

Solicitation No. P1768.23
ADDENDUM NO. IV
CITY OF HAGERSTOWN
HAGERSTOWN, MARYLAND
Operation and Maintenance Services for Pelletizer Facility

Date: Friday, February 3, 2023

Bids Due: Wednesday, February 15, 2023 at 2:00 PM

To Bidders:

This Addendum is hereby made a part of the Request for Proposal (RFP) Documents on which all bids will be based and is issued to clarify the original documents. Please acknowledge receipt of this Addendum at the appropriate space on the bid form by inserting its number and date. This Addendum consists of seventeen (17) pages. This Addendum forms a part of the RFP Documents as it supplements and/or modifies as follows:

ADDENDUM IV – QUESTIONS AND ANSWERS AND CHANGES TO THE RFP AND SAMPLE AGREEMENT DOCUMENTS

Solicitation No. P1768.23 Operation and Maintenance Services for Pelletizer Facility

The attention to bidders submitting proposals for the above project is called to the following addendum that contains answers to the questions submitted by the prospective bidders and changes to the RFP Documents. The items set forth herein, whether of omission, addition, substitution or clarifications are all to be included in and form part of the proposal submitted. This addendum shall take precedence or provide clarification.

The above referenced Addendum follows.

QUESTIONS AND ANSWERS

QUESTIONS ON THE RFP

Q1. Section 2.2.2 Feedstock quality has a material impact on the unit cost for processing. By not guaranteeing feedstock qualities is the City saying that the contractor has to process whatever is delivered, at the bid price, regardless of the quality of the materials. For instance, what if the feedstock would damage the equipment, is hazardous, or won't result in Class A Biosolids? Can the City please clarify the intent of this section and/or provide firm feedstock guarantees?

A1.The City understands that feedstock quality has an impact on operations and costs of the Pelletizer Facility. As indicated in **Section 2.2.2 of the RFP**, the City, in working with the City's engineer, to address a few deficiencies in the existing system/wastewater treatment plant (WWTP) operations that are expected to improve the quality and consistency of feed solids to the pelletizer facility.

Appendix E in the RFP provides the current average feed solids quality to the Pelletizer Facility. The City expects the contractor to accommodate, to the maximum extent feasible, daily and seasonal variations in the quantity of biosolids that may be provided by the owner as well as quality variations such as moisture content, volatile content, and chemical analysis as a result of variations in the influent wastewater quality and operational needs of the WWTP. The City will work with the contractor to develop "reasonable" quality criteria for the feed solids and will accommodate any reasonable requests on feed rate adjustments within the operating limits and without compromising the performance of the WWTP. **Per Section 2.3.1.1**, the contractor is allowed to dispose solids in a landfill if the solids

delivered are not in accordance with 40 CFR 503.13 Table III or if the solids contain hazardous materials.

Q2. Section 2.2.2 Without feedstock quality and quantity guarantees, the Contractor cannot provide performance guarantees such as dewatering efficiency, Class A product, return flows, utility consumption, etc. Will the City allow for price changes and/or relief from performance guarantees if there is not a feedstock quality and quantity guarantee?

A2. The City will not allow for price changes and/or relief from performance guarantees. However, the City recognizes that any valid technical constraints and/or planned process modifications indicated in **Appendix D of the RFP** could impact achieving performance guarantees in the first year of operations and will be willing to revise those guarantees through mutual discussions, at the end of the first year.

The following addition is made to **Section 4.3.1.D.i.a. of the RFP**:

“The City will recognize any valid technical constraints and/or planned process modifications indicated in **Appendix D of the RFP** that could impact achieving performance guarantees in the first year of operations and will be willing to revise those guarantees through mutual discussions, at the end of the first year.

Q3. Section 2.2.2 For determination of Dry Tons for determination of Performance Guarantees and/or payment, will city agree to average contractor’s lab analysis with City’s?

A3. The City will agree to a daily composite sample analyzed by the contractor for determination of dry tons of solids delivered for performance guarantees. The daily composite samples will be split with the City’s lab for verification.

Q4. Section 2.2.2 Other Sections mention City sampling and analysis. Will sampling and analysis be included in the City Responsibility Section? If so, can the City please provide its sampling plan and protocol for review?

A4. Per Section 4.3.1.D.iii.b., Regulatory compliance testing shall be performed by a certified third-party lab and will not be part of the scope of services. The Contract Operator may elect to equip for, and perform, its own sampling activities and analyses for purposes of process monitoring, operational improvements, and process modifications. The City will not provide the laboratory services to the Contract Operator.

Q5. Section 2.3.1.1 How is availability to be calculated for achieving the 96% requirement?

A5. System availability of 96% was calculated based on the equipment being available 50 weeks out of 52 weeks in a year, allowing two weeks for maintenance activities.

Q6. Section 2.3.1.1 Who bears the cost (both transportation and tipping fees) of landfill disposal under the three listed criteria for landfill disposal?

A6. The City will bear the costs for landfill disposal of solids for the three conditions listed under Section 2.3.1.1 and during outages caused by force majeure events. The costs for solids disposal during capital improvement projects and during planned outages of the Pelletizer Facility will be negotiated and agreed upon prior to the start of each project/outage.

