

# CLARK COUNTY STAFF REPORT

**DEPARTMENT:** Public Works/Wastewater Operations

**DATE:** April 14, 2015

**REQUESTED ACTION:** Authorize the Public Works Director to execute contracts with Matt Peterson, Tribeca Transport, and Natural Selection Farms for the land application of biosolids from the Salmon Creek Wastewater Treatment Plant.

**SR Number:**

**FOR APPROVAL BY:**  BOCC  COUNTY MANAGER  HEARING

## PUBLIC WORKS GOALS:

- Provide safe and efficient transportation systems in Clark County
- Create and maintain a vibrant system of parks, trails and green spaces
- Continue responsible stewardship of public funds
- Promote family-wage job creation and economic development to support a thriving community
- Maintain a healthy, desirable quality of life
- Increase partnerships and foster an engaged, informed community
- Cultivate a nimble, responsive work force
- Make Public Works a great place to work

## **BACKGROUND**

The Salmon Creek Wastewater Treatment Plant is operated by Clark County Public Works for the Discovery Clean Water Alliance (DCWA). As part of the treatment process, biosolids are separated from the wastewater and further treated and dewatered. The final biosolids product is spread on agricultural land, subject to stringent local, state, and federal regulations.

The county has long-term relationships and prior contracts with the three companies included in this request. Two of the companies (Matt Peterson and Tribeca Transport) apply biosolids locally. The third company (Natural Selection Farms) applies biosolids in eastern Washington. Contracting with multiple land application providers allows the county to optimize the biosolids program, since biosolids may only be applied during dry weather. All three companies have an excellent performance record. Since there is a limited market of reputable companies that provide the land application service, the county directly negotiated these three contracts.

The BOCC approved the expense budget for biosolids land application with the treatment plant's FY2015-16 adopted budget. The DCWA Board of Directors also approved the same treatment plant operating budget. The contracts cost is based on a unit price per ton of biosolids. The annual contract amount will vary based on the contractor's specific land availability, but estimated 2015 annual expenses for each contract are:

Natural Selection Farms, Inc. - \$88,000

Matt Peterson - \$54,000

Tribeca Transport - \$28,000

All three contracts have five-year terms with an option of one five-year extension. The long terms are necessary to ensure land is available for the biosolids land application and to ensure the continuity of the treatment plant's biosolids program.

## **ADMINISTRATIVE POLICY IMPLICATIONS**

None known at this time.



PW 15-025

**COUNCIL POLICY IMPLICATIONS**

None known at this time.

**PREVIOUS REVIEWS AND ACTIONS**

The BOCC has previously approved similar biosolids land application contracts with these three companies.

**COMMUNITY OUTREACH**

Not applicable at this time.

**BUDGET IMPLICATIONS**

YES	NO	
X		Action falls within existing budget capacity.
	X	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	X	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

**DISTRIBUTION OF BOARD STAFF REPORTS:**

Distribution of staff reports is made via the Grid. <http://www.clark.wa.gov/thegrid/>  
Copies are available by close of business on the Thursday after council deliberations.

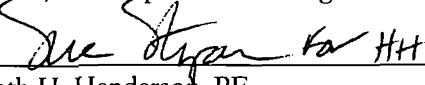
**DISTRIBUTION OF COUNTY MANAGER STAFF REPORTS:**

Public Works Administration – Anita Temme

**PUBLIC WORKS APPROVALS:**

  
\_\_\_\_\_  
Sue Stepan, PE

Public Works Operations Manager

  
\_\_\_\_\_  
Heath H. Henderson, PE

Public Works Director/County Engineer

Attachments: Three (3) contracts with Natural Selection Farms, Inc.; Matt Peterson; Tribeca Transport

CC: Public Works (Anita Temme, Sue Stepan, Kay Hust)

APPROVED:   
\_\_\_\_\_  
**CLARK COUNTY, WASHINGTON  
BOARD OF COUNTY COUNCILORS**

\_\_\_\_\_  
**MARK MCCAULEY  
ACTING COUNTY MANAGER**

DATE: April 14, 2015

SR #: SR 070-15

**COUNTY MANAGER ACTION\RECOMMENDATION**

**By:** Mark McCauley

**Date:**

**SR Number:**

**REQUESTED ACTION:**

Authorize the Public Works Director to execute contracts with Matt Peterson, Tribeca Transport, and Natural Selection Farms for the land application of biosolids from the Salmon Creek Wastewater Treatment Plant.

**COUNTY MANAGER RECOMMENDATION:**

<b>Action</b>	<b>Conditions</b>	<b>Referral to council?</b>
<i>Approval\denial</i>	<i>Enter conditions or requests here</i>	<i>Yes\No</i>

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**Mark McCauley**  
**Acting County Manager**

**DISTRIBUTION**

Public Works Administration – Anita Temme

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# BUDGET IMPACT ATTACHMENT

## Part 1: Narrative

The BOCC approved the expense budget for biosolids land application with the treatment plant's FY2015-16 adopted budget. The Discovery Clean Water Alliance Board of Directors also approved the same treatment plant operating budget.

## Part 2: Budget Impact

The expenditures shown in the table below are estimated annual expenses for the total of the three contracts. The contracts cost is based on a unit price per ton of biosolids. The annual contract amount will vary based on the contractor's specific land availability, but estimated 2015 annual expenses for each contract are:

Natural Selection Farms, Inc. - \$88,000  
 Matt Peterson - \$54,000  
 Tribeca Transport - \$28,000

Expenditure:

Fund	Dept	Obj	Expense Change Year 1	Expense Change Year 2	Expense Change Year 3	Expense Change Year 4	Expense Change Year 5	Expense Change Year 6	One Time or Ongoing
4580	000/535814	419							\$170,000
Total:			\$0	\$0	\$0	\$0	\$0	\$0	\$170,000

Revenue:

Fund	Dept	Obj	Expense Change Year 1	Expense Change Year 2	Expense Change Year 3	Expense Change Year 4	Expense Change Year 5	Expense Change Year 6	One Time or Ongoing
4580 Fund Balance									\$170,000
Total:			\$0	\$0	\$0	\$0	\$0	\$0	\$170,000

## Part 3: FTE Profile Over Time

# FTE	Type*	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Not Applicable							

\*operating, revenue, project, temporary

Estimated start date for employees: Not Applicable.

**AN AGREEMENT BETWEEN  
CLARK COUNTY, WASHINGTON, AND MATT PETERSON  
FOR THE BENEFICIAL USE OF BIOSOLIDS**

This Contract is made and entered into as of the <sup>14th</sup> ~~16~~ day of ~~March~~ <sup>April</sup>, 2015, (for the "Effective Date" of March 1, 2015) by and between Clark County, Washington, ("County"), and Matt Peterson, ("Owner").

