



**SLUDGE REMOVAL AND LAND APPLICATION
AGREEMENT**

- I. **PURPOSE:** The Town of Purcellville Sludge Removal and Land Application Agreement (hereinafter the “Agreement”) is for the provision of high quality sludge removal and land application services.
- II. **PARTIES:** The parties to this Agreement are the Town of Purcellville (hereinafter “Town”) and contractor.
- III. **SCOPE OF SERVICES** – include sludge removal and land application services from the following facilities:

<u>Service</u>	<u>Tonnage Price Per</u>
<u>Sludge Removal</u>	<u>Wet Ton</u>
Wastewater Treatment Facility	\$
Water Treatment Plant	\$

- IV. **TERM, RENEWAL AND MODIFICATION:** The initial term of this Agreement shall commence on August 1, 2015 and end on July 31, 2016. The Agreement may be renewed for four (4) additional successive one-year periods provided funding for this Agreement is budgeted by the Town, and based upon mutual written consent by the Town of Purcellville and contractor. The Agreement may be modified only with written consent by the Town of Purcellville and contractor.
- V. **TERMINATION:** The Agreement may be terminated without cause by the Town of Purcellville or contractor upon thirty (30) calendar days advance written notice to the other party. All sums earned and due to the contractor up to the date of termination shall be paid to the contractor provided the quality of the service and work was satisfactory to the Town. The Town of Purcellville may terminate this Agreement at any time for non-performance, default or negligence by the contractor. The determination of non-performance, default or negligence will be made solely by the Town. Outstanding payments for services due to the contractor will only be paid upon such termination if they are **not related** to any services rendered or incidents by contractor that are the subject of the Town finding of non-performance, default or negligence.

Examples of non-performance, default or negligence include, but are not limited to:

- a) Missing a scheduled pick-up and removal service date;
- b) Failure to fully comply with all the provisions, terms, specifications and requirements of this Agreement, the Invitation for Bid and the contractor's Bid Submission Forms.
- c) Dishonesty, theft, criminal act(s) or other such action(s) by the contractor and/or employees or agents of the contractor.
- d) Failure to promptly correct inadequate levels of service after notification by the Town.
- e) Failure to comply with all applicable federal, state and local laws and regulations concerning sludge removal, storage and land application.

VI. **BILLING AND ESCALATION PAYMENTS:** The contractor shall submit a monthly invoice to the Town for all services rendered during that period. All invoices shall reference the purchase order/contract number. The invoice shall detail the location(s), services provided, frequency of service, date(s) of service, itemized applicable costs, fees and expenses included in the contractor's tonnage price per wet ton and an invoice total cost.

If the Town chooses to renew this Agreement for a successive annual period, the monthly fee for services paid to the contractor **may** escalate up to a maximum of 1.5% (one point five percent) on the first day of the new term at the sole discretion of the Town. The contractor must provide detailed written evidence of increased costs to provide sludge removal and land application services to support the requested monthly fee increase within thirty (30) days prior to the expiration of the current term. There shall be no additional payments of any kind to be paid to the contractor under this Agreement.

VII. **TIME AND FREQUENCY OF SERVICE:** The contractor shall provide monthly sludge removal services, per location as noted in Section III (Scope of Services). The frequency of service is subject to modification by the Town at any time during this Agreement. There will be no removal during holidays or when the Town is closed without checking with and obtaining the approval of the Wastewater and/or Water Superintendent prior to when the work is to be performed. All work hours shall conform to the requirements of the Town's noise ordinance and restrictions and legal requirements for work within the Town Limits.

VIII. SMOKING: No smoking is permitted at any time.

IX. SUBCONTRACTORS: No subcontractors shall be permitted to perform work under this Agreement without the Town's prior written consent.

