



SERVICE AGREEMENT NO. 65144

Autoscale System Support

THIS **Autoscale System Support Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Mettler-Toledo, LLC. ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has bid to provide Autoscale System Support in response to Request for Bid/Proposal No. SS 65144 ("RFB/RFP"), which RFB/RFP includes the required scope of work and all specifications and which RFB/RFP and the Contractor's bid or proposal response, as applicable, are incorporated by reference in this Agreement as Exhibits 1 and 2, respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, City and Contractor agree as follows:

1. **Scope.** Contractor will provide Autoscale System Support ("Services") in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety, and in accordance with Exhibit 2.
2. **Term.** This Agreement is for five years, with performance commencing upon the date of issuance of a notice to proceed from the Contract Administrator or Purchasing Division. The parties may mutually extend the term of this Agreement for up to zero additional zero-month/year periods ("Option Period(s)"), provided, the parties do so in writing and prior to the expiration of the original term or the then-current Option Period. The City's extension authorization must be executed by the City Manager or designee.
3. **Compensation and Payment.** This Agreement is for an amount not to exceed \$84,647.00, subject to approved extensions and changes. Payment will be made for Services completed and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. Any amount not expended during the initial term or any option period may, at the City's discretion, be allocated for use in the next option period.

Invoices will be mailed to the following address with a copy provided to the Contract Administrator:

City of Corpus Christi
Attn: Accounts Payable
P.O. Box 9277
Corpus Christi, Texas 78469-9277

4. **Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Name: Gabriel Maldonado
Department: Solid Waste Department
Phone: (361) 826-1986
email: GabrielM3@cctexas.com

5. **Insurance; Bonds.**

(A) Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.

(B) In the event that a payment bond, a performance bond, or both, are required of the Contractor to be provided to the City under this Agreement before performance can commence, the terms, conditions, and amounts required in the bonds and appropriate surety information are as included in the RFB/RFP or as may be added to Attachment C, and such content is incorporated here in this Agreement by reference as if each bond's terms, conditions, and amounts were fully set out here in its entirety.

6. **Purchase Release Order.** For multiple-release purchases of Services to be provided by the Contractor over a period of time, the City will exercise its right to specify time, place and quantity of Services to be delivered in the following manner: any City department or division may send to Contractor a purchase release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and Services will not be rendered until the Contractor receives the signed purchase release order.

7. **Inspection and Acceptance.** City may inspect all Services and products supplied before acceptance. The products shall be deemed accepted upon delivery or calibration, if Subcontractor is responsible for calibration (for products) and services shall be deemed accepted upon completion, being upon issuance of installation, calibration, or any other applicable certificate signifying completion. Any Services or products that are provided but not accepted by the City must be corrected or re-worked immediately at no charge to the City.
8. **Warranty.**
- (A) The Contractor warrants that all products supplied under this Agreement are new, quality items that are free from defects, fit for their intended purpose, and of good material and workmanship. The Contractor warrants that it has clear title to the products and that the products are free of liens or encumbrances.
- (B) In addition, the products purchased under this Agreement shall be warranted by the Contractor or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.
- (C) Contractor warrants that all Services will be performed in accordance with the standard of care used by similarly situated contractors performing similar services.
9. **Quality/Quantity Adjustments.** Any Service quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator.
10. **Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.
11. **Independent Contractor.** Contractor will perform the work required by this Agreement as an independent contractor and will furnish such Services in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Contractor be considered an employee of the City.

- 12. Subcontractors.** Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Contractor must obtain prior written approval from the Contract Administrator unless the subcontractors were named in the bid or proposal or in an Attachment to this Agreement, as applicable. In using subcontractors, the Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Contractor. All requirements set forth as part of this Agreement, including the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the work. The City may, at the City's sole discretion, choose not to accept Services performed by a subcontractor that was not approved in accordance with this paragraph.
- 13. Amendments.** This Agreement may be amended or modified only in writing executed by authorized representatives of both parties.
- 14. Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
- 15. Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
- 16. Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Gabriel Maldonado
Title: Contracts/Fund Administrator
Address: 2525 Hygeia St., Corpus Christi, Texas 78415
Phone:(361) 826-1986
Fax:(361) 826-1971

IF TO CONTRACTOR:

Mettler-Toledo, LLC

Attn: Matthew Bendick

Title: Head of Service Operations

With a Copy to: Legal Department

Address: 1900 Polaris Parkway, Columbus, OH 43232

Phone:(859) 266-3000 ext. 12

Fax: N/A

- 17. CONTRACTOR SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES, WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH ANY MATERIAL BREACH IN THE PERFORMANCE OF THIS AGREEMENT BY THE CONTRACTOR OR RESULTS FROM THE NEGLIGENT ACT, OMISSION, OR WILLFUL MISCONDUCT OF THE CONTRACTOR OR ITS EMPLOYEES OR AGENTS. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.**

Although Contractor will be responsible for the damages caused by Contractor as above, Contractor's total liability will not exceed the aggregate value of this Agreement giving rise to the claim, and the parties agree that this limitation will not cause this Agreement to fail in accomplishing its essential purpose. Neither the City nor Contractor will be responsible to the other or any third party for any type of consequential, indirect, punitive or similar damages.