Whereas, the County produces municipal biosolids at the Salmon Creek Wastewater Treatment Plant, 15100 NW McCann Rd., Vancouver, Washington, and desires to recycle biosolids from the plant for beneficial use; and

Whereas, Owner has the ability to perform land application of biosolids in an approved manner at appropriate sites; and

Whereas, Owner and County now wish for Owner to perform the land application of biosolids tendered by County to Owner in accordance with the terms more fully set forth herein;

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:

1. **Purpose.** County and Owner enter into this Contract to establish terms and conditions for Owner to receive County's biosolids and perform the land application of biosolids produced by County and tendered to Owner.
2. **County's Obligations.** County shall be obligated to perform the following with respect to biosolids at the County's facilities in Vancouver, Washington, in such quantities as the parties may mutually agree upon, but not less than 180 dry tons per calendar year, unless otherwise agreed to by Owner and County:
  - a. load biosolids onto trucks and arrange hauling routes;
  - b. ensure the biosolids meet federal, state and local standards governing land application of biosolids as the same currently exist and as they may be modified or altered from time to time;
  - c. provide test results to Owner of all pertinent biosolids testing performed in conjunction with land applications at the beneficial use facility (BUF);
  - d. pay Owner service fees as provided in Section 6 below;
  - e. pay all costs, whether in the form of fees, levies, or other charges, charged by any local agency related to the importation, management, disposal, or use of biosolids tendered to Owner under this Contract. In the event that any such cost or fee is charged to Owner, County agrees to timely pay the

same prior to delinquency promptly upon presentation of any invoice therefor submitted to County by Owner; and

- f. pay such amounts as may be reasonably incurred by Owner in order for Owner to efficiently accept and land apply County's biosolids, provided that the parties presently contemplate that this charge will be mutually agreed upon in advance. The failure to so agree will relieve Owner of any further obligation to accept biosolids pursuant to this Contract but will not otherwise alter the remaining rights and obligations of the parties hereunder.
3. County's Covenants and Warranties. The County warrants that all biosolids tendered to Owner shall comply with all specified testing standards and results stated herein and all requirements under federal, state and local laws and regulations applicable to the land application of biosolids, as the same currently exist and as they may be modified or altered from time to time.
  4. Owner's Obligations. Subject to Section 7 below, Owner shall:
    - a. Receive biosolids from the County's facility located at 15100 NW McCann Rd., Vancouver, Washington, for application and use thereof on agricultural lands located at the BUF as a nutrient based soil amendment or other permitted beneficial use.
    - b. Provide all of the facilities, equipment, and personnel necessary for such work, and perform the application of County's biosolids in compliance with all applicable local, state, and federal regulations.
    - c. Maintain a suitable storage site or multiple storage areas for trucks to off load during hauling activities through completion of land applications. The storage site(s) will allow for spring and fall applications.
    - d. Fulfill site access and egress requirements for hauling trucks delivering the biosolids.
    - e. Apply biosolids at agronomic rates determined by County and only in areas/fields mutually agreed to by County and Owner.
    - f. Test and provide County with annual testing results of wells for Total Coliform and Nitrate Nitrogen within  $\frac{1}{4}$  of one-mile of fields to be utilized for biosolids applications. Testing results shall be provided to County at least 10 business days prior to applications taking place. Owner is also responsible for any re-testing of wells, in the event parameters are outside of normal and appropriate ranges. Biosolids shall not be applied within  $\frac{1}{4}$  mile of any well outside of appropriate ranges for the above constituents.

- g. Test and provide County with annual testing results of each field expected to have biosolids applications during the calendar year at least two weeks prior to intended actual applications commencing. Only permitted fields identified and have completed soil analysis supplied to County within aforementioned time frame shall be considered for biosolids applications.
  - h. Provide access to all fields identified for land application of biosolids without restriction, for the purposes of gathering soil and water samples.
  - i. Ensuring roadway egress is relatively clear of dirt, biosolids, grass or other crop debris from truck traffic exiting the field. The Owner shall route trucks through field(s) in a manner that either prevents driving through biosolids, or the Owner shall provide a means of cleaning tires for truck drivers prior to entering the public roadway.
5. Owner's Covenants and Warranties. Owner warrants and represents that it has the business, professional, and technical expertise to use and manage the application of biosolids and shall at all times do so in a prudent and workmanlike manner. Furthermore, Owner warrants and represents that it has the equipment (subject to the terms of paragraph 2(b) above), plant and employee resources required to perform this contract. Such equipment shall, at all times relevant to the performance of services hereunder, be maintained in a good and safe condition fit for use as required.
6. Billing and Payment.
- a. Billing. Owner shall provide to the County, by the thirtieth (30th) day after acceptance of the County's biosolids, a statement in a format that is mutually agreeable to Owner and the County, detailing the number of wet tons/gallons (as applicable) of biosolids accepted by Owner. The method of determining tonnage shall be the certified truck scale located at the County's facility. In the event the scale is unavailable, weights shall be determined by using the average weights from reasonably comparable past loads, load cell weights (if loading from storage hopper), or by any other reasonable method as the County shall, in its sole discretion, decide.
  - b. Service Fees. The County shall pay Owner's service fees as provided herein. County shall pay Owner the sum of \$17.76 per wet ton to receive the County's biosolids from the County's wastewater treatment plant at Vancouver, Washington, for use at a beneficial use land application facility mutually agreed upon by Owner and County. Of this amount, \$4.67 shall on the date of execution be allocated to fuel-related charges (Diesel Cost) and \$13.09 shall on the date of execution be allocated to non-fuel-related (Non Fuel Rate) charges.

Attachment C is an example of the Fuel Cost adjustment spreadsheet which shall be utilized for monthly billing purposes.

These minimum service fees will be adjusted from time to time as set forth herein.

- c. Loading. The County shall be solely responsible for all fees associated with loading of trucks at the County site and subsequent fees related to the transportation of biosolids to the mutually agreed upon land application site.
- d. Price Adjustment for Change in Law. Owner may, after notice to County, increase the minimum service fee by one hundred percent (100%) of Owner's reasonable actual increased costs of performing its obligations under this Contract due to a change in law. For purposes of this section, a "change in law" constitutes a determination that requires that Owner pay prevailing wage rates, as may be required by law; it being a basis of the price terms in this Contract that Owner is and shall not be required to pay prevailing wage rates. Whether or not a change in law material to this Contract has occurred shall be determined by Owner, in Owner's sole discretion. Such increase in service fees may occur only for reasonable costs that are actually incurred, and shall not be allowed for any cost increases that are in any way attributable to activities caused by Owner or its subcontractors, employees, or agents, or are otherwise within Owner's control. In the event County does not approve an increase for a change in law as provided for herein, then Owner, at its option, may terminate this Contract upon written notice and with no further obligation to County.
- e. Other Changed Conditions. In the event of any material change in the nature of the biosolids subject to this Contract, including but not limited to any deviation from the test parameters set forth above, or in the event of any other change in circumstances that causes an increase in Owner's cost or the time and equipment required for performance of any part of the work under this Contract, an equitable adjustment in the service fee, the delivery schedule, or both shall be made and, if the same shall be acceptable to County and Owner, the Contract shall be modified in writing accordingly. If no such change may be agreed upon by the parties, then Owner shall be entitled, at its option, to terminate this Contract upon written notice and with no further obligation to County.



