

BIOSOLIDS BENEFICIAL USE SERVICES FOR THE CITY OF LYNDEN AT THE BOULDER PARK PROJECT

2021



CONTRACT No.
21-0002

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ATTACHMENTS:

- A: PROJECT ROLES & RESPONSIBILITIES
- B: EQUIPMENT USE FEE RATE TABLE
- C: SPILL PREVENTION & RESPONSE PLAN
- D: KING COUNTY LETTER OF SELF-INSURANCE

DEFINITION OF WORDS AND TERMS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Beneficial Use Facility, or BUF: means a receiving-only facility consisting of a site or sites where biosolids from other treatment works treating domestic sewage are applied to the land for beneficial use, which has been permitted as a treatment works treating domestic sewage in accordance with the provisions of WAC 173-308-310, and that has been designated as a beneficial use facility through the permitting process.

Biosolids: the nutrient-rich product of the wastewater treatment process that meets requirements for beneficial use and used to improve soil characteristics and enhance plant growth and crop yield. Biosolids are not considered a commercial fertilizer. Regulations established two classes of biosolids: Class A, which has no detectable pathogens, and Class B, which is treated, but may have some detectable pathogens.

Boulder Park Inc., or BPI: designates the farmer-owned company with headquarters in Mansfield, Washington, that manages biosolids land application operations.

Boulder Park Project, or BPP: designates the name of the biosolids land application project in Douglas County in operation since 1992. This project is jointly operated and managed as a BUF by BPI and King County as outlined in Attachment A, Project Roles and Responsibilities from Contract #471783.

Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with the Generator for the performance of services or Work under this Contract.

Generator: the city, town, district, municipal corporation or other entity or person who generates biosolids during the treatment of domestic sewage in a treatment works and has as one of its responsibilities the treatment, transport, use or disposal of biosolids. For purposes of this Agreement, the term Generator means the City of Lynden.

Party or Parties: City of Lynden (Generator), King County (KC), and Boulder Park Inc. (BPI).

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Project: Same as Boulder Park Project (BPP).

Project Participants: General term to include the primary people who are involved with the Boulder Park Project (BPP). This would include the local farmers, local government agencies, local residents, Washington State Department of Ecology (Ecology), other public agencies, Washington State University extension service, etc.

Shall or Will: Whenever used to stipulate anything, Shall or Will means mandatory by either BPI, KC or the Generator, as applicable, and means that BPI, KC, or the Generator, as applicable, has thereby entered into a covenant with the other Party or Parties to do or perform the same.

Soil Amendment Value: A monetary value that the farmer agrees to pay BPI for the nutrient, organic matter and other benefits of biosolids to the soil and crop.

Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with BPI and/or KC to perform any portion of the Work covered by this Contract.

Work: Everything to be done and provided by BPI and KC for the fulfillment of the Contract.

This Contract is made and entered into effective as of January 1, 2021 by and between the City of Lynden, a municipal corporation, (hereinafter referred to as the "Generator"), Boulder Park Inc., a Washington corporation (hereinafter referred to as "BPI"), and King County, a home rule charter county of the State of Washington (hereinafter referred to as "KC"). The Generator, BPI and KC may also be collectively referred to as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, the Generator produces biosolids as a by-product of its wastewater treatment process and desires to manage and beneficially use such biosolids in accordance with Chapter 173-308 WAC Biosolids Management and 40 CFR Part 503; and

WHEREAS, the Washington State Department of Ecology (Ecology) supports and encourages maximum beneficial use of biosolids per Chapter 173-308-010(2)(a); and

WHEREAS, the state of Washington recognizes biosolids as a valuable commodity and does not classify biosolids as solid waste per Chapter 173-308-060(1) and (2); and

WHEREAS, the Boulder Park Project (BPP), located in Douglas County, Washington, is a Beneficial Use Facility (BUF) that has been permitted by the Ecology for the application of biosolids; and

WHEREAS, BPI and KC have entered into a contract to jointly manage and operate the BPP in accordance with all applicable local, state and federal laws, regulations and best management practices regarding applying dewatered biosolids to lands for beneficial use; and

WHEREAS, the Generator desires to enter into this Contract with BPI and KC for (a) land application of the Generator's biosolids at the BPP, and (b) for the use of KC's equipment to apply the Generator's biosolids; and

WHEREAS, it is in the best interests of the environment, the public health, safety, and welfare of the citizens served by Generator, and the Generator, that this Contract be entered into; and

WHEREAS, all Parties agree to support and work towards excellence in biosolids management practices and provide meaningful opportunities for public participation.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and for other good and valuable consideration, it is hereby agreed as follows:

SECTION 1 PURPOSE

1.1 The purpose of this Contract is (a) to allow the Generator to purchase BPI's services, which shall include all work necessary for the beneficial utilization of the Generator's Class A or Class B biosolids (hereafter referred to as "biosolids") at the BPP and (b) to allow the Generator to pay a use fee for KC's biosolids application equipment for BPI to use in land application of the Generator's biosolids.