Payment Clauses Required by Va. Code § 2.2-4354 –

- a) The contractor shall take one of the two following actions within seven days after receipt of amounts paid to the contractor by the Town for all or portions of the goods and/or services provided by a subcontractor: (a) pay the subcontractor for the proportionate share of the total payment received from the Town attributable to the work performed by the subcontractor under that contract; or (b) notify the Town and subcontractor, in writing, of the contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
- b) Pursuant to Virginia Code § 2.2-4354, the contractor that is a proprietor, partnership, or corporation shall provide its federal employer identification number to the Town. Pursuant to Virginia Code § 2.2-4354, the contractor who is an individual contractor shall provide his/her social security numbers to the Town.
- c) The contractor shall pay interest to its subcontractors on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the Town for all or portions of goods and/or services performed by the subcontractors, except for amounts withheld as allowed in Subparagraph IX. a).
- d) Pursuant to Virginia Code § 2.2-4354, unless otherwise provided under the terms of the Agreement interest shall accrue at the rate of one percent per month.
- e) The contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.
- f) The contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in Virginia Code § 2.2-4354 shall not be construed to be an obligation of the Town. An Agreement modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

- X. SUPERVISION/CONTRACTOR CONTACT: The contractor will provide a competent, fluently English speaking supervisor or Crew Leader to supervise all sludge removal and land application services. The supervisor must remain at service locations at all times while services are being conducted.

The contractor will provide the Town with telephone numbers that will contact the contractor both during normal business hours and on a twenty-four (24) hour emergency basis should emergency services be required.

XI. PERFORMANCE SPECIFICATIONS:

- a) The contractor shall provide all equipment, labor and services for the purpose of sludge removal from one (1) storage facility, transporting and land application the Town of Purcellville's Wastewater Treatment Sludge (WWTS) in the states of Maryland and/or Virginia. The Wastewater Plant Site Overview (see Section XII of the Invitation for Bid) displays the sludge lagoon and sludge holding tank layout.
- b) The Town will provide approximately 1400 wet tons minimum of sludge on an annual basis. If the Town of Purcellville exceeds the minimum gallons of sludge to be removed during the time of this contract, the contractor will remove any excess sludge under the contract at the same price per tonnage bid.
- c) The WWTS shall be applied as a soil conditioner to application sites located by the contractor and approved by the Maryland Department of Agriculture (MDA) or the Virginia Department of Health (VDH). The contractor shall provide the Town of Purcellville with documentation of the intended approval site(s) where the WTS will be applied. The registration application approving the Town's WWTS as a soil conditioner by the MDA, VDH or other jurisdiction shall be obtained by the Contractor and provided to the Town of Purcellville prior to beginning sludge removal operations.
- d) The WWTS shall be transported in a currently inspected covered trailer to an off-loading site where the WWTS is transferred into a sludge application vehicle. The sludge applicator vehicle shall be specifically designed for land application with floatation tires to prevent compaction of solids and subsoils. The WWTS shall be surface applied or injected to a depth of six inches below surface depending on approved site requirements.
- e) The contractor will comply with all MDA or VDH regulations and provide MDA or VDH and the Town of Purcellville all field reports, semi-annual soil conditioner tonnage reports, commercial soil

conditioner reports, proof of tonnage inspection fees and other documentation required for sludge removal, transportation and disposal operations.

- f) The contractor shall comply with all applicable federal, state or local regulations or ordinances relating to air quality (odor), water quality, zoning or transport etc.
- g) The contractor shall obtain and pay for all permits, licenses, certifications, tolls and any other associated charges necessary for sludge removal, transportation and disposal operations.
- h) All costs, fees and expenses are included in the tonnage price per wet ton specified in Section III.
- i) The contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from danger; injury or loss and shall provide and maintain all necessary safeguards for such safety and protection in the removal, transport and application of WTS for this project.
- j) The contractor shall implement its emergency spill cleanup plan in the event of a spill on state or non-state routes and immediately notify all pertinent agencies. The contractor shall notify the Town of Purcellville immediately upon occurrence of the spill and keep the Town of Purcellville informed of the status of cleanup operations.
- k) The contractor is required to remove sludge on at least a monthly basis or as specified by the Town.

XII. **CONTRACTOR'S INSURANCE REQUIREMENTS, INDEMNIFICATION AND HOLD HARMLESS:** The contractor will not commence work under this Agreement nor receive any payments due until all insurance requirements herein have been met. A certificate of insurance displaying the required coverages and a policy endorsement naming the Town as an Additional Insured shall be provided by the contractor to the Town as required in Section X (b) of the Invitation for Bid.