Q7. Section 2.3.1.3 The City contemplated improvements to the POTW and the drying facility can significantly and materially alter the quality and/or quantity of the feedstock. As these improvements are contemplated and implemented, is the contractor able to negotiate with the City the impact to contract including unit prices, unit guaranteed utility consumptions, or other performance metrics? In addition, it may not be possible to meet the performance metrics (such as dewatering capture, facility uptime, and utility consumption) as proposed in the contract until certain improvement (such as sludge storage tanks, sludge pumps, cake bin improvements, and screening) are completed. Please advise how the City intends to handle this issue.

A7. Please see response to Question 2.

Q8. Sections 2.3.2.1 and 2.3.2.2 In fixed-price bids, sharing of cost information (other than where reimbursement or changes are being sought by the Contractor) is not the norm, as such cost savings are already included in the fixed-price bid. These objectives suggest the City desires a cost-plus arrangement. Can the City please clarify the expectations for these sections?

A8. The City needs to rely on actual O&M and capital costs for key functions such as dewatering/pelletization, solids distribution and/or disposal, etc. for performing cost of service analysis for its retail sewer rate setting purposes. Therefore, the City is expecting to have an estimate of how the annual aggregate contract fees are allocated across these unit processes, and not the underlying contractor cost detail.

In addition, as stated in **Section 2.2.2 of the RFP**, the City's responsibilities include paying for natural gas, electricity, potable water etc. and hence expects the Contract Operator to provide, as appropriate, variable cost information associated with these.

Given that the Asset Management Fee defined in **Section 4.3.2.B.ii** is subject to Annual Reconciliation process, and the City retains the ownership of the assets, the City expects Contract Operator to delineate and maintain adequate accounting of all minor and/or major capital items related costs.

Q9. Section 2.3.3.1 says the Contractor will perform major repairs and replacements, but 2.2.2 says the City will perform major capital projects. Please clarify how responsibility for both performance and cost will be delineated.

A9. Section 2.2.2 speaks generally to the City's responsibility for undertaking major capital projects, that are over the threshold of \$50,000 per event defined for capital projects in **Section 4.3.2.B.ii. Section 2.3.3.1** should be read in the context of the Proposer engaging in continuous best maintenance management practices and being ready to undertake Capital Items repairs and replacements, under the construct of Asset Management Fee threshold and associated contractual stipulations, and also support Capital Items projects, not under the Asset Management Fee component, but when requested by the City and subject to mutually agreed upon terms for the execution.

Q10. Section 2.3.3.2 Is the "communication conduit" between the pelletizer and the City SCADA intended to be more than just monitoring? Also, please provide a summary of the City's cyber security program so that the bidders can evaluate the security risks with tying into the City's systems

A10. The contractor will not be accessing the City's network. The City requires the communication conduit between the Pelletizer Facility and the City only for the City's operations staff to monitor Pelletizer Facility operations. The contractor is responsible for the security and integrity of the pelletizer facility's SCADA and IT systems as indicated in **Section 4.3.1.D.ii.a.**

Q11.Section 2.3.4 Please provide the City's reporting requirements. Contractor cannot price to a minimum if the City is going to require other reporting unless the Contractor is not required to pay for additional reporting requirements.

A11.Please refer **Section 2.3.4** for the City's reporting requirements. The reports shall include, at a minimum, monthly operations reports, maintenance and asset management reports, regulatory compliance reports, and air emissions reports.

Q12.Section 3.9 of the RFP asks for changes to proposed contract to be submitted with the bid and Activity 8 and Section 5.5 includes a negotiation period, but Section 1.3 says just submitting a bid is deemed acceptance of the agreement. Please clarify the intent.

A12.The proposer may propose modifications to the Sample Agreement language, in **ARTICLE I through ARTICLE V**, for the City's consideration and City will evaluate the acceptability of the proposed changes. The City deems the clauses presented in **ARTICLE VI through ARTICLE XXIV** as required terms and conditions.

Q13.Section 4.3.1.B.ii References union labor. Can the City please clarify the intent of this section as the current labor staff at the Pelletizer is non-union?

A13.As noted in **Section 4.3.1.B.ii**, the pelletizer facility is currently non-union, but the WWTP has union labor. The requirement that the proposers provide their experience working within a labor environment that includes employees that are members of unions and how existing labor agreements were accommodated or modified under a new operations contract does not necessarily imply that the labor environment is going to change in the pelletizer facility in the future.

Q14.Section 4.3.1.D.i.b Please confirm that during outages required for the City to implement a capital improvement, that the City will fund such disposal or that it will be factored into the capital improvement project.

A14.Please see response to Question 6.

Q15.Section 4.3.1.D.i.b The requirement to dispose of unstabilized dewatered solids at contractor's expense is limited to unplanned outages. What about during planned outages? Who pays if the outage is caused by a force majeure event?

A15.Please see response to Question 6.

Q16.Section 4.3.1.D.ii.b MDE does not require operators of similar facilities to hold S-Certifications. Can the City please explain the rationale for this requirement?

A16.The operator licensing requirements outlined in **Section 4.3.1.D.ii.b** is a requirement of the City and not a requirement by the Maryland Department of the Environment.

Q17.Section 4.3.2.B.iii If the Proposer does not provide a specific capital improvement project with the proposal and it becomes required or desirable to both parties in the future, how is this handled given this Section?