1.2 The further purpose of this Contract is to provide the Generator with a biosolids management and utilization option to complement the Generator's other biosolids management contracts. The Generator has the sole right to allocate the biosolids deliveries among its biosolids contractors.

1.3 The Generator may provide the BPP with biosolids during the months of January through December to ensure year-round responsiveness.

1.4 The Generator will provide BPI with an estimated schedule of deliveries. The Generator in its sole discretion, may adjust its estimated schedule of deliveries upon reasonable notice to BPI. Such schedule shall include estimated quantities and estimated timing of deliveries consistent with the operating plan and distribution needs.

1.5 During the term of the Contract, BPI agrees to accept up to one hundred (100) percent of the Generator's biosolids that have a total solids content of no less than ten (10) percent. Biosolids having a total solids content of less than 10 percent may be accepted at BPI's sole discretion and may be subject to additional charges for any additional work per Section 9.

1.6 All biosolids provided to the BPP by the Generator shall meet Table 3 – Pollutant Concentration Limits contained in WAC 173-308-160 (Biosolids pollutant limits); the pathogen reduction requirements of WAC 173-308-170; and, the vector attraction reduction (VAR) requirements of WAC 173-308-180. The Generator shall immediately notify BPI and KC if the Generator's biosolids do not meet any of the requirements described above.

A. The Generator shall provide analytical results demonstrating biosolids quality and nutrient content appropriate for land application at the BPP. Biosolids analysis data and documentation shall include at a minimum the following parameters:

- Part 503 Metals (arsenic, cadmium, copper, lead, mercury, molybdenum, nickel, selenium, zinc). Refer to WAC 173-308-160.
- Fecal Coliform. Refer to WAC 173-308-170.
- VAR. Refer to WAC 173-308-180.
- Nutrients (total Kjeldahl nitrogen, ammonia-nitrogen, phosphorus, potassium, sulfur).
- Percent total solids.

B. Biosolids that do not meet VAR requirements, and/or that do not have sufficient documentation, will be incorporated into the soil within six hours after being applied to the land to meet the requirements of WAC 173-308-210(4)(b). The six-hour tillage work shall be subject to additional charges per Section 7.2(A) of this contract.

1.7 Any material that fails to meet all requirements of WAC 173-308 for Class A or Class B biosolids classification cannot be accepted at the BPP for beneficial use and must be properly managed by Generator as solid waste or as determined by Ecology.

SECTION 2 BPI'S RESPONSIBILITIES

2.1 BPI shall be responsible for biosolids management as defined below, including transport and reuse after acceptance of biosolids from the Generator. Biosolids loaded into BPI's method of transport shall be considered accepted by BPI when the method of transport departs the Generator's site. These biosolids management responsibilities shall include, but are not limited to, the following:

- A. Transportation of biosolids loaded into BPI-furnished equipment at the Generator's site, to the location of ultimate disposition. All loads will be covered during transport;
- B. Ultimate disposition of biosolids including management, application, monitoring, permitting, record keeping, and reporting;
- C. Compliance with all local, state and federal laws and regulations applicable to said operations including best management practices;

- D. Payment of employees, subcontractors, lenders and suppliers associated with BPI's management and beneficial use of biosolids, and all related taxes, fees, charges and all other costs; and
- E. Maintenance and operation of all KC-owned equipment per the contractual agreement between KC and BPI (see Attachment A, Project Roles & Responsibilities from Contract #471783);
- F. Ensure contracted haulers always have a current Spill Prevention & Response Plan in all trucks hauling the Generator's biosolids and that the haul contractor's drivers know who to call in case of a spill, accident, or emergency. The Spill Prevention & Response Plan must meet the requirements of WAC 173-308-100(2). Attachment C of this contract includes a Spill Prevention & Response Plan that may be used;



2.2 BPI warrants and represents that it has the business, professional, and technical expertise necessary to manage, handle and utilize the Generator's biosolids in a safe, prudent, workman-like, and legal manner. Furthermore, BPI warrants and represents that it has the equipment and employee resources required to perform this Contract, and that such equipment shall at all times, relevant to the performance of services hereunder, be maintained in a good and safe condition and fit for the use as required.

2.3 BPI shall keep all equipment and any application sites clean and orderly. No unsightly debris, broken down equipment, trash, garbage or deleterious materials not necessary for the operation shall be allowed to accumulate. BPI shall cooperate fully with the Generator to maintain the highest reasonable image for such services. The Generator shall have no responsibility for the selection or use of an application site by BPI and assumes no responsibility or liability for the adequacy or legality of such site for the beneficial use of biosolids.