- a) At all times during the term of this Agreement, the contractor will maintain a general liability policy with not less than \$2,000,000 combined single limits per occurrence with excess general liability (umbrella) coverage with a combined minimum limit of \$3,000,000. Coverage is to be on an occurrence basis only with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. The contractor's

general liability and excess liability policies must be endorsed to list the Town of Purcellville as an additional insured. The insurance provided in the additional insured endorsement shall be primary without contribution from such other insurance provided or available to the additional insured. Any additional insured endorsement will be rejected if it includes an exclusion of completed operations coverage, unless a separate endorsement for that coverage is attached. All endorsements must be issued by the contractor's insurance company. A notation of additional insured status on the certificate of insurance is not sufficient. Prior to the commencement or any work under the Agreement, the contractor shall provide the Town with a certificate of insurance and all insurance endorsements evidencing compliance with all insurance requirements in this paragraph.

- b) At all times during the term of the Agreement, the contractor will maintain workers' compensation coverage in compliance with the laws of the Commonwealth of Virginia. The coverage must have statutory limits and be with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. As an alternative, it is acceptable for the contractor to be insured by a group self-insurance association that is licensed by the Virginia Bureau of Insurance. The contractor will also carry employers liability insurance with a limit of at least \$1,000,000 bodily injury by accident/\$1,000,000 bodily injury by disease policy limit/\$1,000,000 bodily injury by disease each employee. Prior to the commencement or any work under the Agreement, the contractor shall provide the Town with a certificate of insurance evidencing compliance with all insurance requirements under this paragraph. Title 65.2 of the Code of Virginia requires every employer who regularly employs three or more full-time or part-time employees to purchase and maintain workers' compensation insurance. If you do not purchase a workers' compensation policy, a signed statement is required documenting that you are in compliance with Title 65.2 of the Code of Virginia.
- c) At all times during the term of this Agreement, the contractor will maintain automobile liability insurance with limits of at least \$2,000,000. The coverage is to be written with a symbol "1" or "any auto." The insurer must be licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. The Town of Purcellville must be listed as an additional insured on the automobile liability policy by endorsement. The endorsement must be issued by the contractor's insurance company. A notation on the certificate of insurance is insufficient. The insurance provided in the additional insured endorsement shall be primary without contribution from such other insurance provided or available to the additional insured. Prior to the commencement or any work under the Agreement, the contractor shall provide the Town with

a certificate of insurance and all endorsements evidencing compliance with all insurance requirements under this paragraph.

- d) All coverages required herein are to be evidenced by a certificate of insurance issued by the contractor's insurer or insurance agent. The Town's additional insured status must be by endorsement to the contractor's insurance. A copy of the additional insured endorsement must be provided to the Town. The endorsement listing the Town as an additional insured must remain in force during the entire term of the contract.
- e) The insurance provided in the additional insured endorsements required herein shall be primary without contribution from such other insurance provided or available to the additional insured.
- f) The contractor's insurer or insurance agent must provide thirty (30) days' notice of cancellation [ten (10) days for non-payment] to the Town of any insurance or endorsements required herein. Such notice may be provided by one of the following three methods:
 - 1. A note on company letterhead that the Town will receive such notice of cancellation. This may be on the letterhead of the agent, the broker, or the insurance company, and not include a blanket disclaimer of liability upon failure to give such notice.
 - 2. A separate endorsement specifying the notice required, or
 - 3. A copy of a policy provision regarding such notice.
- g) The contractor shall not commence any work under the contract until the Town has received all required certificates of insurance and endorsements.
- h) If the contractor fails to comply at any time with any part of this Section XIII of the Agreement, the Town may, at its discretion, terminate the Agreement or otherwise require contractor to cease all activities under the Agreement.
- i) Waiver of subrogation required. The contractor's insurer shall waive rights of subrogation against the Town and its officers, officials, employees, agents, assigns and volunteers under the Contractor's general liability, excess liability, automobile liability, and workers' compensation policies. The waiver of subrogation must be specified on the certificate of insurance.
- j) The contractor shall require the same insurance coverage from its subcontractors as the Town requires of the contractor under this Agreement. Compliance by the contractor and any of its subcontractors with the insurance requirements under this Agreement shall not relieve the contractor or any subcontractors of their liabilities and obligations under this Agreement.