7. Conditions Precedent. The obligations of both Owner and County hereunder are strictly contingent upon County obtaining all applicable and necessary permits, licenses and approvals of any federal, state, and local government or governmental authority.
8. Term and Extension; Adjustment of Fees. The term of this Contract shall expire on midnight, December 31, 2019; provided, however, that this term shall be automatically extended for one additional five-year term, expiring on midnight, December 31, 2024, unless notice of non-renewal is provided by either party to the other party by not later than November 1, 2019.

The non-fuel-related service fee set forth above shall be adjusted annually on the yearly anniversary date of this Contract, beginning one year after the date of execution. Said adjustment shall be dictated by, and directly proportional to, the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for all U.S. cities over the same period of time.

The fuel-related service fee set forth above shall be adjusted monthly, following the date of execution and continuing every month thereafter. The adjusted fee shall be utilized for payment of services rendered in the following month (i.e. March fuel costs for biosolids delivered in April – see Attachment C, Figure 2). The said adjustment shall be dictated by, and directly proportional to, the percentage change in the data found in the Bureau of Labor Statistics Producer Price Index-Commodities Data for #2 diesel fuel (Series ID: WPU057303), or its successor index, as found at [www.bls.gov](http://www.bls.gov).

Both the Owner and the County hereby agree that the fuel related service fee charged to the County shall be based on the entire hauling event, which may involve delivery of biosolids to multiple fields or locations, and that the month containing the largest quantity of delivered biosolids to said site(s) shall be the month in which fuel related fees are assessed for the entire hauling event, even when some of the biosolids are delivered in previous or later months in the same hauling event/season of no greater than 15 work days of any given previous or later month of hauling was executed during this hauling event. In the event a hauling event takes longer than 15 work days in a given month, each month shall be billed separately according to the aforementioned adjusted fee for fuel related services, and the quantity delivered during that month and any additional biosolids within the 15 work day period thereafter during the same hauling event as described above.

9. Insurance; Waiver of Subrogation. At all times during the term of this Contract, Owner shall maintain an insurance policy that insures all aspects of Owner's operation hereunder, regardless of what insurance the County may maintain, and which shall provide limits of liability of not less than \$2,000,000 comprehensive bodily injury and property damage. It is further agreed that certificates of insurance showing all of said coverage and endorsements shall be provided to the County, and that the County shall be named as an additional insured thereon.

The parties hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective insurance contracts, including any extended coverage endorsements thereto, provided, that this paragraph shall be inapplicable to the extent that it would have the effect of invalidating any insurance coverage otherwise available.

10. Termination; Default.

a. Owner may terminate this Contract if:

- i. the County fails to make any payment required hereunder within thirty (30) days after receiving notice of nonpayment from Owner;
- ii. the County breaches any material representation or warranty set forth herein;
- iii. the County defaults in the performance of any other obligation of the County under this Contract and fails to cure such default within thirty (30) days after receiving written notice thereof from Owner;
- iv. any applicable law or governmental regulations or other circumstances outside Owner's control cause the services required of Owner to be economically unfeasible for Owner, or Owner is otherwise prohibited from providing the services required of it by the Contract; or
- v. as provided in Section 6(d) and 6(e) above.

b. County may terminate this Contract if:

- i. Owner breaches any material representation or warranty set forth herein;
- ii. Owner defaults in the performance of any other material obligation of the County under this Contract and fails to cure such default within thirty (30) days after receiving written notice thereof from the County;
- iii. Owner fails to comply with any federal, state or local laws, rules, orders or ordinances, or regulations that pertain to the storage or use of biosolids and fails to cure such non-compliance within thirty (30) days after receiving written notice from the appropriate agency or court; or
- iv. as provided in Section 6(d) and 6(e) above.

11. Non-conforming Biosolids. Owner shall be entitled to inspect and analyze each load of biosolids tendered by the County. Owner's right to verify County's biosolids testing under this section is entirely discretionary and imposes no duty

on Owner. County bears sole responsibility under this Contract for tendering only biosolids that conform to the warranty standards set forth in Section 3 above. If Owner tests County's biosolids and the biosolids are found to be non-conforming, County shall pay Owner's commercially reasonable costs incurred in the testing. If Owner determines that the biosolids do not conform to the warranty standards set forth in Section 3 above, it may reject the biosolids by notifying the County in writing, with documented test results. Timely removal (if necessary) and disposal of biosolids rejected according to these warranty standards shall be at the County's sole cost and responsibility; provided that if Owner rejects biosolids as non-conforming, Owner reserves the right to transport the biosolids to a disposal site or to return the biosolids to County's site, and to collect from County any commercially reasonable expenses or damages incurred thereby, including but not limited to transport, storage or disposal costs.

12. Indemnification.

- a. Owner agrees to defend, indemnify and hold County harmless from and against: (I) any and all claims, demands, causes of action, damages, liabilities, losses, expenses, penalties and costs of defense relative thereto, including legal fees, ("Losses") caused by or resulting from Owner's breach of this Contract; and (II) any and all Losses caused by or resulting from Owner's intentional or negligent act or omission in the performance of its duties as described in this Contract.
- b. County agrees to defend, indemnify and hold Owner harmless from and against: (I) any and all Losses caused by or resulting from County's breach of this Contract (specifically including any breach of County's obligation to tender only biosolids that conform to the warranty standards set forth above); and (II) any and all Losses caused by or resulting from County's intentional or negligent act or omission in the performance of its duties as described in this Contract.

Notwithstanding any other provision herein, the obligations created by this section shall survive any termination of this Contract.

13. Safety Standards and Instruction. Owner shall provide adequate training of its personnel involved in management of biosolids. Owner shall inform its personnel that sewage treatment plants process sanitary and industrial waste, and that any workers involved in biosolids management may be exposed to pathogens, and that such workers should follow proper hygiene and workplace safety practices.
14. Compliance with Laws. The County and Owner shall each fully comply with all applicable laws, ordinances, decisions, orders, rules or regulations of any government or governmental agency pertaining to its handling, storage, transportation, treatment, use or management of the biosolids.

