

**CONTRACT FOR SERVICES OF
INDEPENDENT CONTRACTOR
FOR
BIOSOLIDS REMOVAL SERVICES**

City Department: **Public Works**

Provider of Services: Tribeca Transportation

City Business License: _____

Federal I.D. No.: _____

Unified Business I.D. No: _____

Liability Insurance: _____

Description of Services:

The Contractor shall provide all of the labor, tools and equipment necessary to complete the work associated with providing Biosolids Removal Services: Pump and Land Apply approximately 666,667 gallons of **Class B** biosolids at the rate of \$.15/gallon to be removed from the Tenino biosolids storage basin and beneficially reused at state approved and permitted Contractor provided land application site(s).

Cost of Services:

\$100,000.00 plus 8.5% Sales Tax

1. Parties to Contract: The City of Tenino, State of Washington, hereinafter referred to as “City”, and the above described and undersigned provider of services, hereinafter referred to as “Contractor” are the parties to this Contract.
2. Duties of Contractor: The Contractor, during the term of this Contract, promises and agrees to provide all labor, tools, equipment and materials to perform the following services for the City as described above in the “Description of Services”: All associated costs for L&I intents and affidavits, insurance certifications, bonds, payment of prevailing wages, permits including any other costs needed to complete the project, all shall be included in the amount listed above as full compensation for the project.
3. Term of Contract and Designation of Work: The Contractor shall start performance of the foregoing duties on August 3, 2020 and shall complete the work promptly and diligently during the 2020 biosolids application season, which is approximately from **(date)** to **(date)**. The City shall have the right to direct the Contractor as to the times and places at which such services shall be performed.

4. Compensation to Contractor: In consideration of the services to be provided to the City by the Contractor, the City shall pay to the Contractor the sum of \$100,000.00 (plus tax) and paid in the following manner:

Contractor shall provide monthly progress payment requests to the City which list the quantities of biosolids pumped, transported, and applied to each land application site, the acreage that received applied biosolids at each application site, the charge per gallon, and the total charge for the month.

All amounts paid by the City to the Contractor shall be reported to the appropriate taxing authorities in accordance with the requirements of federal, state and local laws and regulations.

Pursuant to RCW 60.28, a sum of 5 percent of the monies earned by the Contractor will be retained from progress payments. Such retainage shall be used as a trust fund for the protection and payment (1) to the State with respect to taxes imposed pursuant to RCW 82, and (2) the claims of any person arising under the Contract.

The City may also, at its option, accept a retainage bond from the Contractor in lieu of withholding retainage from the monthly progress payments.

Release of withheld retainage, if applicable, will be made 60 days following the date of Final Acceptance of the work (pursuant to RCW 39.12 and RCW 60.28) provided the following conditions are met:

- A. Affidavits of Wages paid for the Contractor and all Subcontractors are on file with the City (RCW 39.12.040).
 - B. A certificate of payment of Contributions Penalties and Interest on Public Works Contract is received from the Washington State Employment Security Department.
 - C. Washington State Department of Labor and Industries shows the Contractor is current with payments of industrial insurance and medical aid premiums.
 - D. All claims as provided by law, filed against the retainage have been resolved. In the event claims are filed and conditions A, B, and C above are met, the Contractor will be paid such retained percentage less an amount sufficient to pay any such claims together with a sum determined by the City sufficient to pay the cost of foreclosing on claims and to cover attorney's fees.
5. Warranties: Contractor warrants and represents that it and its subcontractors have sufficient facilities, equipment, and personnel who are sufficiently trained, skilled, knowledgeable, and experienced, to perform all functions that are reasonably necessary to lawfully and effectively remove, transport, or pump and land apply biosolids in a beneficial manner at approved and permitted land application sites. Contractor warrants that its, and its subcontractor(s) equipment and facilities are and will be maintained in a safe condition, and that they are and will be fit for the particular purposes for which they will be operated. Contractor warrants that its and its subcontractor(s), personnel will work in a prudent and workmanlike manner.
6. Prevailing Wages: This contract is subject to the prevailing wage requirements of RCW 39.12.
- A. The Contractor shall submit a copy of an approved "Statement of Intent to Pay Prevailing Wages". The City will make no payment under this contract for the work performed until this statement has been approved by the State Department of Labor and Industries, and a copy of the approved form has been submitted to the City.