18. Termination.

(A) The City Manager may terminate this Agreement for Contractor's failure to perform the work specified in this Agreement or to keep any required insurance policies in force during the entire term of this Agreement. The Contract Administrator must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City Manager may also terminate this Agreement upon 24 hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out in this Agreement.

19. Assignment. No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

20. Severability. Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.

21. Order of Precedence. In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:

- A. this Agreement (excluding attachments and exhibits);
- B. its attachments;
- C. the bid solicitation document including any addenda (Exhibit 1); then,
- D. the Contractor's bid response (Exhibit 2).

22. Certificate of Interested Parties. Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.

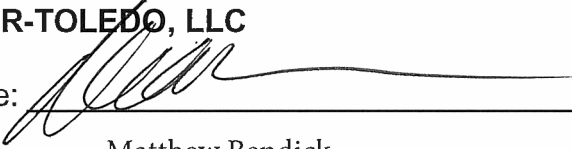
23. Verification Regarding Israel. In accordance with Chapter 2270, Texas Government Code, the City may not enter into a contract with a company for goods or services unless the contract contains a written verification from the

company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this Agreement on behalf of the Contractor verifies that the company does not boycott Israel and will not boycott Israel during the term of this Agreement.

24. Governing Law. This Agreement is subject to all federal, State, and local laws, rules, and regulations. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.

25. Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties

METTLER-TOLEDO, LLC

Signature:  _____

Printed Name: Matthew Bendick

Title: Head of Service

Date: 3/11/2019

CITY OF CORPUS CHRISTI

Kim Baker
Assistant Director of Finance – Purchasing Division

Date: _____

APPROVED AS TO LEGAL FORM

Attached and Incorporated by Reference:

Attachment A: Scope of Work
Attachment B: Bid/Pricing Schedule
Attachment C: Insurance and Bond Requirements
Attachment D: Warranty Requirements

Assistant City Attorney Date

Incorporated by Reference Only:

Exhibit 1: RFB/RFP No. SS 65144
Exhibit 2: Contractor's Bid/Proposal Response

Attachment A - Scope of Work

1.1. General Requirements

- A.** The Contractor will provide software and hardware maintenance support for the autoscale system located at the Solid Waste Departments. The support is for the scales and the central management reporting system for both locations.
- B.** The Contractor is responsible for telephone assistance support, software will include updates and end user training will be a one-time per year upon request via Web-ex.
- C.** The Solid Waste Departments consist of J.C. Elliott Landfill located at 7001 Ayers St., Corpus Christi, Texas, Cefe Valenzuela Landfill located at 2397 CR 20, Robstown, Texas 78380.

Attachment B - Bid/Pricing Schedule

DESCRIPTION	QTY	UNIT	UNIT PRICE	PRICE TOTAL
System Support – Autoscale support (Elliott LF) First Year	1	YR	2,034.00	2,034.00
System Support – Autoscale support (Cefe V LF) First Year	1	YR	11,340.00	11,340.00
System Support – Autoscale support (CMRS) First Year	1	YR	2,893.00	2,893.00
System Support – Autoscale support (Elliott LF) Second Year	1	YR	2075.00	2075.00
System Support – Autoscale support (Cefe V LF) Second Year	1	YR	11567.00	11567.00
System Support – Autoscale support (CMRS) Second Year	1	YR	2951.00	2951.00
System Support – Autoscale support (Elliott LF) Third Year	1	YR	2117.00	2117.00
System Support – Autoscale support (Cefe V LF) Third Year	1	YR	11798.00	11798.00 11,789.00 <i>4/4/19</i>
System Support – Autoscale support (CMRS) Third Year	1	YR	3010.00	3010.00
System Support – Autoscale support (Elliott LF) Fourth Year	1	YR	2159.00	2159.00
System Support – Autoscale support (Cefe V LF) Fourth Year	1	YR	12034.00	12034.00
System Support – Autoscale support (CMRS) Fourth Year	1	YR	3070.00	3070.00
System Support – Autoscale support (Elliott LF) Fifth Year	1	YR	2202.00	2202.00
System Support – Autoscale support (Cefe V LF) Fifth Year	1	YR	12275.00	12275.00
System Support – Autoscale support (CMRS) Fifth Year	1	YR	3131.00	3131.00
TOTAL				\$ 84,647.00

Anthony Martinez
METTLER TOLEDO, LLC
ITD Software Solutions Manager

Attachment C – Insurance Requirements

No insurance requirements necessary for this service agreement;
Section 5. (A) and (B) are null and void for this service agreement.

