

Service Contract for the
Transportation and Land Application of Biosolids
Contract #2020-XX

I. Parties

The Parties to this Contract are the City of Duvall, a Washington State municipal corporation (City), and XXXXX (Contractor). The Contractor operates a Beneficial Use Facility (BUF) in accordance with the provisions of [WAC 173-308-310](#), and has been designated as a Beneficial Use Facility through the permitting process and has the ability to perform land application of biosolids in a lawful manner at appropriate sites.

II. Biosolids Production and Use

The parties acknowledge and agree that (a) the City produces sewage sludge in the form of biosolids as a by-product of its domestic sanitary sewage treatment processes; and (b) the City desires that its biosolids be used beneficially as defined by [WAC 173-308-310](#), in a manner of application to the land for the purpose of improving soil characteristics including tilth, fertility, and stability to enhance the growth of vegetation consistent with protecting human health and the environment.

III. Scope of Services

In consideration of the mutual promises and covenants in this Contract and on the terms and conditions of this Contract, the Contractor agrees to receive, transport, and perform beneficial land applications of the City's biosolids.

The Contractor will manage and operate the entire biosolids land application program for the City upon taking receipt at the City's site. All management and operation activities will be coordinated through the following person:

Name
Title
Company
Address
Address
Phone
email

With respect to any biosolids tendered by the City to the Contractor, the Contractor shall:

- A. Provide a trailer(s) to the City, not exceeding 35' in length and with an approximate capacity of thirty (30) tons, up to five (5) times each week for the transport of biosolids to the Contractor's BUF or other permitted locations for beneficial use through land application of the biosolids which may include use thereof on agricultural lands as a nutrient-based soil amendment or compost ingredient;

- B. Develop and submit to the City a Hauling Plan, that is reviewed and considered as part of the Contract award and approval process, detailing how material will be transported and the location(s) where the material will be transported to and applied;
- C. Develop and submit to the City an Emergency Spill Response Plan;
- D. Provide and furnish at the Contractors cost and expense, all materials, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to provide the beneficial use services in strict conformance with the conditions and prices stated in this Contract;
- E. Collect and test all necessary soil samples on application sites;
- F. Provide information to complete all required biosolids reports, annual or otherwise, related to land application as required by any governing agency, including, but not limited to, the State of Washington Department of Ecology and the United States Environmental Protection Agency;
- G. Obtain and maintain in good standing all applicable and necessary permits, licenses, and approvals of any federal, state, and local government including a permit to operate a BUF from the Washington State Department of Ecology;
- H. Promptly provide copies of the above data, tests and reports to the City to document compliance;
- I. Promptly provide all costs for mobilization, demobilization, transportation, and application. This will include all cost associated to fuel, labor, repairs, maintenance, permit fees, insurance and other associated costs; and
- J. Accept the risks and resulting liabilities of managing conforming biosolids from receipt at the City site to disposition at the application sites. For purposes of this Contract, “conforming biosolids” shall mean that the City's biosolids shall meet federal, state and local standards that govern Class B biosolids.

The risks assumed by the Contractor potentially include, but are not limited to the following;

1. *Transportation accidents*
2. *Transportation spills*
3. *Contamination of ground water*
4. *Contamination of surface water*
5. *Contamination of air*
6. *Odor issues at the site and how to mitigate them for surrounding neighbors*

7. *Human health impacts*
8. *Impacts to soil*
9. *Impacts to crops, vegetation, or livestock*
10. *Impacts to future uses of the sites to which biosolids have been applied*

IV. Tender of Biosolids

The City will regularly tender all of its biosolids to the Contractor. With respect to any biosolids tendered by the City to the Contractor the City shall:

- A. Dewater the biosolids and properly and evenly load the biosolids into transport trailers provided and properly positioned for loading by the Contractor. The City will not move the Contractor's trailer within the bay. Trailer drop-off and pick-up must occur within the regular working hours of plant personnel. The City shall use its best efforts to load the biosolid transport trailer to its maximum capacity;
- B. Ensure that the tendered biosolids conform to federal, state, and local standards that govern Class B biosolids, as they currently exist or are hereafter amended; and
- C. Test the tendered biosolids in accordance with testing procedures that are required by any applicable federal, state, and local law and regulations and provide the Contractor all information required by law or that otherwise is necessary for the Contractor to use and manage application of the biosolids in a safe, consistent, and reliable manner. Such information may include test results that show on a dry weight basis, the level of trace metals and pathogens for which testing is required, the percentage of solids by weight, and nitrogen content as expressed in terms of total Kjeldahl nitrogen (TKN), ammonium or ammonia and nitrates and nitrites, and a certification that the biosolids meet at a minimum Class B standard and vector attraction reduction standard as set forth by the Washington Department of Ecology and USEPA.