2.4 BPI is responsible for assuring that all transportation activities required under this Contract are performed by BPI or BPI's subcontractor in compliance with any applicable federal, state or local environmental or public health laws, codes or regulations. BPI is responsible for obtaining and maintaining all permits and registrations necessary for the transportation of the Generator's biosolids. The Generator and BPI agree KC shall have no responsibility for any transportation or hauling activities related to the Generator's biosolids.

2.5 BPI shall be responsible for maintaining necessary security at application sites to protect public health and safety, and to avoid unauthorized uses of biosolids material. BPI shall not cause a nuisance, as defined in RCW 7.48.120, at any application site.

2.6 BPI shall inform its personnel and/or any subcontractors that biosolids are a product of the wastewater treatment process derived from sewage treatment and that workers may be exposed to pathogens. The workers shall be advised on proper hygienic precautions when handling or being in contact with biosolids.

SECTION 3 KING COUNTY'S RESPONSIBILITIES

KC shall be responsible for the following:

3.1 Provide access and use by BPI to project-specific KC-owned equipment, so BPI may use such equipment to apply the Generator's biosolids as part of the BPP. It shall be known per this Contract that KC shall have first-right of usage as it relates to KC-owned equipment;

3.2 Replace and/or refurbish KC-owned equipment per an equipment replacement schedule, which is part of the Equipment Use Fee Table provided as Attachment B and is incorporated by reference as if fully stated herein;

3.3 Regularly communicate with BPI regarding daily project activities and perform routine site inspections;

3.4 Calculate application rates based on the Generator's current biosolids quality data (these calculations are reviewed by Washington State University research scientists and sent to Ecology for approval);

3.5 Maintain and update the Biosolids Beneficial Use Services Contract and associated costs and price adjustments in accordance with Sections 7 and 8 of this Contract;

3.6 Maintain and update the BPP Site-Specific Land Application Plan, and promptly provide any revisions to the Generator when periodic changes are made; and

3.7 Secure and maintain all necessary state and local permits and/or approvals for biosolids to be applied at the BPP, and comply with all applicable federal, state and local regulations.

SECTION 4 JOINT BPI/KC's RESPONSIBILITIES

4.1 BPI and KC shall be responsible for obtaining and maintaining all permits and registrations necessary for the management of biosolids land application. Costs for required permits and registrations shall be included in the Base Unit Price for biosolids management as described in Section 7.2 of this Contract. Upon request, BPI and KC shall provide the Generator with current copies of all permit applications, permits, registrations, records, and reports required by local, state and federal laws and regulations throughout the life of the Contract. Costs for documentation shall be included in the unit price for biosolids management. The Generator's review of such documents is for its information only, implies no approval of BPI's or KC's compliance with applicable requirements, and in no way relieves BPI or KC of its obligations under this Contract.

4.2 BPI and KC shall be responsible for any public involvement or public information efforts associated with biosolids management outside of the Generator's service area.

SECTION 5 GENERATOR'S RESPONSIBILITIES

Generator shall:

5.1 Provide timely communication of any significant variation in biosolids quantities to be delivered;

5.2 Scale and record wet tons of biosolids loaded into the contractor's biosolids hauling equipment at the Generator site to document the tonnage of biosolids being hauled in accordance with state and federal trucking regulations and to delivered tonnage at location of ultimate disposition. If the Generator does not have access to a certified scale, the Generator will work with BPI to locate a certified scale where tonnage can accurately be weighed and recorded as presented in Section 7.1(A) of this contract;

5.3 Provide documentation on a per load basis to BPI for reconciliation purposes that includes at a minimum the delivery date, driver name, delivery site ID or location description, and tonnage delivered. This information will be reconciled on a monthly basis to ensure accuracy and agreement by all Parties;

5.4 Secure and maintain all necessary state and local permits and comply with all applicable federal, state and local regulations;

5.5 Provide and or approve for use a Spill Prevention & Response Plan as required under WAC 173-308-100(2) and as provided in Attachment C. Ensure the contracted hauler has a current copy of the Spill Prevention & Response Plan in trucks hauling the Generator's biosolids at all times and before leaving the Generator's facility, and that the haul contractor's drivers know who to call in case of a spill, accident, or emergency;

5.6 Test its biosolids in accordance with applicable law; thoroughly review the reported analytical data for accuracy and completeness; provide BPI and KC the biosolids quality data necessary for BPI and KC

to use or otherwise manage the biosolids; and, immediately notify BPI and KC if the Generator's biosolids do not meet any of the requirements in Section 1.6;

5.7 Pay BPI and KC the amounts set forth in Sections 7, 8 and 9 of this Contract; and

5.8 Not operate or maintain KC-owned equipment.

SECTION 6 TERMS OF CONTRACT

6.1 The term of this Contract is from the effective date specified above to December 31, 2024. Any extension of the term of this Contract shall be in writing, mutually agreeable by BPI, KC and the Generator.