15. Disputes, Governing Law, Venue. This Contract shall be governed by and construed in accordance with the laws of the State of Washington. If litigation arises concerning the interpretation of any of the terms of this Contract, venue for such litigation shall be in the Superior Court of the State of Washington in Clark County. The prevailing party in any legal action brought to enforce this Contract shall be entitled to reasonable attorney's fees incurred therein.
16. Savings. If any part of this Contract is declared to be invalid or unenforceable, the rest of the Contract shall remain binding, unless such invalidity or unenforceability destroys the purpose and intent of this Contract.
17. Independent Contractor, No Partnership. 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. Neither party nor anyone employed by it shall be, represent, act, purport to act or be deemed to be the agent, representative, employee, partner or servant of the other party.
18. Force Majeure. Should either party be prevented wholly or in part from performing its 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, strike, lockout, accidents, weather, earthquake, fire, acts of God or public enemy or any similar cause beyond the control of the parties, then such party shall be excused hereunder during the time and to the extent that the performance of such obligations are so prevented, and such party shall have no liability whatsoever for any damages, consequential or otherwise, resulting therefrom.
19. Non-Waiver. Either 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.
20. Assignment. This Contract shall not be assignable by either party without the written consent of the other, which shall not be unreasonably withheld. County presently anticipates that such assignment may be requested by County as regards a regional intergovernmental entity known as the Discovery Clean Water Alliance.

21. 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 County, addressed to:

Solids Program Manager  
Clark County Public Works  
15100 N.W. McCann Road  
Vancouver, WA 98685

If to Owner, addressed to:

Matt Peterson  
2260 Dike Road  
Woodland, WA. 98674


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 U.S. Mail.

22. Equal Employment Opportunity Requirements. Owner will not discriminate against any employee or applicant for employment because of creed, color, race, sex, age, national origin, or the presence of any sensory, mental or physical handicap, unless based on a bona fide occupational qualification.
23. 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.
24. Parties and Successors. Subject to the limitations on assignment provided in this Contract, this Contract shall inure to the benefit of, and be binding upon the parties, their successors and assigns.
25. Counterparts/Facsimile. This Contract may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Facsimile transmissions of any signed original document, and re-transmissions of any signed facsimile transmissions, shall be the same as delivery of an original.
26. 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 by a writing signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date first above written.

MATT PETERSON  
Owner

By:   
Matt Peterson,  
Owner

CLARK COUNTY,  
a Washington municipal corporation

By:   
Heath Henderson, P.E.  
Public Works Director/County Engineer

Approved as to form only:

By:   
Deputy Prosecuting Attorney

**Attachment A – Hauling Record**

A Hauling Record shall be sent to the Contractor following completion of hauling activity to a given site, or monthly or as mutually agreed upon by both parties. The following is an example of this record:

**2015**

**Transportation of Clark County Biosolids to Land Application Site**

Date	Gross Weight	Tare Weight	Net Weight	Wet Ton	% Solids	Dry Ton	Field
03/29/15	98860	39220	59640	29.82	13.64	4.07	Field 2
03/30/15	97880	39520	58360	29.18	13.20	3.85	Field 2
04/03/15	98800	39280	59520	29.76	12.85	3.82	Field 2
04/04/15	99100	42020	57080	28.54	12.77	3.64	Field 2
04/05/15	97660	38680	58980	29.49	13.18	3.89	Field 2
04/06/15	98860	39220	59640	29.82	13.64	4.07	Field 2
04/07/15	97880	39520	58360	29.18	13.20	3.85	Field 2
04/10/15	98800	42020	56780	28.39	12.85	3.65	Field 2
04/11/15	99100	40020	59080	29.54	12.77	3.77	Field 2
04/12/15	97660	38680	58980	29.49	13.54	3.99	Field 2
04/13/15	98860	39220	59640	29.82	13.56	4.04	Field 2
04/14/15	97880	39520	58360	29.18	13.20	3.85	Field 2
04/17/15	98800	39280	59520	29.76	12.85	3.82	Field 2
04/18/15	99100	42020	57080	28.54	12.77	3.64	Field 2
04/19/15	97660	38680	58980	29.49	13.18	3.89	Field 2
04/20/15	98860	39220	59640	29.82	14.10	4.20	Field 2
04/21/15	97880	39520	58360	29.18	13.20	3.85	Field 2
04/24/15	98800	39280	59520	29.76	12.84	3.82	Field 2
04/25/15	99100	40020	59080	29.54	12.77	3.77	Field 2
04/26/15	97660	38680	58980	29.49	13.45	3.97	Field 2
<b>TOTALS</b>			<b>1,175,580</b>	<b>587.79</b>	<b>13.18</b>	<b>77.47</b>	
				<b>AVERAGE</b>			

Wet Ton "circled" total is utilized for billing purposes.

**Attachment B – PPI Data/Fuel Adjustments**

PPI Data is utilized from the Bureau of Labor Statistics (BLS), Producer Price Index Commodities Data for #2 Diesel Fuel (Series ID: WPU057303), seasonally adjusted. An example of the document utilized for calculating costs (from BLS Website: <http://www.bls.gov/> ) follows:

Figure 1.

**Producer Price Index-Commodities  
Original Data Value**

**Series** WPU057303  
**Id:**  
**Not Seasonally Adjusted**  
**Group:** Fuels and related products and power  
**Item:** No. 2 diesel fuel  
**Base** 198200  
**Date:**  
**Years:** 2012 to 2014

<b>Year</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>	<b>Annu</b>
<b>2012</b>	339.6	340.5	334.3	315.1	315.4	292.8	303.6	318.4	340.4	356.4	328.4	334.1	
<b>2013</b>	336.4	352.6	311.3	295.2	297.9	302.1	316.1	314.9	323.8	322.6	313.6	331.6	
<b>2014</b>	325.4	331.6	308.5	295.6	307.0	306.1	312.2						

Using the table (example) above, fuel costs are adjusted during the mutually agreed upon seasonal land application projections, typically the months of April and August for Owner.

It is understood that preliminary PPI data shall be considered as final data for purposes of payment for any applications, as a 4-month lag time for final statistical data from the BLS is recognized by the County and the Contractor per Section 8 of the Contract/Agreement, with the agreement that, if the final data posted after the 4-month lag time changes by more than one-hundred (100), the Contractor may submit an amended invoice with justification of increase for the difference of the amount originally invoiced and the amount of actual fuel-related increase in conjunction with the original invoiced quantity as deemed mutually representative by both parties.