V. Warranties

The Contractor warrants and represents that it has 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 transport biosolids, operate a beneficial use facility and apply biosolids in a beneficial manner. The Contractor warrants that its 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 are used or operated. Contractor shall bear the exclusive risk of loss and/or damage to any such equipment. The Contractor warrants that its personnel will work in a prudent and workman-like manner. In addition, the Contractor warrants that it has a permit to operate a Beneficial Use Facility from the Washington State Department of Ecology in accordance with [WAC 173-308-310](#) and that it shall maintain the permit in good standing.

VI. Initial Term and Renewal Term

The initial term of this Contract shall commence on the date when both parties have executed this Contract and shall expire on the third (3rd) anniversary of the effective date (Initial Term). After the Initial Term, this Contract shall automatically renew for consecutive two (2) year periods (each a Renewal Term), unless terminated under Section XVIII.

VII. Compensation for Services

The City shall pay The Contractor based on acceptable work performed at a rate of **XX Dollars and XX cents (\$XX.XX)** (per scale ton rate, based on the City's certified scale weight tickets) for each scale ton of biosolids tendered by the City to the Contractor that the Contractor receives, transports, and beneficially applies pursuant to the provisions of this Contract. This payment shall compensate Contractor for all costs associated with the Contract, including, but not limited to labor, materials, overhead, administrative, and permit and regulatory costs, unless otherwise agreed to by the parties in writing.

VIII. Adjustment of Compensation

After the initial contract year and on an annual basis thereafter, the price of services will be adjusted based on the previous June to June CPI for Western Washington. All price adjustments shall occur only in whole cents. Specifically, any adjustment shall be rounded down to the nearest whole cent.

IX. Billing

The Contractor shall provide to the City a monthly invoice or billing statement that details the services that it has provided hereunder including the total amount of the City's biosolids transported by the Contractor during the billing period, relevant load weight documentation, and any other information that the City may reasonably require.

X. Payment

The City shall pay to the Contractor the above-identified compensation within thirty (30) days after the Contractor provides an invoice for such services to the City. Any payment not made when due shall accrue interest at the rate of one percent (1%) per month or the highest rate permitted by applicable law, whichever is less. All amounts payable under this Contract are denominated in United States dollars and the City shall pay all amounts payable under this Contract in lawful money of the United States. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.

XI. Taxes

Each party shall be responsible for the payment of all taxes of whatever nature and source; to the extent that each party is responsible for the payment of any such taxes pursuant to law.

XII. Notices

All notices required under this Contract shall be personally delivered or mailed by certified or registered mail, postage prepaid to the following address or to such other address as either party shall specify in a written notice so given:

Contractor:	City:
Name Title Address Address Phone email	City of Duvall Waste Water Operations Mike Marty, Manager PO Box 1300 Duvall, WA 98019 425-788-0257 mike.marty@duvallwa.gov

XIII. Safety

The Contractor 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 that the Contractor follows the safety regulations issued by OSHA.

XIV. Regulations, Orders and Conditions

The Contractor shall comply with all applicable state, federal, or 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](#), and the conditions of any applicable beneficial use permit.

XV. Insurance

Throughout the term of this Contract, The Contractor shall obtain and maintain sufficient levels of liability insurance for bodily injury, death and property damage, and any other insurance that is reasonably necessary to effectuate the purpose of this Contract when required by the City. Such liability coverage shall extend to or cover the City as an additional insured.

A. **Minimum Scope of Insurance.** The Contractor shall obtain insurance of the types described below:

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

2. 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 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.

B. Minimum Amounts of Insurance. The Contractor shall maintain the following insurance limits:

1. Automobile Liability Insurance with a minimum combined single limit for bodily injury and property damage of \$300,000 per accident.
2. Commercial General Liability Insurance shall be written with limits no less than \$1,000,000 each occurrence, \$1,000,000 general aggregate and a \$1,000,000 products-completed operations aggregate limit.

C. 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:

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

XVI. Force Majeure

Neither party shall be liable to the other for or be considered to be in breach of or default under this Contract because of any delay or failure in performance by such party under this Contract to the extent such delay or failure is due to any cause or condition beyond such party's reasonable control, including, but not limited to failure or threat of failure of facilities or equipment; fire, lightning, flood, earthquake, volcanic activity, wind, drought, storm and other acts of the elements; court order and act, or failure to act, of civil, military, or governmental authority; strike, lockout, and other labor dispute; epidemic, riot, insurrection, sabotage, war and other civil disturbance or disobedience; labor or material shortage; and act or omission of any person or entity (other than such

party, its contractors or suppliers of any tier or anyone acting on behalf of such party). Each party shall exercise reasonable diligence to overcome the cause of such delay; provided, however, that to the extent the cause of such delay arises from any breach of, or failure by the other party to perform any of its obligations under this agreement, the costs and expenses incurred by the party that has delayed or failed in its performance under this Contract to overcome the cause of such delay shall be for the account of such other party. Nothing contained in this Contract shall be construed to require either party to prevent or settle any strike, lockout or other labor dispute in which it may be involved. Notwithstanding the foregoing, nothing in this paragraph shall apply to any delay or failure by either party to pay any amounts due and owing to the other party pursuant to this agreement.