6.2 BPI's and KC's obligations and responsibilities shall commence upon full execution of this Contract.

SECTION 7 BASIS FOR PAYMENT

7.1 BPI shall be paid based on wet weight for biosolids loaded in trucks and/or trailers provided by BPI for the purpose of transporting biosolids from the Generator's treatment plant to BPI's designated application sites.

A. Wet weight shall be determined using a certified scale mutually acceptable to BPI and the Generator. BPI shall be responsible for identifying certified scales and proposing scales to the Generator for acceptance if a certified scale is not available at the Generator's site. BPI shall maintain tare weights of trucks and/or trailers and provide a list of tare weights for each shipment in writing to the Generator prior to use in transporting biosolids. All trucks and trailers shall be readily identified by a unique number. The truck and trailer number shall be recorded at the time of weighing on the trip ticket. The forms and procedures for trip tickets and billing shall be developed by BPI and approved by the Generator prior to hauling biosolids.

7.2 BPI shall submit monthly billings in an approved format that has been reconciled with the Generator's records. Payment shall be made based on a cost per delivered wet ton of biosolids transported. Monthly billings received on or before the fifth day of that calendar month will be paid within thirty (30) days after receipt of an invoice. The Generator will pay BPI a Base Unit Price at the rate of **\$71.97 per wet ton** (2020 dollars) for authorized materials accepted and/or services, satisfactorily performed, including the KC equipment use fee, as set forth in Attachment B. The Base Unit Price includes \$3.40 plus \$0.26 Tax [at Mansfield rate of 7.7%] for King County equipment, hereinafter called the "Equipment Use Fee", and \$68.31 for BPI operations fee per wet ton (2020 dollars). Acceptance of such payment by BPI shall constitute full compensation for all tasks completed by BPI and KC, including but not limited to supervision, management, labor, supplies, materials, work equipment and the use thereof, and for all other necessary expenses incurred by BPI and KC in performing the services. Adjustments shall be made in billing for errors in measurement discovered within twelve (12) months of the error.

A. **Biosolids that do not meet VAR requirements will be incorporated to meet the requirements of WAC 173-308-210(4)(b). The six-hour tillage work shall be subject to additional charges at the rate of \$8.93 per wet ton (2020 dollars).**

7.3 BPI will submit a quarterly statement to KC that clearly shows the Generator's tons applied, the site, and the month application occurred. After receipt and verification of the statement KC will submit an invoice to BPI for payment of the KC Equipment Use Fee. BPI shall pay the invoice and will remit payment to:

Accounts Receivable
King County Department of Finance
500 Fourth Avenue, Room 620
Seattle, WA 98104-2387

7.4 The BPI Base Unit Price shall include everything necessary for the prosecution and completion of the Contract including but not limited to furnishing all transportation costs, materials, application equipment use fee, tools, and all BPI and KC management, superintendence, labor and service, except as may be provided otherwise in the Contract, provided, Washington State sales tax is not included in the price.

7.5 The BPI Base Unit Price shall remain firm throughout the term of the contract, except for changes allowed in Section 8. Rate changes may also be made at the time this Contract is extended providing BPI and KC supply adequate documentation of the change in its costs acceptable to the Generator. Requests for any such change are to be made in writing to the Generator. Any agreed-to change shall take effect at the time of the Contract extension and shall remain in effect throughout the extension period.

7.6 At the end of the calendar year, BPI will pay the Generator **\$7.50 per dry ton for soil amendment value** of biosolids delivered to the BPP. This payment amount is fixed for the term of the contract and not subject to price adjustments in Section 8.

SECTION 8 PRICE ADJUSTMENTS

8.1 Price adjustments may be made for changes of law or regulatory requirements based on documented cost increases or decreases, or tax increases. The Generator has the right to terminate this Contract, pursuant to Section 17, for changes of law or regulatory requirements if the Generator feels such increases are excessive.

8.2 Annual Adjustments for the Base Unit Price, except the Equipment Use Fee portion, will be adjusted using 100% of the annual percent change to the "All Items" category of the Seattle-Tacoma-Bellevue Consumer Price Index for Urban Wage Earners and Clerical Worker for the previous calendar year in which there was a positive adjustment. In the event the formula results in a negative, the adjustment shall be zero adjustment. Retroactive to each January 1 of each year, changes to the base rate will be calculated as follows:

Example: new application rate = previous rate X [current Annual CPI value / previous Annual CPI value for series ID: CWURS49DSA0]

8.3 The Equipment Use Fee will remain fixed throughout the contract term, unless KC acquires and/or uses equipment not listed in Attachment B. In that case, KC shall modify Attachment B and the BPI Base Unit Price accordingly.

8.4 There will be a fuel surcharge included with the submitted monthly billing defined in Section 7.2 based on an average of the actual diesel fuel costs per gallon paid by BPI, or their subcontractor, in excess of four dollars (\$4.00) per gallon. For the purpose of calculating this surcharge, BPI and the Generator agree that the surcharge will be based on 100 gallons of diesel fuel used per load transported to BPI. The amount of the fuel surcharge will be verified from copies of actual bulk diesel fuel purchase invoices for fuel deliveries to BPI, or their subcontractor, during the affected month.