The following example spreadsheet for calculating fuel cost adjustments and the calculations within are subject to change if they are found to be inaccurate, or it is mutually determined by both parties that they are not representative of actual land application costs related to fuel consumption:



Figure 2.

**FUEL COST ADJUSTMENT  
BASED ON  
ID# WPU057303 (NOT SEASONALLY ADJUSTED)**

COLUMN >>	A	B	C	D	E	F	G	H
MONTHS	WPU057303 PPI FUEL DATA	CHANGE	PERCENT OF INCREASE OR DECREASE	Non Fuel Rate	DIESEL Rate	# 2 DIESEL COST	COST ADJUSTMENT ON FUEL	NEW RATE FOR FOLLOWING MONTH
DEC	331.6			\$13.84		\$4.67		\$18.72
JAN	325.4	(6.20)	-1.87%	\$13.84	\$4.67	\$4.58	-\$0.09	\$18.42
FEB	331.6	6.20	1.91%	\$13.84	\$4.58	\$4.67	\$0.09	\$18.51
MAR	308.5	(23.10)	-6.97%	\$13.84	\$4.67	\$4.34	-\$0.33	\$18.18
APR	295.6	(12.90)	-4.18%	\$13.84	\$4.34	\$4.16	-\$0.18	\$18.00
MAY	307.0	11.40	3.86%	\$13.84	\$4.16	\$4.32	\$0.16	\$18.16
JUN	306.1	(0.90)	-0.29%	\$13.84	\$4.32	\$4.31	-\$0.01	\$18.15
JUL	312.2	6.10	1.99%	\$13.84	\$4.31	\$4.40	\$0.09	\$18.24
AUG		(312.20)	NA	\$13.84	\$4.40	NA	NA	NA
SEP		0.00	NA	\$13.84	NA	NA	NA	NA
OCT		0.00	NA	\$13.84	NA	NA	NA	NA
NOV		0.00	NA	\$13.84	NA	NA	NA	NA
DEC		0.00	NA	\$13.84	NA	NA	NA	NA

For the following example, we will use April for the attachment-related data. Note: The above figure is calculated in March for the following month of April.

Figure 2 Calculations for April Rate:

- A. From Website: <http://www.bls.gov/>
- B. MAR "A" – FEB "A"
- C. MAR "B" / FEB "A"
- D. Mutually Agreed Rate
- E. FEB "F"
- F. MAR "E" x ( 1 + MAR "C" )
- G. MAR "F" – MAR "E"
- H. MAR "D" + MAR "F" = Rate for April

The Cost to County should be the Rate for April multiplied by the quantity of biosolids delivered to the site in the month of April (from the Hauling Record or other document confirming quantity of Hauling Record). In the above example, most hauling took place in the month of April, so \$18.18 (from figure 2 above) would be multiplied by 587.79 wet tons (from Attachment A, Hauling Record), resulting in a payment of \$10,686.02 to the Owner.

**AGREEMENT BETWEEN CLARK COUNTY, WASHINGTON, AND  
TRIBECA TRANSPORT**

THIS Contract is made and entered into as of the 14<sup>th</sup> day of April, 2015, (for the "Effective Date" of March 1, 2015) by and between Clark County, Washington, (the "County"), and Tribeca Transport ("the Contractor").

**RECITALS**

- A. The County produces municipal biosolids that are suitable for land application at its Salmon Creek Wastewater Treatment Plant Facility, 15100 NW McCann Rd., Vancouver, Washington. All references to biosolids in this agreement shall refer to the County's biosolids produced at this facility.
- B. The Contractor operates agricultural sites that are permitted as a Beneficial Use Facility ("BUF") with the Washington State Department of Ecology ("Ecology"). All references to BUF in this Agreement shall refer to the Contractors BUF.
- C. The Contractor is in the business of receiving and land applying biosolids at the BUF in accordance with local, state and federal regulations.
- D. The County wishes to retain the Contractor for the service of receiving and land applying biosolids at the BUF.

**AGREEMENT**

In consideration of the following terms and conditions, the County and the Contractor agree as follows:

1. Duties of Contractor. The primary duties of the Contractor pursuant to this Agreement will include the following:
  - 1.1. The Contractor will receive and apply biosolids at the BUF in accordance with local, state and federal regulations.
  - 1.2. The Contractor shall perform all duties under this Agreement relating to the handling of biosolids pursuant to the BUF. These duties shall include but not be limited to:
    - Fulfilling site access requirements for hauling trucks delivering the biosolids.
    - Temporarily storing biosolids on field application sites prior to biosolids application.

- Providing services for application of minimum volume of 180 dry tons of biosolids on an annual basis.
- Applying biosolids at agronomic rates and only in areas that are permitted by Ecology for application.
- Conducting any and all environmental monitoring required by Ecology including testing of soil, surface water, and groundwater.
- Ensuring roadway egress is relatively clear of dirt, biosolids, grass or other crop debris from truck traffic exiting the field. The Contractor shall route trucks through field(s) in a manner that either prevents driving through biosolids, or the Contractor shall provide wash down equipment and water for truck tire cleaning prior to entering the public roadway.
- Completing all recordkeeping and reporting required by Ecology and the County.

1.3. The Contractor shall be responsible for all costs associated with the storing, loading and spreading of the biosolids at the BUF and shall assume all risks of loss associated with these activities.

2. Duties of County. The primary duties of the County pursuant to this Agreement will include the following:

- 2.1. The County shall produce biosolids that are suitable for land application according to local, state and federal regulations.
- 2.2. The County will deliver biosolids to the BUF in compliance with Ecology requirements through a separate agreement with a contract hauler. Contract hauler may or may not be the same Contractor as the Contractor herein, depending on award status of hauling contract(s). Any and all other contracts shall be considered as separate, particularly for billing purposes, in the event the Contractor herein may also be awarded hauling contract(s).
- 2.3. The County shall provide the Contractor with reasonable notice by phone or e-mail of not less than ten days, excluding County recognized holidays, when biosolids are ready to be delivered. In some cases, deliveries may be delayed because of inclement weather conditions.
- 2.4. The County shall provide updated weight data compiled on a spreadsheet to Contractor on an as-needed basis by e-mail, or if mutually agreed; an updated spreadsheet may be delivered to the field location by the driver of the first load of the following day, except the final day, which shall be sent to the Contractor by e-mail. Tickets from County scale printer shall not be delivered directly to the site.