- k) Nothing contained herein shall be construed to create a contractual relationship between the Town and any subcontractor of the contractor. The contractor shall be fully responsible to the Town for the acts and omissions of the contractor's employees, the contractor's subcontractors, and the employees of any subcontractor.
- l) In the event the contractor cannot meet the specifications required by these insurance requirements, alternate insurance coverage, satisfactory to the Office of the Town Manager, or his designee, may be considered if proposed by contractor at the time of Proposal or Bid submission.
- m) If an "ACORD" Insurance Certificate form is used by the contractor's insurance agent, the words, "endeavor to" and "...but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted.
- n) The contractor agrees to indemnify, defend and hold harmless the Town, including its officers, agents, employees, community representatives, volunteers and others working on behalf of the Town, from any and all claims, appeals, damages, actions, liabilities, judgments, suits, losses, payments, costs, fines and or fees levied against the Town (and expenses of every related nature and description, including attorneys' fees) arising from or caused by the actions, inactions, activities, or performance of the contractor or a subcontractor, provided that such liability is not attributable to the Town's negligence.

If the contractor subcontracts all or a portion of the work under this Agreement, the contractor shall enter into an agreement with such subcontractor(s) in which the subcontractor indemnifies, defends, and holds harmless the Town and its officers, agents, employees and community representatives, from any and all claims and losses accruing or, resulting from the negligent performance of work by the subcontractor.

The attorney(s) selected to defend the Town shall be subject to approval by the Town. Virginia is a Dillon Rule state. Unless specifically permitted by statute, indemnification or attempt to have the Town "hold harmless" others are invalid and unenforceable or an impermissible waiver of the Town's sovereign immunity which may create potential future debt in violation of Virginia Constitutional and statutory requirements. The Town does not waive its sovereign immunity. The contractor expressly understands and agrees that any insurance protection required by this Agreement, or otherwise provided by the contractor, shall in no way limit the responsibility to indemnify, keep and hold harmless and defend the Town as herein provided.

- XIII. **NO CLAIM AGAINST TOWN OFFICIALS:** The contractor agrees that it shall make no claims whatsoever against any elected official, appointed official, authorized representative, agent or employee of the Town for, or on account of, anything done or omitted to be done in connection with this Agreement.
- XIV. **LEGAL AND SAFETY REQUIREMENTS:** The contractor will be in compliance at all times with all applicable federal, state, local and Town laws, ordinances, policies, regulations and rules concerning this Agreement and the services rendered thereunder. The contractor and any approved subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as amended. All work and services under the Agreement shall be conducted by the contractor so as at all times to protect the safety and welfare of the contractor's employees, Town employees and the general public. Any dangerous conditions, property damage or injuries shall be promptly reported to the Town by the contractor.
- The contractor agrees that it shall be an independent contractor and not an employee of the Town.
- XV. **APPLICABLE LAW/VENUE:** This Agreement is made, entered into, and shall be performed in the Town of Purcellville, and Loudoun County, Virginia and shall be governed by the applicable laws of the Commonwealth of Virginia. Any dispute arising out of the Agreement, its interpretations, or its performance shall be litigated only in the Loudoun County General District Court or the Circuit Court of the County of Loudoun, Virginia.
- XVI. **INCORPORATION BY REFERENCE:** All provisions, conditions and requirements of the Invitation For Bid (IFB #FY2016 Public Works 01) dated July 1, 2015 and the contractor's bid forms, insurance certifications, insurance endorsements and licenses, permits and certifications are incorporated by reference into the provisions, conditions and requirements of this Agreement as if stated verbatim therein. In case of any conflict between the Agreement and IFB or the contractor's bid forms, insurance certifications, insurance endorsements, licenses, permits and certifications the Agreement shall control.
- XVII. **LICENSE REQUIREMENT:** All firms including the contractor doing business in the Town of Purcellville shall meet all applicable federal, state, town and county licensing requirements. The failure to maintain all required federal, state, town and county licenses shall be grounds for the Town to withhold payments due until all licensing requirement are satisfied. A failure to meet all applicable licensing requirements within thirty (30) days' notice of such failure by the Town shall be grounds for the immediate termination of the Agreement (see Section V).