- B. The Contractor shall submit a copy of an approved "Affidavit of Wages Paid". The City will not release to the Contractor the final payment for the work performed until the "Affidavit of Prevailing Wages Paid" forms have been approved by the State Department of Labor and Industries, and a copy of the approved form has been submitted to the City. The Contractor shall be responsible for requesting these forms from the State Department of Labor and Industries, and for paying any approval fees.
- C. Certified payrolls are required. The Contractor shall submit a copy of an approved "Certified Payrolls" according to section 1-07.9(5) of the WSDOT Standard Specifications for Road, Bridge, and Municipal Construction" 2012 Edition.

7. Indemnification/Hold Harmless:

- A. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.
- B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. **It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.** The provisions of this section shall survive the expiration or termination of this Agreement.
- C. The City shall defend, indemnify and hold the Contractor, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the City's performance under this Agreement, except for injuries and damages caused by the negligence of the Contractor.
- D. **The indemnification provided herein constitutes the City's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.**

- 8. Insurance Requirements: The following insurance requirements will be applicable for the Agreement entered into between the City and the selected Contractor. The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees or subcontractors.

Minimum Scope of Insurance

The Contractor shall obtain insurance of the types described below:

- A. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing

equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

- B. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.
- C. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- D. Pollution Legal Liability insurance covering losses caused by pollution conditions that arise from the operations of the Contractor.

Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

- A. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- B. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.
- C. Pollution Legal Liability insurance shall be written with limits no less than \$1,000,000 per loss, with an annual aggregate of at least \$1,000,000. Coverage may be written on a claims-made basis.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

- A. The Contractor's insurance coverage shall be primary insurance with respect to the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Contractor's insurance and shall not contribute with it.
- B. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

Verification of Coverage

Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work, within 10 business days of the effective date of this Contract.

Subcontractors

Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the same insurance requirements as stated herein for the Contractor.

9. Safety: Contractor and its subcontractors shall comply with all applicable safety rules and regulations adopted by the United States Department of Labor, Occupational Safety and Health Administration (OSHA) or the Industrial Commission of the State of Washington, whichever is most restrictive. The City assumes no duty to ensure Contractor or its subcontractors follows the applicable safety regulations.
10. Regulations, Orders and Conditions: Contractor and its subcontractors shall comply with all applicable, state, federal, and local laws, regulations, rules, or any other sources of authority, including, but not limited to, court orders, administrative rulings, the regulations in WAC 173-308 and 40 CFR Part 503, the conditions of the City's Coverage under the Washington State General Biosolids Permit, and the conditions of any applicable beneficial use permit, and so forth.
11. Business License: Contractor and all subcontractors shall obtain the appropriate business license from the City of Tenino in compliance with Tenino Municipal Code.
12. Evidence of each subcontractor's enrollment in E-Verify shall be submitted to the City within 3-days of the contractor executing a contract with the subcontractor. Contractors and subcontractors shall submit an E-Verify Compliance Declaration along with their evidence of enrollment in the E-Verify program.

Failure to enroll in the E-Verify program shall render the contractor ineligible for award of the contract. Failure of a subcontractor to enroll in the E-Verify program shall render them ineligible for the subcontract. Failure to verify new employees shall result in the contractor or subcontractor being ineligible for award of future contract until the contractor or subcontractor complies with the City's E-Verify requirements. The City has the right to audit the contractor's or subcontractor's records to determine compliance with E-Verify requirements.

Beginning the day after execution of this contract, or the date of execution of a contract with a subcontractor, all new employees performing work on the City contract for the contractor or subcontractor shall be processed through the E-Verify program. Processing of such employees shall begin within 3 business days of their date of hire. Evidence of verification of a new employee shall be retained by the contractor and provided to the City upon request.

13. Major Change in Circumstances: If a material change in circumstances occurs, such as, but not limited to, a change in operating costs, applicable law, licensing or permitting requirements, or a change that results from decisions of tribunals, either judicial or administrative, and such change materially impacts the costs of transportation, storage, land application or other aspects of the beneficial use of the City's biosolids, then the Parties may renegotiate the affected provisions in this Contract. The parties shall negotiate in good faith; however, any modifications of this Contract shall occur only by mutual agreement of both parties.