A17.Upfront Capital needs speak to the proposer's initial due diligence on the project based on its initial evaluation during site visits and based on the data provided. Future major Capital Items that are

identified as required or desired by both parties, could be addressed as a major Capital Item, for which the City is directly responsible, as referenced in **Section 2.2.2**, and subject to mutual agreement with the City.

Q18.Section 5.6 Please confirm that the “non-negotiable” record retention and audit of records section is limited to records required to demonstrate compliance with the contract such that, with respect to audit of costs, this is limited to those costs passed through to the City and not to the costs underlying any fixed compensation.

A18.The reports shall be all inclusive, following the solids trail from when they are received at the Pelletizer Facility to their final destination. The types of reports expected from the Contract Operator are indicated in the **Sample Agreement, ARTICLE III, Section 3.3.** i.e., the City expects these types of reports that will be defined in Exhibit 5, during final negotiations with the selected bidder, will be part of the record retention process. The record retention requirement will also be governed by any agency having jurisdiction.

Q19.Section 6.19 We request that a bidder may withdraw its bid at any time prior to award.

A19.Bidders will not be able to withdraw its bid after submission of the Proposals. Proposers need to make the decision to withdraw from the procurement process, prior to proposal submission.

Q20.Please confirm the executed contract will supersede Sections 6.23 and 6.24.

A20.Yes, the executed contract will supersede the RFP unless otherwise stated in the contract.

Q21.Appendix C Can the City please send the data in Excel format for analysis. In addition, can the City please provide the Feed Volatile Solids and Primary Solids Fraction by month.

A21.The City will not be able to provide Appendix C in Excel Format. The average monthly feed volatile solids and primary solids fractions are shown in Table 1.

Table 1. Monthly Average PS Fraction and Volatility of Feed Solids (2021)

2021	PS - % VS	PS Solids	WAS - %VS	WAS Solids	PS fraction
	% of TS	lb/d	% of TS	lb/d	%
Jan	84.6	11,400	75	8,600	57
Feb	86.1	10,900	73.7	6,800	62
Mar	83.6	8,300	73.6	7,300	53
Apr	83.3	8,500	71.2	7,800	52
May	87.7	12,400	69.7	7,500	62
Jun	87.6	11,400	69.5	7,200	61
Jul	87.2	10,500	69.5	6,600	61
Aug	87.1	9,600	68.9	7,400	56
Sep	82.6	11,300	70.9	7,500	60
Oct	87.6	11,900	73.2	6,200	66
Nov	89.5	10,000	72.8	6,500	61
Dec	86.6	8,800	72.9	6,700	57

Q22.Appendix D contains data showing large swings in polymer usage are noted on a monthly basis. Can the City provide any information related to these variations? Are any plant improvements planned to provide a more consistent sludge quality?

A22.Appendix D is a summary of Potential Facility Improvements and does not show any polymer usage data. Polymer dosage rates are shown in Pelletizer Facility Performance Data in **Appendix C of the RFP**, subsequently revised in **Attachment 1 of Addendum #2**.

Polymer dosage rates are set by the contract operator. The City is not able to provide any potential reasons for the wide swings in polymer usage seen from the Pelletizer Facility Performance Data. As shown in **Appendix E of the RFP**, the design modifications made during the recent upgrades did not change any of the solids process parameters to impact the quality of solids delivered to the Pelletizer Facility.

Q23.Addendum 2, Item #9 It is industry standard for coverage requirements to be met through excess/umbrella policy limits. We propose the following language be added to the insurance section: "Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis."

A23.Yes, coverage requirements can be met through excess/umbrella policy limits.

The following addition is made to **Section 6.24.2 of the RFP**:

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis."

Per **Section 6.24.4**, the City shall be named as the 'additional insured' to the contractor's insurance coverage submitted in the Certificate of Insurance.

Q24.Does the City test its biosolids for PFAS/PFOA content? If so, please provide test results.

A24.This information is not available since the City's biosolids have not been analyzed for PFAS/PFOA.

Q25.Please confirm industry standard bond forms from a surety are acceptable to the City. If they are not, can the City please provide the required bond forms?

A25.The City will accept surety standard bond forms.

Q26.Will City agree to a definition of Specification Sludge that includes criteria for items such as Primary Solids Fraction (~40%), Volatile Solids (40% to 55%), TKN (>4.0), fiber content (<25%), pH (>5), solids concentration (3.8% to 4.5%), and sludge able to pass through a 3/16" screen?

A26.The City will work with the contractor to develop "reasonable" quality criteria for the feed solids and will accommodate any reasonable requests on feed rate adjustments within the operating limits and without compromising the performance of the WWTP.

Q27.Annual Asset Management Fee – If the dryer is shut down for an unplanned repair that falls within the Annual Asset Management Fee threshold, will the City commit to approving the scope and cost of repair within 24 hours? If not approved within 72 hours, will City pay for additional costs related to cake disposal?

A27. The Proposer can state its position clearly, for City's consideration, by marking up its response to the Draft Sample Agreement.

Q28. Based on the data provided, there appears to be variations in sludge quality. This can be seen in the increase in polymer dosing. Can the City provide any further information on the variation in the sludge quality and its impact to the drying process?