SECTION 9 ADDITIONAL WORK

Additional work means the furnishing of materials or equipment and/or the doing of work or service not presently contemplated by the Contract. If the Generator requires additional work, it may request BPI in writing to do the additional work at the Base Unit Price (as described in Section 7), or it may request BPI to do the additional work at a mutually agreed upon lump sum or mutually agreed upon unit prices. Performance of additional work without the prior express written consent of the Generator shall be at BPI's sole expense.

SECTION 10 LIABILITY OF THE PARTIES

10.1 BPI, KC, and Generator accept the risks and resulting liabilities of beneficially using biosolids on agricultural lands. These risks potentially include, but are not limited to, the following:

- Contamination of groundwater or surface water
- Odor issues at the site and mitigating them for surrounding neighbors
- Human health impacts
- Impacts to crops, vegetation or livestock

10.2 BPI shall be responsible for securing conforming biosolids loaded into the means of transport selected by BPI against spillage, leakage or public exposure, and for providing properly designed locations for the safe and secure unloading of biosolids at BPI's designated application sites. For the purposes of this agreement, conforming biosolids shall mean that all the Generator's biosolids shall meet Ecology standards for regulated parameters as specified in Subsection 12.6.

10.3 Generator shall be responsible for compliance with all federal and state laws applicable to generators of biosolids and for compliance with all requirements set forth in this Contract.

SECTION 11 TRANSFER OF MANAGEMENT RESPONSIBILITIES

All biosolids accepted by BPI shall become BPI's responsibility to manage under the terms of this contract. Acceptance of biosolids is considered to occur when the biosolids are delivered to the Boulder Park Project site. BPI shall accept all biosolids which are within the range of "Biosolids Quantities and Characteristics" as specified in Section 13 of the Contract. BPI is solely responsible for the handling and ultimate disposition of all biosolids loaded onto the BPI-provided transportation.

SECTION 12 COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS AND REGULATIONS AND BEST MANAGEMENT PRACTICES

12.1 BPI and KC agree to comply with all applicable local, state and federal laws and regulations at all times and obtain and maintain all required permits and registrations necessary for the management of biosolids land application by BPI and KC. Specific laws and regulations specifically applicable to biosolids management include but are not limited to the following:

- 40 CFR 503 Standards for the Use or Disposal of Sewage Sludge
- WAC 173-308 Biosolids Management
- WAC 173-200 Water Quality Standards for Groundwaters of the State of Washington
- WAC 173-201A Water Quality Standards for Surface Waters of the State of Washington

12.2 BPI and KC shall be responsible for contacting all agencies and jurisdictions necessary to obtain any permits necessary for its performance under this Contract. BPI and KC shall contact Ecology for regulations and permits in effect when this Contract is in effect, including, without limitation, permits and regulations regarding the specific management methods proposed for use by BPI and KC with respect to the Generator's biosolids.

12.3 BPI and KC shall manage biosolids using applicable best management practices. Best management practices may be found in the *Biosolids Management Guidelines for Washington State* published by Ecology. The most recent publication available on or before September 2010 shall be used as best management practices for the Contract. Updated versions of best management practices shall be incorporated into this Contract.

12.4 Other permits and registrations, if any, shall be obtained and maintained by BPI and KC as required for the specific location of biosolids handling, application and disposition sites and specific biosolids management approaches at the project sites. BPI and KC shall be responsible for knowledge of and compliance with all laws, regulations and permits required for operation and maintenance of biosolids management application sites and functions.

12.5 BPI and KC shall be responsible for all environmental compliance and monitoring required for the management of biosolids land application. The costs of this environmental compliance and monitoring shall be included in the Base Unit Price.

12.6 The Generator will make available to BPI and KC all biosolids monitoring and environmental compliance required by its National Pollution Discharge Elimination System (NPDES) permit and its Washington State General Permit for Biosolids Management, sections WAC 173-308-160 (Biosolids pollutant limits), WAC 173-308-170 (Pathogen reduction) and WAC 173-308-180 (Vector attraction reduction). Generator shall also provide BPI and KC with any results of additional testing performed by the Generator, at no cost to BPI and KC, when necessary for BPI and KC to perform under this Contract.

SECTION 13 BIOSOLIDS QUANTITIES AND CHARACTERISTICS

13.1 The Generator may develop other biosolids management options during the term of this Contract, delivering biosolids in quantities in accordance with subsections 1.2 and 1.4. The Generator will provide biosolids on as uniform a basis as possible given influent wastewater variations, treatment process conditions, and solids handling operations. The Generator is responsible for reviewing plant records to determine, estimate and plan for annual, monthly, and weekly averages and variability and informing BPI and KC of substantial changes in biosolids quality.

