***Note to Preparer:*** *This sample contract is for septage waste haulers only. It can be combined with the sample contract for septage waste treatment if a single, city-wide operator is desired. This agreement includes the following options for the user:*

*(1) Buy or Lease Municipal Property. If the contractor is taking over an existing municipal operation and will lease, buy or lease-to-buy trucks and other property for the hauling operation*

*(2) Buy New Equipment. If the contractor is buying all new equipment and property for the entire septage hauling operation*

*(3) Performance Based Contract: These are SAMPLE options for rewarding performance and deterring poor performance as opposed to assessing a fixed tonnage fee. The goal is to encourage the contractors to collect, transport and dispose of the septage waste in an efficient manner. Equally, the goal is to discourage contractors from not efficiently servicing customer septic pump-outs; not filling trucks with non-septage waste to maximize payments; and to not dispose septic waste in any other place than an approved septage treatment facility*

FOR FEACAL SLUDGE COLLECTION, TRANSPORTATION

AND DISPOSAL

BETWEEN

***(MUNICIPALITY AND***

***ORGANIZATION)***

This Agreement is made at *(name of city/town)* this (*day, month, year*) by and between *(name)* City, *(address)* herein called the “First Party” and *(name of company or organization and address)* herein referred to as the “Second Party”.

The First Party grants the Second Party an Agreement relating to fecal sludge collection originating from pit latrines; household septic tanks; commercial and institutional buildings; public toilets; and other locations in the municipal or town area. This agreement also includes transportation of all the fecal sludge to a designated treatment facility located at *(location)*.

The Parties hereby agree as follows:

1. ***Definitions:*** For the purpose of this Agreement, the following terms shall apply:
	1. ***Septage Treatment or Disposal Facility*** – Shall mean a disposal site qualified to accept septage waste as defined by *(applicable laws, directives or mandates)*
	2. ***Acceptable Waste*** – Shall mean all material, fluid and sludge, originating from pit latrines; household septic tanks; commercial and institutional building septic tanks; public toilets; and any other household and commercial fecal material holding tanks. The fecal material collected shall not contain any industrial hazardous or unacceptable waste as defined by *(cite hazardous or special material laws and regulations)*. The Second Party is required to define acceptable waste, as defined, in their contract agreement with the waste generator.
2. ***Term:*** The term of this agreement shall be for a period of *(x years – recommended is 3 to 5 years)*, beginning *(date)* and expiring on *(date)* unless sooner terminated as provided herein. The foregoing notwithstanding, it is agreed and understood that the First Party may terminate this contract without further liability to the Second Party except for the payment of services rendered to date if the City or Town has not approved funding.
3. ***Scope of Services:*** *(there are several options for service delivery that include: 1) the Contractor supplying all equipment including vacuum trucks; 2) the City owns all equipment and leases to the Contractor; or 3) the Contractor leases some equipment from the City)*
	1. *(Contractor Supplies All Equipment).* The Second Party shall supply all equipment, including vacuum trucks, needed to collect and transport all fecal material, fluid and sludge. Equipment owned by the Second Party shall be kept in good repair, appearance and in a sanitary condition. Use of the First Party signage and logo is prohibited.
	2. *(City owns all equipment and leases to the Contractor).* The First Party will retain ownership of all equipment, including the vacuum truck, storage facility, pump-out parts and other spare parts. The Second Party will negotiate a lease agreement with the First Party that can include: *1) …..* During the entire agreement period the Second Party shall provide and maintain the Second Party’s equipment. The equipment shall be kept in good repair; good appearance; and in a sanitary condition by the Second Party. Annex C contains a list leased equipment and the pricing. Annex D contains the terms for equipment replacement.
	3. *(City owns all equipment and leases to the Contractor).* The First Party shall lease (*vacuum trucks, associated equipment for pump-out, spare parts, storage facility and maintenance facility – if there is no facility or not to be included in the Agreement than consider, ‘The Second Party will maintain the First Party’s equipment to a reasonable standard and will return all equipment to the First Party in good condition at the termination of the contract’)*. The Second Party agrees to monthly fee *(if there are any subsidies, they can be mentioned here)* for fecal sludge collection and transportation. Fees for the equipment are listed in Annex C.
	4. *(Contractor leases some equipment from the City).* The First Party will retain ownership of some equipment, *(including the vacuum truck, storage facility, pump-out parts and other spare parts).* The Second Party will negotiate a lease agreement with the First Party that can include: *1) …..* During the entire agreement period the Second Party shall provide and maintain the Second Party’s equipment. The equipment shall be kept in good repair; good appearance; and in a sanitary condition by the Second Party. Annex C contains a list of equipment and the lease pricing. Annex D contains the terms for equipment replacement.
	5. The Second Party agrees to furnish all labor, tools, fuel and services required and necessary for the collection and transportation of fecal sludge to the *(designated treatment facility)* and shall provide qualified supervisory personnel to direct the activities under this Agreement.
	6. The Second Party will bear the repair cost of the vacuum trucks(s) up to *(amount)* per year. Any major repairs must be documented and any amount over *(amount)* is the responsibility of the First Party. Replacement costs are also the responsibility of the First Party.
	7. *(Use this if the Contractor is the only permitted provider).* The Second Party is responsible for coordinating; working with; and organizing any subcontracts with third parties involved in the emptying and cleaning of pit latrines and septic tanks. The Second Party is the *(only)* permitted service and thus is responsible for all services related to collection and emptying of septic tanks.
	8. The Second Party will have an operation, safety and emergency response plan. Field staff of the Second Party will have 20 hours of health and safety training for handling and transporting fecal sludge. The Second Party’s operation plan will include steps to avoid spillage, leaks and poor housekeeping. Disruption to property or surrounding environment should be minimized by the Second Party.
	9. The First Party shall allow the Second Party to collect fecal sludge from *(time: 8 AM to 5 PM).* The Second Party will be allowed to transport sludge past the deadline to accommodate traffic and other considerations. The Second Party may also request from the First Party an expansion of the time allotment.
	10. The First Party will establish a ‘Septage Hotline’ where customer can call or email regarding the services of the Second Party.
4. **Reporting.** In addition to providing invoices upon delivery of the fecal sludge to the designated facility operator, the Second Party has the duty to provide monthly reports to the First Party that discloses tonnage hauled; number of customers served; verification of proper disposal; and the schedule for collection for the ensuing month. The monthly report should also include any incidence reports such as spillage, environmental damage, health exposures, subcontractor issues and any complaints from the customers.
5. ***Payment:*** The Second Party agrees to collect and transport fecal sludge to the designated treatment facility for agreed fee per cubic meter. The Second Party’s monthly invoice should accompany the monthly report and include a copy of all sludge volume tickets from the disposal facility. The invoice should be delivered the last day of each month to *(name, office, address)*, and can be printed or emailed. Payment by the First Party to the Second Party should be made in fifteen (15) business days of receiving the invoice.
	1. For collection and transportation of the fecal sludge to the designated treatment facility the First Party shall pay *(amount)* per cubic meter of fecal sludge collected from households, commercial building, latrines or holding tanks. The First Party will record the volume at the designated treatment facility or *(amount)* and approve the sludge volume collection tickets. The First Party will periodically test the effluent and verify the origin.
	2. *(For fee collection by the City).* The First Party will have a standard contract for the septic tank owners and the contract will have a standard fee per cubic meter of fecal sludge removed.The Second Party is responsible for recording the amount of fecal sludge removed on the invoice at the time of septic pumping. Payment by the First Party to the Second Party will be made when the collected fecal sludge in designated facility. At the time of disposal the First Party will deliver the invoices to the Second Party and the facility operator will compare the amount collected to the invoices. The First Party is responsible for invoicing and fee collection.
	3. *(For fee collection by the Contractor).* The Second Party will have a standard contract for the septic tank owners that must be approved by the First Party. The contract will have a standard fee per cubic meter of fecal sludge removed.The Second Party is responsible for preparing the invoice at the time of septic pumping, based on the volume removed. The Second Party is also responsible for invoicing and fee collection. At the time of disposal the Second Party is responsible for delivering copies of all the invoices for that load. Payment will be verified by comparing the sludge volume collection tickets and the volume of the amount of fecal sludge delivered to the designated facility. In the event they are not the same, payment will be based on the amount delivered to the facility.