14. Termination: Termination for Breach or Default. If either party commits a material breach of or default under this Contract, then the Non-Breaching Party may give the Breaching Party written notice of the breach or default (including a statement of the facts relating to the breach or default and the provisions of this Contract that are applicable to such breach or default.) If the Breaching Party fails to cure the specified breach or default within thirty (10) days after receipt of such notice (or such later date as may be specified in such notice), then the Non-Breaching Party may elect to immediately terminate this Contract. If the City or Contractor purports to terminate or cancel all or any part of this Contract for the other Party's breach or default when the other Party is not in breach or default that would permit such termination or cancellation, such termination or cancellation shall be deemed to have been a Termination Without Cause by the City or Contractor, as the case may be, and the rights of the Parties shall be determined accordingly.
15. Governing Law: The obligations of each Party under this Contract shall in all respects, including all matters of construction, validity and performance, be governed by and construed in accordance with the laws of the State of Washington, without reference to any rules governing conflict of laws, except to the extent such laws may be preempted by the laws of the United States of America.
16. Venue: The venue for any action that arises from or out of this Contract shall be the Thurston County Superior Court.
17. Severability: The invalidity or unenforceability of any provision of this Contract shall not affect the other provisions hereof, and this Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted, unless such invalidity or unenforceability destroys the purpose and intent of this Contract.
18. Independent Contractor, No Partnership: As between Contractor and City, Contractor shall maintain full and complete control and responsibility for its services and the performance thereof; provided, however, the services contemplated herein shall be subject to the City's general rights of direction and must be approved in advance by the City. Notwithstanding the foregoing, the Contractor, acknowledges and agrees that it is dealing with the City as an independent contractor. Nothing contained in this Contract shall be interpreted as constituting either Party as the joint venture, agent, employee, franchisee or partner of the other Party or as conferring upon either Party the power of authority to bind the other Party in any transaction with third parties. Employees or subcontractors of the Contractor are not employees of the City and such employees are not entitled to any of the benefits the City provides to its employees. Contractor shall be solely and entirely responsible for the acts of its employees during the performance of this Contract and shall provide at its sole expense all materials, equipment and facilities, and other necessities to perform its duties under this Contract, unless otherwise specified in writing. All rights and obligations of the Parties under this Contract are intended to be several, not joint or collective, and neither Party shall be jointly or severally liable for the acts, omissions or obligations under this Contract of the other Party.
19. Subcontracting and Prohibition Against Redistribution: Contractor may not subcontract or delegate performance of its services hereunder to any entity, including any Contractor subsidiary company, without written authorization and approval of the City. Contractor shall require all recipients of biosolids products from Contractor to enter into an "Agreement for Beneficial Reuse of Biosolids" which shall limit the use of such biosolids to the land of the recipient and prohibit redistribution thereof without prior written consent from both the Contractor and the City.
20. Non-Waiver: A party's failure to strictly enforce its 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.

- 21. No Third Party Beneficiary: This Contract is entered into solely for the benefit of the parties hereto. This Contract shall confer no benefits, direct or indirect, on any third persons, including employees of the parties. No person or entity other than the parties themselves may rely upon or enforce any provision of this Contract.
- 22. Assignment: Neither Party shall voluntarily assign or otherwise transfer any of its rights, interests or obligations in, to or under this Contract without the prior written consent of the other Party.
- 23. Cumulative Rights: The rights and remedies of each Party set forth in any provision of this Contract are in addition to and do not in any way limit any other rights or remedies afforded to such Party by law.
- 24. Survival: The obligations of the Parties under the provisions of this Contract that may reasonably be interpreted or construed as surviving the completion, termination or cancellation of this Contract shall survive the completion, termination or cancellation of this Contract.
- 25. 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. No amendment or modification of any provision of this Contract shall be valid unless set forth in a written amendment to this Contract. This Contract may be amended only with the express written consent of both of the Parties and no provision of this Contract shall be varied or contradicted by any oral agreement, course of dealing or performance or any other matter not set forth hereafter in a written Contract signed by both of the Parties.
- 26. Counterparts: This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

DATED this _____ day of July, 2020.

FOR THE CITY:

FOR THE CONTRACTOR:

Wayne Fournier
Mayor

Eric Thwaites
Chief Operations Officer

ATTEST:

APPROVED AS TO FORM:

John Millard, Clerk/Treasurer

Richard L. Hughes, City Attorney