Attachment C – Bond Requirements

No bond requirements necessary for this service agreement; Section 5. (B) is null for this service agreement.

Attachment D - Warranty Requirements

Products and Services provided under this Agreement shall be subject to Contractor's standard warranty. Contractor's standard warranty is hereby incorporated as follows:

MT Standard Warranty

WARRANTIES: ABSENT A SEPARATE WRITTEN WARRANTY MT ISSUES BUYER, MT EXPRESSLY WARRANTS ITS EQUIPMENT, SOFTWARE, AND SERVICES SOLELY AS SET FORTH IN THIS SECTION. TO THE FULLEST EXTENT ALLOWED BY LAW, MT DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). THESE WARRANTIES MAY BE TRANSFERRED TO A SUBSEQUENT PURCHASER OF EQUIPMENT OR A SUBSEQUENT LICENSEE OF SOFTWARE ONLY WITH MT'S PRIOR WRITTEN CONSENT. IN ADDITION, THE FOLLOWING CONSTITUTES BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH BY MT OF THIS WARRANTY.

A. EQUIPMENT – MT warrants that under normal use: (i) its equipment, except for replacement parts, will be free from defects in workmanship and materials for one year from the date of original installation/use, or 18 months from the date it is shipped from MT, whichever occurs first; and (ii) replacement parts will be free from defects in workmanship and materials for 90 days from delivery. Should the defects described be found and reported during the term of the warranty, MT will, at its option, refund the purchase price, replace the equipment, or correct the defects by furnishing replacement parts and labor free of charge. Travel up to 80 kilometers (50 miles) from our nearest service representative or authorized service provider is free of charge for valid warranty claims.

B. SOFTWARE – If it is properly installed according to specifications and system requirements, MT warrants the software it develops will perform substantially the functions described in the software documentation it provides or, in the absence of any software documentation, as otherwise agreed in writing. MT does not warrant that the software is error-free, that Buyer will be able to operate the software without interruption, that third party interfaces or systems connected to the software will operate without interruption, or that the software will be free of vulnerability to intrusion or attack. Absent a separate warranty MT communicates to Buyer in writing, the warranty period for equipment operating software is the same as the warranty period for the equipment it's purchased with. The warranty period for any other software or software feature is 90 days from the date of delivery. For avoidance of doubt, our warranty includes bug fixing, but excludes any new features. Except as may be agreed otherwise in writing, MT provides no warranty for software specifically developed, amended, or customized for Buyer. These warranties also apply to any new releases and service MT may deliver in the future.

C. SERVICE – MT warrants that services will be performed in a workmanlike manner in conformity with standard industry practice. Should any nonconformity be detected within 30 days after the work is completed and Buyer gives MT prompt written notification, MT will supply the necessary service, direction, or consultation to correct the nonconformity.

D. GENERAL – The foregoing warranties are further subject to the following general conditions: (i) Consumables, accessories, normal wear and tear, wear parts, and perishables are expressly excluded. (ii) If Buyer requests warranty work during non-standard work times Buyer will be charged for premium time. (iii) These warranties do not apply where MT's equipment and/or software has been subjected to: accident, alteration, misuse, abuse, failure by Buyer to ensure proper storage, operation and/or maintenance, installation or servicing by personnel MT doesn't authorize, the addition or supply of equipment or software not approved for incorporation into MT's, environmental or operational conditions, or software or interfacing Buyer or a third party provide and any other causes MT is not responsible for. (iv) MT does not warrant the calibration of any equipment. MT does, however, warrant its equipment to be capable of being adjusted to meet MT's printed specifications, if any, for accuracy for the period of warranty above stated when properly installed and used. (v) Products of other manufacturers that MT sells are warranted by MT solely to the extent of any remaining warranty provided by the original manufacturer. (vi) If MT repairs equipment, such repair work will not extend existing nor generate

new warranty coverage for the equipment as a whole or for those parts not repaired or replaced by MT. Unless Buyer gives MT written notice in advance, and MT agrees its warranty still applies, all warranties are void if product is moved outside the country MT delivered it to.

E. METHODS OF CORRECTION OF DEFECTS DURING WARRANTY – MT may attempt to diagnose and resolve defects over the telephone or electronically. Certain equipment contains remote support capabilities for direct problem reporting, remote problem determination, and resolution. When Buyer contacts MT for warranty work, Buyer must follow the problem determination, resolution, and procedure that MT specifies. MT may require return of the part or equipment to its depot for service or to assist in problem determination. If MT determines on-site work is required, a service technician will be scheduled. If Buyer gives MT notice of a defect and requests on-site work when the defect could have been remedied remotely, or if MT responds to Buyer's notice of defect and no defect is found for which MT is liable, MT is entitled to compensation for any work performed and costs it incurred as a result of Buyer's request. Failure to install and use available remote connectivity tools and equipment for direct problem reporting, remote problem determination, and resolution may result in increased response-time and additional costs to Buyer.