A28. The design modifications made during the recent upgrades did not change any of the solids process parameters to impact the quality of solids to the Pelletizer Facility as can be seen from **Appendix E of the RFP**.

Q29. Does the City have any large industrial processing inflows? If so, how do changes in these inflows impact the drying process?

A29. The City receives industrial flows and has a delegated pretreatment program for all industries with flows greater than 25,000 gallons per day or if identified as categorical within the pretreatment regulations. The industries discharging to the City have permits to comply with under federal and state regulations. There have not been any chronic non-compliance issues with any of the permitted industrial users.

Q30. The RFP requires the proponents to commit to meeting guarantees on utilities consumption based on historic data. However, the proponents are also asked to improve the facility in ways that may impact overall efficiency of the plant with respect to utilities. This includes requests to improve solids capture from the dewatering system (could impact cake quality and thus natural gas usage) as well as potential design modifications for safety and/or process optimization that could add equipment or change equipment utilization (could impact electricity consumption). We would request that language be added to the RFP that would allow the utilities guarantees to be revisited based on the changes to the operation of the drying facility being implemented.

A30. Please see response to Question 2.

Q31. The utilities guarantees stated in the RFP seem to have been set very closely to the average values of consumption per dry ton after the dryer upgrades in 2019/2020. However, there is noticeable variance in the consumption data and the current guarantees are less than one standard deviation from the average based on the data. Since 2020, there are several months for each utility category that would be above the current guarantees. Additionally, benchmarking the electricity guarantee against our comparable operating facilities raised concerns. The electric consumption from the RFP data/guarantees is significantly lower than comparable facilities, even when taking differences in dewatering equipment into account.

With these concerns, and with proponents being requested to make facility improvements that could also impact utilities guarantees, we request the guarantees be reconsidered to take into account the variance in the monthly data provided in the RFP. The table on the following page provides an analysis of the guarantees:

	Therms/DT	kWh/DT	Potable Gal/DT	Industrial Gal/DT
Utilities Guarantees	85	225	1,100	14,000
Post-Upgrade Average	85	217	1,042	13,210
Post-Upgrade St. Dev.	7	26	133	1,919
Average + 1 St. Dev.	92	243	1,174	15,129
Average + 2 St. Dev.	99	269	1,307	17,049

A31. Please see response to Question 2.

Q32. The data provided in the RFP shows a significant drop in belt filter press capture after the pelletizer plant upgrades. Has there been any root cause found for what caused this drop?

A32. As shown in **Appendix E**, there has not been a significant change in the average feed solids quality to the Pelletizer Facility since the upgrades. One key modification that was made during the upgrades was the removal of a day tank from the Pelletizer Facility. Before the upgrades, the thickened solids from the WWTP were pumped to the day tank and ferric chloride was added to the day tank, which allowed for more contact time and some degree of coagulation, upstream from dewatering. The day tank also provided flow equalization to the BFP and helped settle out some of the debris in the feed sludge. Without the day tank, it is believed that there is less contact time for ferric chloride with the feed solids, possibly impacting dewaterability of the solids.

Q33. Please provide any data available on ortho-phosphate and Total Nitrogen levels in the BFP filtrate from the ongoing sampling referenced in the RFP.

A33. The ortho-phosphate concentrations in the BFP Filtrate are shown in **Addendum #2 - Attachment 1 under “Pelletizer Cake/Filtrate Quality”** data. The data from additional sampling conducted by the City are shown in Table 2.

Table 2. BFP Filtrate Quality

Date	COD	NH _x -N	PO ₄ -P
10-Jan-23	3,448	79	288
11-Jan-23	3,080	105	288
12-Jan-23	5,524	5	259
13-Jan-23	2,348	5	261
14-Jan-23	1,572	5	12
15-Jan-23	SNP	SNP	SNP
16-Jan-23	SNP	SNP	SNP
17-Jan-23	2,748	95	308
18-Jan-23	2,820	73	285
19-Jan-23	2,920	72	267
20-Jan-23	2,604	71	266
21-Jan-23	SNP	SNP	SNP
22-Jan-23	SNP	SNP	SNP
23-Jan-23	SNP	SNP	SNP

SNP-sample not provided

Q34.Section 3.3 of the Draft Services Agreement states that proponents will be required to “receive, dewater and dry a blend of thickened primary and waste activated solids to achieve a minimum 90% capture of the solids delivered”. This can be interpreted as referencing the overall facility capture. The answer to Question #44 in Addendum 3 noted that the facility capture as a whole has only averaged ~82% since 2020 (see Table 5. Biosolids Processed and Days of Operation of the Pelletizer Facility). Please reconsider the target capture or require that a capture will be agreed to after an evaluation is performed.