XVIII. COMPLIANCE WITH IMMIGRATION LAW: The contractor certifies that it does not, and during the performance of this Agreement shall not, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

XIX. EMPLOYMENT DISCRIMINATION BY CONTRACTORS PROHIBITED: During the performance of this Agreement, the contractor agrees as follows –

- a) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b) The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, shall state that such contractor is an equal opportunity employer.
- c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement.

XX. DRUG-FREE WORKPLACE: During the performance of this Agreement, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, a "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the contract.

XXI. COMPLIANCE WITH STATE LAW; FOREIGN AND DOMESTIC BUSINESSES TO TRANSACT BUSINESS IN THE COMMONWEALTH:
During the performance of this Agreement, the contractor agrees as follows –

- a) If the contractor is organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership, the contractor shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, as amended, or as otherwise required by law.
- b) Pursuant to competitive sealed bidding or competitive negotiation, all public bodies shall include in the solicitation a provision that requires a bidder or contractor organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or contractor that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or contractor is not required to be so authorized.
- c) Any bidder or contractor described in this section that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the Director of the Department of General Services or his designee or by the chief executive of a local governing body.
- d) Any business entity described in this section that enters into a contract with a public body pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.
- e) A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

XXII. NO DISCRIMINATION AGAINST FAITH-BASED ORGANIZATIONS: The Town of Purcellville does not discriminate against faith-based organizations as defined in Virginia Code Section 2.2-4343.1 (D).

XXIII. ETHICS IN PUBLIC CONTRACTING: The provisions of law set forth in Article IV of the Virginia Public Procurement Act, entitled "Ethics in Public Contracting," Code of Virginia §§2.2-4367 et seq., the State and Local Government Conflict of Interest Act, Code of Virginia §§ 2.2-3100, et seq., the Virginia Governmental Frauds Act, Code of Virginia §§18.2-498.1 et seq., Articles 2 and 3 of Chapter 10, Title 18.2 of the Code of Virginia, as amended, are incorporated herein by reference. The contractor shall incorporate the above clause in its contracts with any subcontractor.

XXIV. MINORITY AND WOMEN-OWNED BUSINESSES: The Town of Purcellville solicits both minority and women-owned businesses to respond to all Invitations for Bids and Requests for Proposals.

XXV. SEVERABILITY: Each paragraph and provision of the Agreement will be severable from the entire Agreement and if any paragraph or provision is declared invalid, void or unenforceable by a court of competent jurisdiction the remaining provisions shall remain in full effect and be binding on the parties.

XXVI. TAXES: The contractor shall pay all Town, county, state and federal taxes required by law and resulting from the work under this Agreement, or traceable thereto, under whatever name levied. Said taxes shall not be in addition to the price under this Agreement between the Town and contractor, as the taxes shall be an obligation of the contractor and not of the Town, and the Town shall be held harmless for same by the contractor.

The Town is exempt from the payment of federal, state, and local taxes.

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XXVII. EXECUTION AND ACKNOWLEDGEMENT OF AGREEMENT:

FOR THE TOWN OF PURCELLVILLE

By: _____
Alex Vanegas
Director of Public Works

County of Loudoun

Commonwealth of Virginia

The foregoing Town of Purcellville Sludge Removal and Land Application Services Agreement was acknowledged before me this _____ day of _____, 2015 by Alex Vanegas.

Notary Public

My Commission Expires: _____

Notary Registration #: _____

STAMP OR SEAL:

FOR THE CONTRACTOR

By: _____

Printed Name

Title

County of _____

Commonwealth of Virginia

The foregoing the Town of Purcellville Sludge Removal and Land Application Services Agreement was acknowledged before me this _____ day of _____, 2015 by _____.

Notary Public

My Commission Expires: _____

Notary Registration #: _____

STAMP OR SEAL: