinations in future contracts, suspension/debarment procedures, and forfeiture of profits as provided elsewhere.

XV. CONFLICT OF INTEREST

15.1 Contractor acknowledges that it is informed that the Charter of the City of San

Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Contractor further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

Except where the terms of this Contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor. The Aviation Director shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City and in conformance with requirements set out by statute and/or Ordinance.

XVII. SEVERABILITY

If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Contract that is invalid, illegal, or unenforceable, there be added as a part of the Contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

Contractor warrants and certifies that Contractor and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services,

and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XIX. COMPLIANCE

Contractor shall provide and perform all services required under this Contract in compliance with all applicable federal, state and local laws, rules and regulations.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Contract shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

21.1 **THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Contract shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXII. LEGAL AUTHORITY

The signer of this Contract for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

This Contract shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIV. CAPTIONS

The captions contained in this Contract are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Contract.

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Contract, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits:

Exhibit A – City's Request for Proposals dated November 13, 2012 and related addenda
Exhibit B- Contractor's Proposal and related documents.

XXVI. ENTIRE AGREEMENT

This Contract, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO	**LIQUID ENVIRONMENTAL SOLUTIONS OF TEXAS, LLC**
_____	_____
Sheryl Sculley, City Manager	Shane Miller, Director of Sales
Date: _____	Date: _____

Approved as to form:

_____
City Attorney