A34.The requirement to capture 90% of solids delivered to the pelletizer facility, referenced in **Section 3.3 of the Draft Services Agreement**, is the overall facility capture. As indicated in **Section 4.3.1.D.i.a of the RFP**, at current facility capture rates of ~82%, the City is experiencing higher than desirable concentrations of suspended solids, biological oxygen demand, and ortho-phosphate in the recycle stream from the Pelletizer Facility that is impacting the City’s ability to meet the final effluent quality requirements from the WWTP. Therefore, the City will require the Contractor to improve capture efficiencies through the Pelletizer Facility. As indicated in **Section 2.2.1.3 of the RFP**, the City is seeking to make improvements to the chemical (ferric chloride) feed system at the Pelletizer Facility to better control phosphorus concentrations in the recycle stream to the WWTP. The changes being considered include changes to the chemical feed location and/or a change in chemical, both of which may alter the quality of solids to the dewatering process and possibly impact the performance of the BFP. Some level of testing and optimization, including BFP operations optimization and/or a change in polymer type, may be required to ensure good capture efficiencies following the upgrades. The City recognizes that any valid technical constraints and/or planned process modifications indicated in **Appendix D of the RFP** could impact achieving performance guarantees in the first year of operations and will be willing to revise those guarantees through mutual discussions, at the end of the first year.

Please see response to Question 2.

Q35.Section 4.3.2B, Part ii – Annual Asset Management Fee in the RFP states that the fee should cover items that cost between \$10,000 and \$50,000. How are costs greater than \$50,000 going to be recovered?

A35.Costs greater than \$50,000 will be handled directly by the City as a CIP item. **Section 2.2.2** speaks generally to the City’s responsibility for undertaking major capital projects, that are over the threshold of \$50,000 per event defined for capital projects in **Section 4.3.2.B.ii**.

Q36.The RFP cites “security” of the facility. Is this to be construed as physical security of the facility or is it related to IT infrastructure, or both? Please confirm.

A36.Answer The term “security” as referenced in **Section 2.3.6 of the RFP** implies physical security of the facility. The “safety and security program”, mentioned in **Section 4.3.1.D.ii.a of the RFP**, implies both physical security of the facility and the security and integrity of the pelletizer facility’s SCADA and IT systems.

QUESTIONS ON THE SAMPLE SERVICE AGREEMENT

Q39.**Section 2.2 and 2.3** In order to ensure that bids received are apples-to-apples, the City should establish the Amortization Period and Annual Index Factor. These can significantly impact margin and therefore the bid prices. This will mean either the City will receive bids making vastly different assumptions or will receive bids qualified to require that the City accept those assumptions in order to maintain price. For example, if a Proposer bases its pricing on getting a 100% Annual Index Factor (and using a particular index), but the City requires a lower factor, then the Proposer will need to increase its base

price and will therefore have to condition its bid. All of this will create variables amongst the proposals that will not allow the City to accurately gauge the real differences in the pricing proposals.

A39. Annual Index Factor:

The cost proposal is a proposal from the bidder that is subject to negotiations. Evaluation of the proposals will be based on best cost value relative to the services the Proposer defines in the Technical and Cost Proposals and will include the evaluation of the impact of the specific index or combination of indices for escalation of the Base and Asset Management fees that the Proposer provides. As indicated in the Sample Agreement, the Annual Index factor will be subject to negotiation.

Amortization Period:

With the exception of the Upfront Capital items, the Amortization Period applies to the Extraordinary Items Component (EIC) items which could occur anytime during the contract term. The handling of the recovery of capital costs will thus be a discussion item with the City as to the best path forward with regard to capital costs. Hence, as indicated in the Sample Agreement, the Amortization Period is subject to negotiation.

Q40. Section 2.5 This definition should include the RFP language to define the values. We suggest inserting the following language from the RFP: “The City will guarantee a minimum annual average thickened solids quantity of 45,000 gpd and a maximum annual average thickened solids quantity of 80,000 gpd at an average solids concentration of 3.8 to 4.5 percent total solids.”

A40. Proposer can suggest the edits, in its marked up Draft Sample Agreement, for the City’s consideration.

Q41. Section 2.8 Capital Items definition is too vague. We suggest a dollar threshold be established for this category. In context, this definition, Section 3.6.ii.a and Section 5.5 seem to overlap. It is unclear what items go in which category. In order to ensure that Proponents submit comparable bids, clarity on how this works is essential.

A41. The definition provides a factual description of what type of activities are typically deemed Capital Items. **Section 3.6.ii.a** and **Section 3.6.ii.b** provide clarity on the fact that the City will be responsible for capital items that arise as a consequence of mutual agreement on capital needs at the Facilities and/or uncontrollable circumstances. In addition, **Section 5.4** provides the dollar threshold for the Capital Items to be covered under Asset Management Fee.

Q42. Section 2.8 and 2.33 Will Capital Items (or EIC Capital Items) costs include SG&A and profit? If not, the Contractor will be incentivized to outsource all Capital Items work when self-performance could be more efficient and cost sensitive.

A42. Self-performance of Capital Items, as described under Asset Management Fee in **Section 5.4**, implies that the Proposer’s labor costs associated with those Capital Items will already be recovered through the Base Fee. As implied in **Section 5.4**, for Asset Management thresholds, the costs subject to the thresholds will be exclusive of Proposer’s internal labor already, which is already covered in the Base Fee. The appropriate staffing balance, for Asset Management thresholds, is up to the Contract Operator to decide.

Q43. Section 2.10 This definition is incomplete which does not allow proper assessment of risk. Suggested language can be provided upon request.

A43. Proposer can suggest a language for the City’s consideration. This will be finalized during negotiation.

Q44.Section 2.14 and 2.65 Pandemic/epidemic should be added to the “included” list for each party’s Uncontrollable Circumstances

A44. Proposer can suggest the edits in its marked up Draft Sample Agreement for the City’s consideration.

Q45.Section 2.44 Index Factor is supposed to be defined in Attachment B, but Attachment B is the Dispute Resolution procedure. Please clarify.

A45. Definition will be revised as follows:

“2.44 Index Factor – Shall have the meaning given this term in **ARTICLE V, Section 5.3 and Section 5.4.**”

Q46.Section 2.45 and 2.49 Influent/Non-Specification Influent definitions need to be substantially improved. Quality and quantity (including rate of delivery) need to be addressed. Processes at the WWTP (including, for example, changes in chemical treatment, solids concentrations, distribution of primary and WAS and age of delivered sludge) or at industries contributing to the sewage system (such as paper processors, meat renderers, etc.) can have severe and deleterious effects on the ability of the Facilities to dewater, dry and otherwise perform as intended. In addition, while right now volumes are limited by the size of the WWTP, there is nothing that prevents the City from expanding the WWTP, taking in third party material and delivering it to the Facility for processing without any change in compensation. This may require changes to Article IV as well.

A46. Proposer can suggest the edits, in its marked up Draft Sample Agreement, for the City’s consideration. The City will work with the contractor to develop “reasonable” quality criteria for the feed solids and will accommodate any reasonable requests on feed rate adjustments within the operating limits and without compromising the performance of the WWTP.

Q47.Section 2.49 Please change “hazardous wastes” to “Hazardous Substances” to match preceding definitions.

A47. Proposer can suggest the edits, in its marked up Draft Sample Agreement, for the City’s consideration.

Q48.Section 2.65 Please make reciprocal to Section 2.14 by adding “but not be limited to any of the following” after the word “include”

A48. Proposer can suggest the edits, in its marked up Draft Sample Agreement, for the City’s consideration.

Q49.Section 2.65 While there is relief for Change in Law (Section 2.65(b) should be Change in law, not Change in Regulation), will the City consider adding more explicit provisions regarding retention of liability for PFAS-related items? PFAS litigation is occurring prior to any federal enactments or EPA regulations (or Maryland regulations for that matter). In this case, the City should, for purposes of PFAS-related liabilities, be considered the sole owner of the Influent and the Biosolids with the Service Provider’s liability and indemnity limited to breaches of Applicable Laws (not common law tort claims related to PFAS). Since PFAS contamination is no longer insurable, only an entity with a tax base to which it can pass contamination costs can afford to retain this risk.

A49. Proposer can suggest the edits, in its marked up Draft Sample Agreement, for the City’s consideration.

Q50.Section 2.75 Where is User Charge System used in the agreement?

A50.User Charge System is not used in the agreement.

Q51.Section 3.3.i.d We assume the remote read-only access can be provided via a private cable. This increases system security versus remote access. Please confirm.

A51.The city will work with selected bidder to implement the best fit read-only access option. Proposer can suggest the edits, in its marked up Draft Sample Agreement, for the City's consideration.

Q52.Section 3.3.i.e. Please explain what "related financial matters" is intended to cover. Where pricing is on a lump-sum or unit-priced basis, customers should not be entitled to underlying cost data. Access to underlying cost data is only appropriate where the customer pays on a cost pass-through or cost-plus basis. This is applicable to Section 5.9 and Article XIII as well.

A52."related financial matters" is intended to cover various costs referenced in the clauses stated in **ARTICLE V**.

Q53.Section 3.6.ii.a. Does not include replacement and does not include age/useful life. Who is responsible for replacement of capital items that wear out or age out of their useful life?

A53.Section 3.6.ii.a Capital Items does not include replacement of capital items that fall under the Asset Management Fee defined in **ARTICLE V, Section 5.4**. The Asset Management Fee as defined in **ARTICLE V**, Section 5.4 is limited to repair and replacement of Capital Items that cost greater than \$10,000 but less than \$50,000 per event. Any repair and replacement of Capital Items that exceed the Asset Management Fee threshold are subject to discussion and funding by the City. Improvements will be subject to discussion with the City and will be the general responsibility of the City. with a sub agreement arrived at if the City sees value in the proposal.

Q54.Section 3.6.ii.b Why is the process limited to UC capital items? Why wouldn't this process apply to improvements and other modifications/replacements as well?

A54.This process is not just limited to Uncontrollable Circumstance capital items. As described in **Section 3.6.ii.b**, it also applies to Capital Items that needs to occur to repair or replace any damaged or destroyed portion of the Facilities necessary for the Service Provider to perform its obligations under the Service Agreement. This process would apply to all asset repair and replacement Capital Items greater than \$50,000 per event.

Q55.Section 3.9 Are these items to be paid for and owned by the City or will they be owned by the Service Provider and removed at the conclusion of the Term?

A55.Any items, including spare parts, purchased by the contractor will be owned and removed by the contractor. Items purchased by the City will be owned by the City and do not have to be removed at the conclusion of the contract term. All spare parts placed in-service by the contractor will be owned by the City.

Q56.Section 5.2 The Calculation of Annual Service Fee needs to be defined for all bidders to allow for an equal comparison between proposals.