- 2.5. The County shall provide pertinent quarterly and/or most current biosolids laboratory test result data prior to field applications of Contractor.
3. Fee for Services. The County shall pay the Contractor for receiving and applying biosolids on a wet ton basis, at the rate of 15.25 per wet ton delivered to the Contractor site near Woodland, Washington. The County agrees to provide Contractor a minimum of 180 dry tons annually. The minimum quantity herein is to be measured from January 1 through the end of each year.
4.
  - 4.1. Truck Scaling. Weight of the biosolids delivered to the BUF shall be determined by the hauler's equipment at the County's facility when empty and then when filled. Weights are typically measured on the scale in 20-pound increments and recorded on a separate spreadsheet designed by the County to monitor the amount of biosolids hauled. In the event scale is not available, truck weight shall be determined by using an average of the previous three weights from the particular truck (if possible), reasonably comparable past loads, load cell weights, other scales, or by any other reasonable method as the County shall, in its sole discretion, decide.
  - 3.2. Invoicing. Following completion of local hauling events (e.g. when hauling is completed for the season, or as otherwise mutually agreed upon by County and the Contractor), the County shall e-mail a spreadsheet to the Contractor that contains the biosolids weight data. The weight data shall serve as the basis for invoicing by the Contractor to the County.
  - 3.3. Soil Amendment Value. The Contractor agrees to work on a "best efforts" basis with the County and farmers/landowners to establish a reasonable soil amendment value per dry ton of biosolids, and to provide County with said soil amendment value-related data of no less than the mutually agreed amount of \$0.20 per pound available nitrogen value. This value shall be mutually collaborated every year thereafter for the life of this contract, including extensions. Nothing contained in this Contract shall create any enforceable obligation on the part of the Contractor beyond the minimum nitrogen value payment based on delivered dry tons of biosolids. In the event the mutually agreed upon value of Nitrogen is less than the minimum value established by this contract, the Contractor shall have no liability to the County whatsoever for obtaining any specific soil amendment value, and the minimum established herein shall be rendered null and void, but continue to be reviewed and negotiated annually on a "best efforts" basis.

- 3.4. Term and Extension. The term of this Agreement shall begin on March 1, 2015, regardless and following of date this Agreement is signed into effect, and no goods or services may be performed as part of this specific agreement until January 1, 2015. The term of this Agreement shall expire on midnight, December 31, 2019; provided, however, that this term shall be automatically extended for one additional five-year term, expiring on midnight, December 31, 2024, unless notice of non-renewal is provided by either party to the other party by not later than November 1, 2019.
- 3.5. Adjustment of Fees. The cost for services may be adjusted during the renewal process at the five year extension period, provided that written justification is provided to the County for reasonable costs increases to the Contractor (e.g. fuel related, permitting, lab testing or other factors) which cannot be attributed to the activities caused by the Contractor, or any subcontractors, employees, or agents, or are otherwise within Contractors control, and the change is mutually agreed upon aforementioned written justification of cost increases. Any cost changes required due to force majeure circumstances shall be considered on that basis, and shall require the same aforementioned written justification and mutual agreement.
4. Termination. This Agreement may be terminated under the following conditions:
  - 4.1 Termination by County. The County may terminate this Agreement immediately if, in County's sole and responsible judgment, the Contractor's performance is unsatisfactory. Under such circumstances, the County will not exercise its right of termination unless the County first shall have notified the Contractor in writing of the County's dissatisfaction and the Contractor shall have failed within 30 days thereafter to remedy such performance, as determined by the County. If the Contractor is unable to manage the biosolids during this period, the County may make alternative arrangements for biosolids services.
  - 4.2 Termination by Either Party. This Agreement may be terminated by either party if termination is necessary to comply with local, state or federal laws or regulations. Each party shall immediately notify the other upon becoming aware of any provision of law or regulation that requires termination of the Agreement including, but not limited to, a change in the regulatory status of biosolids.
  - 4.3 Termination by Default. If either party breaches a provision of this Agreement, then that party shall be considered in default of this Agreement. Upon default, the non-defaulting party shall have the right, upon written notice to the defaulting party, to immediately terminate this Agreement.

5. Notices. Any notice or demand required or permitted to be given under the terms of this Agreement shall be deemed to have been made by duly depositing it in the United States mail, in a postage prepaid sealed envelope, by registered or certified mail with return receipt requested, e-mailed or hand delivered.
6. Force Majeure for County. In no event shall the County be held for breach of obligations to deliver and/or have, available biosolids if such breach or failure is caused by little or no production at the County's treatment plant, strike, war, fire, act of God, shortages of natural resources, weather, non-acceptance of biosolids by Contractor within scope of regulatory requirements given reasonable notice to Contractor of intent to deliver mandated in Section 2.3 of this Agreement, or any other occurrence or cause beyond the reasonable control of the County.
7. Force Majeure for Contractor. In no event shall the Contractor be held for breach of obligations to receive or apply biosolids if such breach or failure is caused by weather, non-acceptance of biosolids by Contractor due to adherence to regulatory requirements, little or no production at the County's treatment plant, strike, war, fire, act of God, shortages of natural resources or any other occurrence or cause beyond the reasonable control of the Contractor.
8. Assignment. Neither party shall have the right to assign this Agreement without the written consent of the other party.
9. Contract Documents. This Agreement constitutes the entire agreement for management of biosolids. Changes, additions and/or deletions to this Agreement shall be made by Amendment, which shall be agreed to in writing by both parties and shall be in the form of a signed document, which specifies that it is an amendment hereto and shall become effective as an integral part of the whole Agreement upon execution. If any provisions of this Agreement are held to be invalid, illegal or unenforceable, the provisions shall remain in effect to the extent allowed by law, and the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.
10. Project Documentation. The Contractor shall provide copies to the County on an annual basis, of documentation related to land application of biosolids on or near the BUF, as follows, but not be limited to:
  - Results of any biosolids, soil or water testing performed by or directed by the Contractor or a subcontractor at the BUF and within a one-mile (1-mile) radius of the BUF, and said results.
  - All final biosolids application rate calculations and subsequent biosolids land application records.