13.2 The Generator certifies and affirms that its biosolids are produced from domestic, commercial and industrial wastewaters generated in the Generator's wastewater service area.

SECTION 14 INSURANCE

14.1 The Parties shall obtain and maintain the minimum insurance as set forth below covering the operations and activities required by the Contract. By requiring such minimum insurance, the Parties shall not be deemed to have assessed the risks that may be applicable to each Party under this Contract. Each Party shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Each Party shall also require its subcontractors to maintain the minimum insurance set forth below or such other minimum insurance as is appropriate with respect to the work to be performed. Each Party shall obtain certificates of insurance for all of its subcontractors and make them available for inspection by the any other Party on request.

14.1.1 **Commercial General Liability.** \$1,000,000 combined single limit per occurrence and for those policies with aggregate limits, a \$2,000,000 aggregate limit.

14.1.2 **Automobile Liability.** \$1,000,000 combined single limit per accident. If the potential exists to release pollutants either as cargo or from the automobile (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent).

14.1.3 **Workers' Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

14.1.4 **Employer's Liability or "Stop Gap".** For a limit of \$ 1,000,000 Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

14.1.5 **Other Insurance Provisions.** The insurance policies required in this Contract are to contain and be endorsed to contain the following provisions:

1. With respect to all Liability Policies except Professional Liability and Workers Compensation:
 - (i) BPI or its subcontractor shall add the other Parties, its officers, officials, employees, and agents to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of BPI or the subcontractor in connection with this Contract. The Generator shall add the other Parties, their officers, officials, employees and agents as additional insureds as respects liability arising out of activities performed by or on behalf of the Generator in connection with this Contract. The Parties acknowledge that KC maintains a self-insurance program for the handling of its liabilities, and as such, cannot add other parties as additional insureds.
 - (ii) Each Parties' insurance coverage shall be primary insurance as respects the other Parties, its officers, officials, employees, agents, and consultants. Any insurance and/or self-insurance maintained by the other Parties, its officers, officials, employees, agents and consultants shall not contribute with the Parties' insurance or benefit the Party in any way.
 - (iii) BPI or its subcontractors' insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

14.1.6 In lieu of the aforementioned liability policies, KC, maintains a fully funded Self=Insurance program for the protection and handling of KC's liabilities including injuries to persons and damage to property.

14.1.7 In the alternative, a Party to this Contract may fulfill the insurance obligations contained herein by maintaining membership in a joint self-insurance program or risk pool authorized by applicable law. In this regard, the Parties understand that the Party to this Contract who is a member of such a joint self-insurance program or risk pool is not able to name the other Parties as an "additional insured" under the liability coverage provided by the joint self-insurance program or risk pool.

14.2 Unless otherwise approved by the Parties, all insurance shall be on an "occurrence" basis and shall be maintained through the term of this Contract and for a period of three hundred sixty-five (365) days after termination or acceptance of work, as the case may be. All insurance shall be provided on forms and by insurance companies satisfactory to the Parties.

14.3 Except as may be provided in Section 19 of this Contract, no provision in this Contract shall be construed to limit the liability of any Party as provided by law. Each Parties' liability shall extend as far as the appropriate periods of limitation provided by law.

14.4 BPI shall provide the other Parties with certificates and endorsements evidencing insurance from the insurer(s) certifying to the coverage of all insurance required herein within ten (10) days after final execution date of Contract. If BPI neglects to obtain and maintain in force any such insurance or deliver such policy or policies and receipts to the Generator, then the Generator may, at its option, terminate this Contract immediately, purchase required insurance coverage by withholding the premium amounts from payments due BPI, or demand BPI purchase the required insurance within a time frame acceptable to the Generator.

14.5 Failure to provide such required insurance shall entitle any Party to suspend or terminate the other Parties' work hereunder for default in accordance with Subsection 17.2. Suspension or termination of this Contract shall not relieve any Party from its insurance obligations hereunder.

SECTION 15 COORDINATION WITH THE GENERATOR'S TREATMENT PLANT

The Generator will provide BPI with e-mail notification when the normal weekly delivery schedule changes. The Generator will attempt to keep biosolids availability to BPI as uniform as possible.

SECTION 16 DAMAGES

Except as otherwise provided in this Contract should BPI fail to commence or continue performance of this Contract after the date of final execution of this Contract, BPI shall reimburse the Generator for the actual costs incurred by the Generator until other satisfactory arrangements for management of Generator's biosolids up to the remaining term of this Contract can be implemented. The Generator shall have the right to deduct such costs or damages from any amount due, or that may become due BPI. The Generator agrees to make all reasonable and practicable efforts to mitigate its damages.