A56.The City’s evaluation of the Technical and Cost proposals will be based on best cost value relative to the services the Proposer defines in the Technical and Cost Proposals. Accordingly, **Section 5.2** will be defined and finalized in the Agreement guided by the selected proposal and associated contract negotiations.

Q57.Section 5.5 Is this only adjustments to the Base Fee (other than by an index) or are the contemplated adjustments to the Service Fee intended to be solely based on adjustments to the Asset Management Fee (and anticipated EIC)? (Note reference to 5.2 here should be to 5.5 and the reference to 5.4 here should be a reference to 5.6.)

A57.Annual Service Fee estimate that the Proposer will provide for the following fiscal year, will include both Base Fee and Asset Management Fee. As indicated in **Section 5.2** of the Sample Agreement, the calculation will be defined and finalized, subject to negotiations with the selected bidder.

As indicated in the RFP, **Section 4.3.2,B.i**, “Annual Base Fee will be subject to an annual escalation factor, to be mutually agreed, for which a lower and upper bound threshold will likely be established during contract negotiations.” As indicated in the RFP, **Section 4.3.2,B.ii**, “The Proposer shall reflect the Annual Asset Management Fee as an annual budgetary number, subject to annual reconciliation. The City envisions this annual fee to be not subject to any annual escalation factor but subject to periodic adjustment by mutual agreement.”

The second paragraph in **Section 5.5** of the Sample Agreement is amended to read as follows: “The Service Provider may amend its estimate at any time before March 31st of such Fiscal Year by a statement delivered to the City. Except with respect to adjustments to the Extraordinary Items Component of the Service Fee, the estimates made in accordance with **Section 5.5**, will be the basis of all monthly payments required to be made by the City under **Section 5.6** during such Fiscal Year until the annual reconciliation accounting is performed as defined in **Section 5.6**.”

Q58.Section 5.7 Please confirm that the Base Fee will be adjusted by the Adjustment Index. Will the City entertain such adjustments more frequently than annually?

A58.As indicated in the RFP, **Section 4.3.2,B.i**, “Annual Base Fee will be subject to an annual escalation factor, to be mutually agreed, for which a lower and upper bound threshold will likely be established during contract negotiations.” The City will not entertain such adjustments more frequently, other than the annual adjustment.

Q59.Section 5.8 Please explain how this Section is supposed to work. The definition of Base Load (actually Base Flow and Load) does not contemplate any identification of volume and appears to be calculated annually in arears. Without a base number, a deviation cannot be calculated. Rather than Cost Substantiation, deviations in solids concentration or volumes should be based on unit pricing which should be part of Proposers’ bid submittals (and subject to escalation) to enable the City to better compare proposals and budget for costs each year.

A59.Please reference **Section 4.3.2.B.i of the RFP** for base loads. If the flow and solids load to the Pelletizer Facility exceeds the maximum flow and load threshold, the contractor is required to substantiate the additional costs incurred for processing and distribution and/or disposal of the excess solids during year-end accounting reconciliation.

Q60.Section 7.1.ii Will excess/umbrella coverage be considered to meet aggregate limit requirement?

A60.The contractor can do excess/umbrella coverage to reach the applicable levels of coverage. The City shall be named as the ‘additional insured’ to the contractor’s insurance coverage submitted in the Certificate of Insurance.

Q61.Section 7.3 Will the City accept the surety standard bond form? If not, please provide one for review and question/comment.

A61.The City will accept surety standard bond forms.

Q62.Section 7.3 Please confirm an annually renewable bond is acceptable. A term bond is not feasible.

A62.Annually renewable bond is acceptable as long as there is no lapse.

Q63.Section 7.3 Please provide the Guaranty referred to in Section 7.3. Please explain how the City is evaluating the need for such guaranty and determining who must/can deliver a guaranty. The consent requirement in this section effectively gives the City a veto right over a change of control of Service Provider which is problematic.

A63.Per ARTICLE VII Section 7.3, the City requires the Service Provider to provide and maintain a Guaranty for performance for the duration of the contract and any extensions granted. The guarantor will be determined on a case-by-case basis, depending on the organizational structure of the contracting firm and will be discussed and agreed upon during contract negotiations. Proposer can suggest the edits, in its marked up Draft Sample Agreement, for the City’s consideration.

Q64.Article VIII This provision should be limited to the extent of Service Provider’s negligence or willful misconduct. A reciprocal indemnification obligation by the City to the Service Provider should be added. Proposed language can be provided upon request.

A64.Proposer can suggest the edits, in its marked up Draft Sample Agreement, for the City’s consideration.

Q65.Article IX Our experience is that IT infrastructure requirements can be very expensive. If these are not determined sufficiently in advance of the bid due date, will the City include these as Upfront Capital Items?

A65.The IT infrastructure requirements and associated costs are to be determined and agreed upon as part of the negotiations.

Q66.Article X City should pay within 30 days of submission, not submission and approval, which has no time limit. Late payments (by either party) should accrue interest at lesser of 1.5% per month or maximum rate allowed by law from due date until paid. This should also be the rate in 21.2 (it should be higher than the Prime Rate).

A66.Proposer can suggest the edits, in its marked up Draft Sample Agreement, for the City’s consideration.