- A copy of each Annual Biosolids Report submitted to Ecology during each year of this Agreement, and for the next one-year following completion of this Agreement, including any extensions.
  - Letters of Intent to Ecology.
  - Copies of any violations, and any documentation regarding corrective measures taken.
11. Warranties and Representations. The Contractor warrants and represents to the County that the Contractor will use the biosolids only at the sites that are included in the BUF that is permitted by Ecology. The Contractor shall not use, dispose, transport or transfer the biosolids to any other person or entity for any other purpose.
12. Third Party Relationships. This Agreement is intended for the benefit of the parties and the public generally; this Agreement shall not be construed to benefit any third party or create a third party beneficiary relationship.
13. Indemnification by Contractor. The Contractor shall indemnify and hold harmless the County, its employees and agents from any claim, charge, liability or damage for bodily injury, occupational sickness or disease or death of any person, including without limitation any employee of the Contractor or any subcontractor, or for any physical damage to property, or loss of use thereof, which arises or grows out of negligent performance or nonperformance of the Agreement; provided, however, that the Contractor shall have no obligation to indemnify or hold harmless when the occurrence giving rise to such claim, charge, liability or damage is caused by the willful misconduct of the County. Upon the County's written request, the Contractor shall at its own expense, defend and suit, action or other proceeding asserting a claim covered by the foregoing indemnity, and the Contractor shall pay all costs, including attorney's fees and litigation costs, incurred in the enforcement. The Contractor's obligations to defend, indemnify and hold harmless under this paragraph shall not be limited or otherwise affected by any insurance which the Contractor may carry or by any insurance which the County may carry.
14. Indemnification by County. The County shall indemnify and hold harmless the Contractor, its employees and agents from any claim, charge, liability or damage for bodily injury, occupational sickness or disease or death of any person, including without limitation any employee of the County or any subcontractor, or for any physical damage to property, or loss of use thereof, which arises or grows out of negligent performance or nonperformance of the Agreement; provided, however, that the County shall have no obligation to indemnify or hold harmless when the occurrence giving rise to such claim, charge, liability or damage is caused by the willful misconduct of the Contractor. Upon the Contractor's written request, the County shall at its own expense, defend and suit, action or other proceeding asserting a claim covered by the foregoing indemnity, and the County shall pay all costs, including attorney's fees and litigation costs, incurred in the

enforcement. The County's obligations to defend, indemnify and hold harmless under this paragraph shall not be limited or otherwise affected by any insurance which the County may carry or by any insurance which the Contractor may carry.

15. Additional Requirements. The following additional requirements are part of this Agreement:
  - 15.1. Time is of the essence in this Agreement.
  - 15.2. All terms and conditions of this Agreement and the rights, duties, and remedies of the parties are governed by the laws of Washington. The provisions of this Agreement are severable and invalidity of any provision of this Agreement shall not affect the validity of any other provisions. This Agreement shall be construed in all respects as if all invalid or unenforceable provisions were omitted.
  - 15.3. The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. The word "including" means including without limitation or exclusion.
  - 15.4. Each party shall bear its own expenses, including any fees of any accountants, counsel, public officials, service bureaus, or others engaged by the party, in connection with this Agreement and the transactions contemplated by it, except as the Agreement otherwise expressly provides.
  - 15.5. Both parties consent to the venue of a court of competent jurisdiction sitting in Clark County, Washington and agree that all actions, proceedings or other matters arising directly or indirectly hereunder may be initiated in those courts.
  - 15.6. A party's failure to require strict performance of any provision of this Agreement is not a waiver of or prejudice to the party's right to require strict performance of the same provision in the future, of any other provision of this Agreement, or of this no-waiver paragraph.
  - 15.7. This Agreement is the entire agreement between the parties with respect to its subject matter and benefits and binds the parties and their respective successors and assigns. It may not be modified except in writing signed by all parties. This Agreement may be signed in two or more counterparts, and all counterparts shall constitute one and the same instrument.



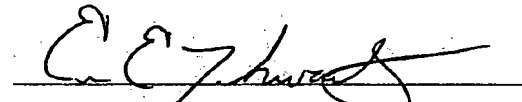
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representatives.

CLARK COUNTY, WASHINGTON

TRIBECA TRANSPORT



Heath Henderson, P.E.  
Public Works Director/County Engineer



Eric Thwaites,  
COO, Tribeca Transport

Date: 4/14/15

Date: 3-31-2015

Mailing Address:

PO Box 9810  
Vancouver, WA 98666-9810

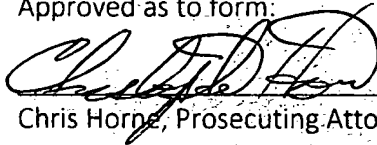
Mailing Address:

1415 Port Way  
Woodland, WA 98674

Telephone: (360) 397-2232 x. 4071

Telephone: (360) 518-0041

Approved as to form:

  
Chris Horne, Prosecuting Attorney

**Attachment A – Example Hauling Record**

A Hauling Record shall be sent to the Contractor following completion of hauling activity to a given site, or monthly or as mutually agreed upon by both parties. The following is an example of this record:

**2015**

**Transportation of Clark County Biosolids to Land Application Site**

Date	Gross Weight	Tare Weight	Net Weight	Wet Ton	% Solids	Dry Ton	Site
04/01/15	98860	39220	59640	29.82	13.64	4.07	F20 DB
04/02/15	97880	39520	58360	29.18	13.20	3.85	F20 DB
04/03/15	98800	39280	59520	29.76	12.85	3.82	F20 DB
04/04/15	99100	42020	57080	28.54	12.77	3.64	F20 DB
04/05/15	97660	38680	58980	29.49	13.18	3.89	F20 DB
04/06/15	98860	39220	59640	29.82	13.64	4.07	F20 DB
04/07/15	97880	39520	58360	29.18	13.20	3.85	F20 DB
04/08/15	98800	42020	56780	28.39	12.85	3.65	F20 DB
04/09/15	99100	40020	59080	29.54	12.77	3.77	F20 DB
04/10/15	97660	38680	58980	29.49	13.54	3.99	F20 DB
04/11/15	98860	39220	59640	29.82	13.56	4.04	F20 DB
04/12/15	97880	39520	58360	29.18	13.20	3.85	F20 DB
04/13/15	98800	39280	59520	29.76	12.85	3.82	F20 DB
04/14/15	99100	42020	57080	28.54	12.77	3.64	F20 DB
04/15/15	97660	38680	58980	29.49	13.18	3.89	F20 DB
04/16/15	98860	39220	59640	29.82	14.10	4.20	F20 DB
04/17/15	97880	39520	58360	29.18	13.20	3.85	F20 DB
04/18/15	98800	39280	59520	29.76	12.84	3.82	F20 DB
04/19/15	99100	40020	59080	29.54	12.77	3.77	F20 DB
04/20/15	97660	38680	58980	29.49	13.45	3.97	F20 DB

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**TOTALS**      **1,175,580**      **587.79**      **13.18**      **77.47**

AVERAGE

Wet Ton "circled" total is utilized for billing purposes.

**Attachment B – Example Nitrogen-Based “Value” Payments**

Nitrogen Value shall be determined by the Actual Laboratory Results for Biosolids during quarter in which it was tested, and the following assumptions which are shown on the partial sheet (Figure 1, below) on the Nitrogen-Based Biosolids Application Rate Worksheet, that 30% of Ammonium-N is retained after application and that 35% of Organic-N is mineralized in Year 1.