SECTION 17 TERMINATION OR CONTRACT SUSPENSION

17.1 Any of the Parties may terminate this Contract in whole or in part for any reason or no reason by delivering written notice to each of the other Parties at the mailing addresses stated herein, properly executed, at least ninety (90) days before the proposed termination date. BPI and KC shall be paid any amounts owing, including necessary and reasonable Contract close-out costs, up to the date of termination as specified in the notice, less any deductions provided by this Contract or by law. BPI shall promptly submit its request for the termination payment, together with detailed supporting documentation. If BPI has any property in its possession belonging to the Generator, BPI shall account for the same and handle it in the manner the Generator directs.

17.2 Any Party may terminate the Contract for default in the event of a failure by either of the other two Parties to comply with the provisions of this Contract including, but not limited to, the following:

- (A) failure to perform services or other work as required;
- (B) failure to comply with any material terms or provisions of the Contract;
- (C) failure to comply with laws or regulations;
- (D) failure or delay due to inability to obtain the required employees or equipment;
- (E) failure to provide continuous and solvent business operations;
- (F) failure or delay in making any required payments.

Termination for default may be delivered by mail and shall be effective upon mailing, directed to the defaulting Party (or Parties) at the mailing addresses stated above, setting forth the manner in which the Party is (or Parties are) in default.

17.2.1 In the event the Generator believes BPI is in default, the Generator may include a compliance schedule with the Notice of Termination, which must be met in order to avoid termination. The compliance schedule shall state that within a time period specified by the Generator, BPI shall submit to the Generator a written detailed plan describing the actions required to achieve compliance that is subject to the Generator's approval.

17.2.2 In the event the Contract is terminated for default, BPI and KC will only be paid the base unit price for services or work delivered or performed in accordance with the Contract, less any deductions authorized by this Contract.

SECTION 18 RECORDS, REPORTS AND MEETINGS

18.1 BPI shall, for the term of the Contract and six (6) years thereafter, consistently maintain full, complete and accurate books of account and records related to this Contract at its principal place of business. These records shall also include detailed information describing the application rates to all project sites. The Generator shall have the right during reasonable business hours to inspect and audit such books and records. All books and records of account shall be maintained by BPI according to generally accepted accounting principles and applicable requirements of the State of Washington.

18.2 The following books of account and reports may be reviewed by the Generator and shall be made available upon request to the Generator:

- a daily project site log (including generator, field identification, delivery dates and tonnage) during application of biosolids;
- a weekly project site summary of activities and events;
- application logs (including application rate, date, acreage and tonnage) for each project site that is applied;
- WAC 173-308 annual report (the Generator shall assist BPI and KC in collecting and documenting the data required for this regulatory report); and
- copies of all written correspondence relating to this project.

18.3 The Generator shall have the right during reasonable business hours to inspect the BPP biosolids management facilities. BPI shall provide the Generator access to perform said inspections.

18.4 The Generator and KC shall maintain records per all applicable state and federal laws. Each Party shall have the right during reasonable business hours to inspect the records of the other Parties.

SECTION 19 INDEMNIFICATION

19.1 BPI agrees that it shall be liable for and shall indemnify, defend, and hold harmless the Generator and KC, and their officers, agents, and employees, from and against any claims, actions, suits, costs, and damages of any nature whatsoever, including reasonable attorney's fees in defense thereof, for injuries or death to persons, or damage to property, (hereinafter "Claim"), arising directly or indirectly out of BPI's intentional or negligent act or omission in the performance of its duties as described in this Contract, BPI's breaches of this Contract, or BPI's acts or omissions in violation of law, including fines, penalties, and judgments. In the event of any Claim arising out of the concurrent negligence of BPI and the Generator, or BPI, the Generator, and KC, BPI's defense and indemnification obligations under this section shall be limited to the extent of BPI's negligence.

19.2 KC agrees that it shall be liable for and shall indemnify, defend, and hold harmless the Generator, and its officers, agents, and employees, from and against any claims, actions, suits, costs, and damages of any nature whatsoever, including reasonable attorney's fees in defense thereof, for injuries or death to persons, or damage to property, (hereinafter "Claim"), arising directly or indirectly out of KC's intentional or negligent act or omission in the performance of its duties as described in this Contract, KC's breaches of this Contract, or KC's acts or omissions in violation of law, including fines, penalties, and judgments. In the event of any Claim arising out of the concurrent negligence of KC and the Generator, or KC, the Generator, and BPI, KC's defense and indemnification obligations under this section shall be limited to the extent of KC's negligence.

19.3 The Generator agrees that it shall be liable for and shall indemnify, defend, and hold

harmless BPI and KC, and its officers, agents, and employees, from and against any claims, actions, suits, costs, and damages of any nature whatsoever, including reasonable attorney's fees in defense thereof, for injuries or death to persons, or damage to property, (hereinafter "Claim"), arising directly or indirectly out of the Generator's intentional or negligent act or omission in the performance of its duties as described in this Contract, the Generator's breaches of this Contract, or the Generator's acts or omissions in violation of law, including fines, penalties, and judgments. In the event of any Claim arising out of the concurrent negligence of the Generator and BPI or the Generator, KC, and BPI, the Generator's defense and indemnification obligations under this section shall be limited to the extent of the Generator's negligence.