XVII. Material 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.

XVIII. Termination

- A. **Termination without cause.** Both parties reserve the right to terminate or suspend this Contract at any time, with or without cause, upon sixty (60) days prior written notice. In the event this Contract is terminated or suspended, the Contractor shall be entitled to payment for all services performed to the date of termination.

Either party may terminate this Contract without cause after the expiration of the Initial Term by giving the other party not less than ninety (90) days prior written notice of termination, provided, however, that no termination under this section shall relieve either party from any of its obligations or liabilities incurred prior to such termination.

- B. **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 (30) 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 agreement. If the City or the 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 the Contractor as the case may be and the rights of the parties shall be determined accordingly.

XIX. Indemnification

The Contractor will defend, protect, indemnify and hold harmless the City its officers, directors, agents, employees and invitees from and against any and all liability, claims, demands, losses and expenses of every kind and description including, without limitation, attorney's fees, caused by arising out of, resulting from, or in any way incidental to the performance of this Contract, provided that any such liability, claim, demand, damage, loss or expense is attributable to or caused in whole or in part by any wrongful intentional act or by the negligent act or omission of the Contractor, anyone directly or indirectly employed by or otherwise associated with the Contractor or is caused in whole or in part by the Contractor failure to perform its obligations under this Contract. This paragraph shall not apply to any damage resulting from the sole negligence of the City, its agents, and employees. To the extent that any of the damages referenced by this paragraph were caused by or resulted from the concurrent negligence of the City, its agents, or employees, this obligation to indemnify, defend, and hold harmless is valid and enforceable only to the extent of the negligence of the Consultant, its officers, agents, and employees.

Likewise, to the extent possible allowed by law and without waiving any defenses on protection under the Governmental Immunity Act, the City will defend, protect, indemnify and hold harmless the Contractor its officers, directors, agents, employees and invitees from and against any and all liability, claims, demands, losses and expenses of every kind and description including, without limitation, attorney's fees, caused by arising out of, resulting from, or in any way incidental to the performance of this Contract, provided that any such liability, claim, demand, damage, loss or expense is attributable to or caused in whole or in part by any wrongful intentional act or by the negligent act or omission of the City, anyone directly or indirectly employed by or otherwise associated with the City or is caused in whole or in part by the City's failure to perform its obligations under this Contract. This paragraph shall not apply to any damage resulting from the sole negligence of the Contractor, its agents, and employees. To the extent that any of the damages referenced by this paragraph were caused by or resulted from the concurrent negligence of the Contractor, its agents, or employees, this obligation to indemnify, defend, and hold harmless is valid and enforceable only to the extent of the negligence of the City, its officers, agents, and employees.

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 indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Contract.

XX. Prevailing Wages

The Contractor shall pay prevailing wages as required and shall comply with RCW 39.12 and RCW 49.28. Notice of intent to pay prevailing wages and prevailing wage rates must be posted for the benefit of workers.

XXI. Job Safety and Housekeeping

All work done shall be done in a manner that minimizes interruptions or inconvenience to the public, Contractor's employees and/or City staff. Contractor will be responsible for daily and final clean up and disposal of refuse, waste and debris produced by its operation. Should the City determine Contractor is not fulfilling its obligation in this regard, the City reserves the right to take such action as may be necessary, and to charge Contractor with any costs that may be incurred in such remedial action.

XXII. 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.

XXIII. Venue

The venue for any action that arises from or out of this Contract shall be the King County Superior Court.

XXIV. 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 agreement.

XXV. Independent Contractor, No Partnership

As between the Contractor and the City, the 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 venturer, 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 contractors 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. The 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 agreement, 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.

XXVI. Subcontracting

The Contractor may not subcontract, assign, or delegate performance of its services hereunder to any entity, including any subsidiary companies, without further written authorization from the City which shall not be unreasonably withheld. Any such delegation, assignment or subcontracting shall not relieve the Contractor of its obligation to perform in accordance with the provisions of this agreement.

XXVII. 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.

XXVIII. 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.

XXIX. 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.

XXX. 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.

XXXI. 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 agreement.

XXXII. Attorney's Fees

In the event that any party commences litigation against the other party relating to the performance, enforcement or breach of this Contract, the prevailing party in such action shall be entitled to all costs, including attorneys' fees and costs and any such fees or costs incurred on appeal.

XXXIII. Non-Discrimination

The Contractor shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Contractor under this Contract on the basis of race, color, religion, creed, sex, age, national origin, marital status, or presence of any sensory, mental, or physical handicap.

XXXIV. 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 agreement signed by both of the parties.

XXXV. 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.

CITY OF DUVALL, WASHINGTON

Contractor:

By: _____

By: _____

Amy Ockerlander, Mayor

Title: _____

Attest/Authenticated:

City Clerk

Approved As To Form:

City Attorney