	4. The First Party and the Second Party shall jointly agree on either the volume of fecal sludge to be collected or the number of households/sites to be served and be recorded in writing before commencement of waste collection and transportation each month. The First Party will have responsibility for conducting the survey(s) needed to assess the location of the customers, the size of the septic tank (if available) and the contact address. Cost involved in the assessment/survey will be the responsibility of the First Party.
	5. *(If the Contractor is required to manage the information, scheduling and fee collection)* The Second Party shall establish a septic tank information center that households can contact regarding latrine pit, septic tank or holding tank emptying. The information center shall be open six days a week from *(time: 9 AM to 6 PM; except days/holidays).* The Second Party has to maintain a register for all the applications received with date and time along with date when the pit or septic tank was cleaned. Moreover, the Second Party shall also maintain complaint register.
	6. *(use for Scheduling)* The Second Party is responsible for managing the septic emptying scheduling. The Second Party should consider grouping areas to save on collection costs. The Second Party shall be responsible for providing emergency emptying services to the applicants within 36 hours of the receipt of the application or contact. The Second Party will be allowed to charge a *(amount, suggest 50%)* premium on the normal emptying fee. In case the Second Party fails to collect the fecal sludge within 36 hours of the application, the Second Party will be paid 50% of the normal collection fee by the First Party.
6. **Bank Guarantee**. The Second Party shall provide a bank guarantee to the First Party. The amount of bank guarantee will be equivalent to estimated payment for collection and transportation the fecal sludge volume for two (2) months. The Bank Guarantee will be made out to the Second Party and remain in place for the period of one year after the contract signing. After successful completion of the first year of this Agreement the bank guarantee will be refunded by the First Party to the Second Party.
7. **Copyright.** The Second Party must use their own logo and signage for their service and is not allowed to use the First Party’s signage with out specific written authority for each use. Any correspondence with Customers by the Second Party will not include reference to the First Party unless specifically authorized by the Second Party for each reference.
8. **Breach of Contract.** The First Party has the right to recover costs if Second Party breaches the contract terms defined in the Agreement. If the failure to collect fecal sludge from the scheduled areas is due to flood, cyclone, war, fire, accident, act of God and other natural calamity as well as strike, political disturbance and violence, the Second Party shall not be liable to pay compensation to the First Party. The Second Party shall collect the fecal sludge in the next available opportunity and report adjustments to the schedule.
9. **Indemnification.** The Second Party shall indemnify and hold harmless the First Party, its agents and employees against and from all actions, suits, liabilities, settlements, losses, demands, damages, penalties, fines, counsel fees and all other expenses relating to or arising from any and all claims of every nature or character due to the agents, employees or attorneys and any collection of any accounts or bills on behalf of the Second Party made pursuant to this agreement. None of the foregoing provisions shall deprive the Second Party of any action, right or remedy otherwise available to it under *(applicable)* law. In the event that the First Party is requested to honor the indemnity obligation hereunder, then the Second Party shall, in addition to all other obligations, pay the First Party the cost of bringing any action at law or in equity, including but not limited to attorney’s fees, to enforce indemnity. The Second Party’s obligation to indemnify as provided herein shall survive the termination or expiration of this agreement, and shall not be limited or diminished by the presence, absence, or amount of insurance as requested herein.
10. **Termination.** In the event either Party fails to perform as required under the terms of this Agreement. If the default is not remedied within *(time)* the Agreement may be terminated by giving an advance *(time; suggest 90 days)* written notice to the defaulting Party.
11. **Insurance coverage**. The Contractor shall purchase and maintain for the duration of this Agreement an insurance policy with a minimum of *(amount)* in liability coverage. The Contractor shall provide the Second Party a certificate of insurance for said policy naming the Second Party as additionally insured and indicating coverage per terms of this Agreement for the period of performance of this Agreement.
12. **Licensing.** The Second Party agrees to hold and maintain all licenses needed for the services required in this Agreement. The Second Party specifically should also have any licenses required for environment pollution cleanup. The Second Party must verify that all collectors, haulers and subcontractors are duly licensed for the services provided.
13. **Subcontractor Identification**. The Second Party has the duty to provide name and address, telephone number and company contact person for all subcontractors to the First Party.
14. **No Assignments.** Neither Party may assign, transfer, broker or otherwise vest in any other company, entity or person, any of its rights or obligations under this Agreement without first obtaining the prior written consent of the other Party. Consent shall not be unreasonably withheld.
15. *(for no Government involvement in the Collection)* **Independent Contractor.** The Second Party shall perform this Agreement as an independent contractor and as such, shall have and maintain complete control over all its employees, agents and operations. Neither Contractor nor anyone employed by it shall be, represent, act, purport to act, or be deemed to be the agent, representative, employee or servant of the Second Party.
16. **Force Majeure.** Each Party is excused from the performance requirements of this Agreement and each Party shall not be liable for any delay in whole or in part caused by the occurrence of any contingency beyond the reasonable control. These contingencies include, war, sabotage, insurrection, riot or other act of civil disobedience, act of public enemy, failure or delay in transportation, judicial action, labor dispute, accident, fire, explosion, flood, severe weather or other act of God.
17. **Confidentiality**. The Parties shall keep strictly confidential all technical or non‑technical information regarding the other party's business divulged in the course of the performance of this Agreement. In particular, the Parties shall keep in strict secrecy any confidential business and end-customer information divulged to them in the course of this Agreement. Notwithstanding anything herein to the contrary, information shall not be deemed confidential for the purpose of this Agreement if the Agreement partner furnishes proof that the information is: a) already publicly known without this being attributable to an act of the party; b) was lawfully obtained from third parties and is not subject to confidentiality; or c) was independently developed or obtained by the respective party prior to a disclosure through the party. The terms and conditions of this Agreement shall be kept confidential and shall remain in force after the termination of this Agreement for whatever reason.
18. **Arbitration**. All disputes and differences covering this Agreement between the Two (2) Parties, which cannot be settled by mutual discussion, shall referred to arbitration under *(reference relative Arbitration Law, Act or Standard)*.
19. **Entire Agreement.** This Agreement represents the entire understanding reached between the Parties hereto with respect to the subject matter contained herein. This Agreement may not be modified or amended except in writing and signed by both parties.