19.4 Solely for the purposes of paragraphs 19.1, 19.2, and 19.3 above, each Party, by mutual negotiation hereby waives any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

19.5 The defense and indemnification obligations under this section shall survive the termination of this Contract.

SECTION 20 DISPUTES UNDER THIS CONTRACT

20.1 In the event that a dispute arises under this Contract, then representatives from the Parties involved in the dispute shall meet and confer in an effort to resolve the dispute. If the Parties' representatives cannot resolve the dispute within fifteen (15) calendar days then any Party involved in the dispute may request that the Parties involved in the dispute engage in mediation, with each such Party to share equally in the costs of mediation. If the dispute is not resolved to the satisfaction of the Parties involved through mediation then any of the involved Parties may take whatever steps it deems appropriate, including but not limited to, bringing a civil action in a court of competent jurisdiction. Nothing in this section shall be construed to prohibit any Party from exercising its right to terminate this Contract as otherwise provided herein or be construed as a precondition to the exercise of such right to terminate.

20.2 Pending final decision of a dispute hereunder, all Parties shall proceed diligently with the performance of the Contract.

SECTION 21 SEVERABILITY

If any part of the Contract is declared to be invalid or unenforceable, the rest of the Contract shall remain binding.

SECTION 22 INDEPENDENT CONTRACTOR

Each Party hereto is and shall perform this Contract as an independent contractor, and as such, shall have and maintain complete control over all of its employees, agents, and operations. None of the Parties nor anyone employed by them shall be, represent, act, purport to act or be deemed to be the agent, representative, employee or servant of any of the other Parties.

SECTION 23 FORCE MAJEURE

Should any of the Parties be prevented wholly, or in part, from performing their respective obligations under this Contract by a cause reasonably outside of and beyond the control of the Party affected thereby, including but not limited to war, government regulation, restriction or action, strike, lockout, accidents, storms, earthquake, fire, acts of God or public enemy or any similar cause beyond the control of the Parties "Force Majeure," then such Party shall be excused hereunder during the time and to the extent that the performance of such obligation are so prevented, and such Party shall have no liability whatsoever for any damages, consequential or otherwise, resulting therefrom. Force Majeure does not include the Generator's financial inability to pay the required payments set forth in this Contract.

SECTION 24 NON-WAIVER

Failure by any of the Parties to enforce their rights under any provision of this Contract shall not be construed to be a waiver of that provision. No waiver of any breach of this Contract shall be held to be a waiver of any other breach.

SECTION 25 ASSIGNMENT

No Party may assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without the prior written consent of the other Parties. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors and/or assigns.

SECTION 26 NOTICES

All notices required under this Contract shall be personally delivered or mailed by certified or registered mail, postage prepaid as follows:

If to the Generator, addressed to:

Name Steve Banham, Public Works Director
Address City of Lynden
300 4th St
Lynden, WA 98264
banhams@lyndenwa.org

If to BPI, addressed to:

Name: David K. Ruud, Operations Manager
Address: Boulder Park, Inc.
P.O. Box 285, Mansfield, WA 98830
(509) 683-1142
ruudbpi@aol.com

If to KC, addressed to:

Name: Jake Finlinson, Biosolids Project Manager
Address: King County Wastewater Treatment Division
201 S. Jackson Street, #KSC-NR-0512, Seattle, WA 98104
(206) 477-3524
jake.finlinson@kingcounty.gov

Or to such other address as any Party shall specify by written notice so given. Notices shall be deemed to have been given and received as of the date so delivered or three (3) business days after being deposited in the US mail.

SECTION 27 ENTIRE CONTRACT; AMENDMENT

This Contract constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any and all other communications, representations, proposals, understandings or agreements, either written or oral, between the Parties with respect to such subject matter. This Contract may not be modified or amended, in whole or in part, except in writing signed by all Parties.

SECTION 28 COUNTERPARTS; ELECTRONIC SIGNATURES

This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Contract may be executed using electronic signatures.

SECTION 29 AUTHORITY

The undersigned represents that they are fully authorized to enter into this Contract on behalf of the Party for whom they sign. Upon full execution of this Contract, this Contract shall be binding on each Party. Each Party has had the opportunity to review this document with an attorney of their choice.

DRAFT

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed as of the date set forth below.

CITY OF LYNDEN

By _____
Scott Korthuis, Mayor

Date _____

BOULDER PARK, INC.

By _____
Leroy Thomsen, President

Date _____

KING COUNTY

By _____
Mark Isaacson
Director, Wastewater Treatment Division

Date _____

Approved as to form only:

Verna Bromley, Sr. Deputy Prosecuting Attorney

Date