Q67.Article XI Will the City include an undertaking to use reasonable efforts to obtain appropriations each year during the Term?

A67.The Pelletizer Facility O&M has been fully funded in the past and the City will make reasonable effort to obtain appropriations each year during the term of this contract. This will be discussed during contract negotiations.

Q68.Articles XII and XIII Please confirm this section is only limited to reporting records and data and does not include cost information except where it pertains to work completed on a cost-plus or cost substantiated basis.

A68.In addition to the reporting records and data, ARTICLE XII and ARTICLE XIII also includes O&M cost data including pass-throughs, and capital costs for key functions such as dewatering/pelletization, solids distribution and/or disposal etc. Please see response to Question 8.

Q69.Article XV Will the City entertain language to prevent a course of conduct from being deemed an amendment?

A69.Proposer can suggest the edits, in its marked up Draft Sample Agreement, for the City's consideration.

Q70.Article XVI The default for non-payment (by either party) should be for failure to pay undisputed amounts within 30 days after the date payment is due.

A70.Proposer can suggest the edits, in its marked up Draft Sample Agreement, for the City's consideration.

Q71.Section 16.2 Other than payment cure period, please change cure periods to business days

A71.Proposer can suggest the edits, in its marked up Draft Sample Agreement, for the City's consideration.

Q72.Section 16.2(iii) Please delete the ratings requirement.

A72.Proposer can suggest the edits, in its marked up Draft Sample Agreement, for the City's consideration.

Q73.Section 16.3b The cure periods should be the same for both parties.

A73.Proposer can suggest the edits, in its marked up Draft Sample Agreement, for the City's consideration.

Q74.Section 16.3c The time periods to dispute a default should be the same for both parties.

A74.Proposer can suggest the edits, in its marked up Draft Sample Agreement, for the City's consideration.

Q75.Article XVII Does not adequately compensate Service Provider which is entering into this contract in the expectation of a long-term arrangement. There should be a separate termination fee (to be negotiated) which partially compensates the Service Provider for the opportunities it foregoes to perform this work and the lost profits anticipated by undertaking this contract. The notice provision is also too short. For these type contracts we typically see 180 days (or more) notice provisions.

A75.Proposer can suggest the edits, in its marked up Draft Sample Agreement, for the City's consideration.

Q76.Article XVIII Inconsistent with Article XVI. Termination for Cause (for both parties) should be inextricably linked to a termination for a matured Event of Default (i.e., after failing to cure within the

given time frame). Termination for Cause is exactly the remedy for an Event of Default but as drafted here it is a stand-alone remedy and there is no remedy tied to an Event of Default. Further, the damages provision is inappropriate. If either party terminates the other for cause, it should be entitled to collect damages available at law (e.g., cover damages for the City).

A76. Proposer can suggest the edits, in its marked up Draft Sample Agreement, for the City's consideration.

Q77. Article XIX Subcontracting should have a dollar threshold attached to it. As drafted the City would have to approve a subcontractor coming in to clear a clogged drain or clean the offices.

A77. ARTICLE XIX refers to subcontracting of the core operational functions and does not cover functions paid for by the contractor.

Q78. Section 22.1.i. There should be some qualifier to resumption of service. For example, if the Facility is offline for an extended period of time, it may take time after the cause has ceased to reseed, and effectively recommission, the Facility before full operations can recommence.

A78. Proposer can suggest the edits, in its marked up Draft Sample Agreement, for the City's consideration.

Q79. Article XXIII Agreements to agree are generally unenforceable. We recommend requiring each Proposer to include in its proposal performance incentives so that the City may evaluate those as part of selecting a preferred proponent.

A79. As indicated in the Sample Agreement, the City and the Proposer will define and finalize the language for this **ARTICLE XXIII**, through negotiation and mutual agreement.

Proposers can suggest performance incentives in the Technical Proposal, as discussed in **RFP Section 4.3.1.D.i.d** "Innovative Approaches to Add Value".

Q80. Article XXIV (or Article IV): The City should have an obligation to enforce its source control requirements.

A80. Proposer can suggest the edits, in its marked up Draft Sample Agreement, for the City's consideration.

Q81. Attachment A What Federal Clauses are anticipated by Attachment A? Depending upon the clause, these could impact pricing.

A81. Applicable Federal Clauses are to be determined during negotiations.

Q82. Exhibit 4 This refers to Value-Added projects which do not appear elsewhere in the contract. The concept and process should be defined and incorporated into the contract provisions including the payment article.

A82. As indicated in **Exhibit 4**, "The content of this section is subject to the structure of the final agreement". The exhibit is an example service fee calculation to demonstrate the fee structure that is defined in the final contract with the selected bidder. Any reference to Value-Added projects in the Exhibit will be applicable only if Value-Added projects are defined in the finalized contract.

Q83. Exhibit 5 Reporting obligations can be onerous and can require additional FTEs. Prior to pricing, the proposers need to understand the extent of the reporting requirements in order to staff the Facilities appropriately. Kindly provide Exhibit 5 detail ASAP.

A83. The types of Reports expected from the Contract Operator are indicated in **ARTICLE III, Section 3.3.i.e.** These types of reports will be listed in **Exhibit 5**, during final negotiations with the selected bidder.

Tyler French, Procurement Administrator
City of Hagerstown