In Witness Wherefore, the Parties have caused this Agreement to be executed by their duly authorized representatives as of this *(date):*

Contractor (Second Party) City (First Party)

 \_

Authorized Signature for the Contractor Authorized Signature for the City

Title: \_ Title: \_

Annex A

Notice to Proceed Form

### Notice to Proceed

##### To:

Date:

Project:

You are hereby notified to commence work in accordance with the Agreement *(date)* and you are to complete the work within *(amount)* consecutive calendar days thereafter. The date completion of all work is therefore *(date).*

City:

By:

Title:

ACCEPTANCE of NOTICE

Receipt of the above Notice to PROCEED IS HEREBY ACKNOWLEDGED

By: , this the day of ,201x. By: , Title :

Annex B

Change Order Form

# CHANGE ORDER No.

PROJECT:

DATE OF

ISSUANCE:

CITY:

CONTRACTOR: ENGINEER:

*You are directed to make the following changes in the Contract Documents.*

DESCRIPTION:

REASON FOR

CHANGE ORDER:

ATTACHMENTS:

|  |  |
| --- | --- |
| **CHANGE IN CONTRACT PRICE** | **CHANGE IN CONTRACT TIME** |
| ORINGINAL CONTRACT PRICE: $ | ORIGINAL CONTRACT TIMES: |
|  | SUBSTANTIAL COMPLETION: |
|  | FINAL COMPLETION: |
| Net Changes from Previous Change Orders | Net Changes from Previous Change Order |
| No. to No.  | No. to No.  |
| *(AMOUNT)* | *(AMOUNT)* |
| Contract Price Prior to this Change Order | Contract Time Prior to this Change Order |
| *(AMOUNT)* | SUBSTANTIAL COMPLETION: |
|  | FINAL COMPLETION: |
| Net Increase or Decrease of this Change Order | Net Increase or Decrease of this Change Order |
| *(AMOUNT)* | *(DAYS)* |

**Contract Price with all approved Change Orders:**

*(AMOUNT)*

**Contract Time with all approved Change Orders:**

**SUBSTANTIAL COMPLETION: FINAL COMPLETION:**

Recommended: ENGINEER Approved: CITY Approved: CONTRACTOR

By: By: By:

Date: Date: Date

ANNEX C

Detailed List of Equipment to be Leased and Pricing

ANNEX D

Terms For Equipment Replacement