Figure 1. (From the Nitrogen-Based Biosolids Application Rate Worksheet):

**BIOSOLIDS DATA**

Total solids (%)	13.10%	(#/dry ton)
Total Kjeldahl N (mg/kg)	84,200	168
Ammonium-N (mg/kg)	15,300	31
Nitrate-N (mg/kg)	6.89	0
Organic nitrogen (mg/kg)	68,900	138

**BIOSOLIDS AVAILABLE N**

Ammonium-N retained after application (%)	30%
Organic N mineralized in Year 1 (%)	35%
Available N in biosolids (# N/dry ton)	57.6

Whereas, # available nitrogen/dry ton = ( 31 X .30 ) + ( 138 X .35 ) + ( 0 ) = 57.6

The “circled” number would be the Available Nitrogen Value for the quarter listed below in Figure 2.

Figure 2.

The delivered biosolids would be used as the basis for Nitrogen payments to the County/Generator, in conjunction with the Nitrogen-Based Value (above) and the negotiated rate for cost per total dry tons of nitrogen set by both parties of this contract. An example of payment is shown below:

Month	Wet Tons	% Solids	Dry Tons	Available N (#/dry ton)	Total Available N (pounds)	Field or Site Designation
April	650.25	12.65	82.26	57.6	4,737.98	Fields 4 & 7
May	712.15	13.12	93.43	57.6	5,381.80	Field 18
June	724.00	13.54	98.03	57.6	5,646.50	Fields 2 & 17
<b>Totals</b>	<b>2,086.40</b>		<b>273.72</b>		<b>15,766.29</b>	

Total Nitrogen	15,766.29
Nitrogen Value per Dry Ton	\$0.20
<b>Nitrogen Value Payment Owed to County</b>	<b>\$3,153.26</b>

**AN AGREEMENT BETWEEN  
CLARK COUNTY, WASHINGTON, AND  
NATURAL SELECTION FARMS, INC.,  
FOR THE BENEFICIAL USE OF BIOSOLIDS**

This Contract is made and entered into as of the <sup>14th</sup> day of <sup>April</sup> ~~January~~, 2015, (the "Effective Date") by and between Clark County, Washington, a Washington municipal corporation (the "Generator"), and Natural Selection Farms, Inc., ("NSF"), a Washington corporation.

Whereas, the Generator produces sewage sludge in the form of solid biosolids (hereinafter referred to as "biosolids") as a by-product of its sanitary sewage treatment process at the Salmon Creek Wastewater Treatment Plant, 15100 NW McCann Rd., Vancouver, Washington, and desires to recycle biosolids from the plant for beneficial use; and

Whereas, NSF has the ability to perform land application of biosolids in an approved manner at appropriate sites; and

Whereas, NSF and Generator now wish for NSF to perform the land application of biosolids tendered by Generator to NSF in accordance with the terms more fully set forth herein;

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:

1. **Purpose.** Generator and NSF enter into this Contract to establish terms and conditions for NSF to receive Generator's biosolids and perform the land application of biosolids produced by Generator and tendered to NSF.
2. **Generator's Obligations.** Generator shall be obligated to perform the following with respect to biosolids produced at the Generator's facilities in Vancouver, Washington, in such quantities as the parties may mutually agree upon:
  - a. deliver biosolids to a permitted project site or other agreed delivery point identified by NSF and deposit said biosolids in a pre-determined location on said property as directed by NSF;
  - b. ensure that the tendered biosolids meet federal, state and local standards governing land application of biosolids as the same currently exist and as they may be modified or altered from time to time, and as set forth herein at Section 3;
  - c. test the tendered biosolids in accordance with best available testing procedures and applicable federal, state, and local laws and regulations and provide NSF all information required by law or that otherwise is

necessary for NSF to use and manage application of the biosolids in a safe, consistent, and reliable manner, including providing to NSF test results confirming acceptable compliance with all applicable trace metal and pathogen standards as well as confirming percent solids by weight and nitrogen content as expressed by total Kjeldahl nitrogen (TKN);

- d. pay NSF service fees as provided in Section 6 below;
  - e. pay all costs, whether in the form of fees, levies, or other charges, charged by any local agency related to the importation, management, disposal, or use of biosolids tendered to NSF under this Contract. In the event that any such cost or fee is charged to NSF, Generator agrees to timely pay the same prior to delinquency promptly upon presentation of any invoice therefor submitted to Generator by NSF; and
  - f. pay such amounts as may be reasonably incurred by NSF in order for NSF to efficiently accept Generator's biosolids, provided that the parties presently contemplate that this charge will be mutually agreed upon in advance. The failure to so agree will relieve NSF of any further obligation to accept biosolids pursuant to this Contract but will not otherwise alter the remaining rights and obligations of the parties hereunder.
3. Generator's Covenants and Warranties. The Generator warrants that all biosolids tendered to NSF shall comply with all specified testing standards and results stated herein and all requirements under federal, state and local laws and regulations applicable to the land application of biosolids, as the same currently exist and as they may be modified or altered from time to time.
4. NSF's Obligations. Subject to Section 7 below, NSF shall:
- a. manage the application of biosolids delivered by Generator to NSF at a permitted project site or other agreed delivery point identified by NSF for application and use thereof on agricultural lands in Eastern Washington as a nutrient based soil amendment, compost ingredient or other permitted beneficial use;
  - b. provide all of the facilities, equipment, and personnel necessary for such work, and perform the application of Generator's biosolids in compliance with all applicable local, state, and federal regulations; and
  - c. coordinate with the Generator's designated haul dispatcher as needed regarding daily distribution, delivery schedule, site access, road restrictions, and truck assistance; provided, however, that Generator will at all times bear sole responsibility for safe delivery and accident spill response for Generator's biosolids along haul routes prior to delivery to NSF.

5. NSF's Covenants and Warranties. NSF warrants and represents that it has the business, professional, and technical expertise to use and manage the application of biosolids and shall at all times do so in a prudent and workmanlike manner. Furthermore, NSF warrants and represents that it has the equipment (subject to the terms of paragraph 2(f) above), plant and employee resources required to perform this contract. Such equipment shall, at all times relevant to the performance of services hereunder, be maintained in a good and safe condition fit for use as required.

6. Billing and Payment.

a. Billing. NSF shall provide to the Generator, by the thirtieth (30th) day after acceptance of the Generator's biosolids, a statement in a format that is mutually agreeable to NSF and the Generator, detailing the number of wet tons/gallons (as applicable) of biosolids accepted by NSF. The method of determining tonnage shall be by certified truck scale located at the Generator's facility and shall be at the Generator's expense. In the event the Generator's customary scale is unavailable, weights shall be determined by load cell weights (if loading from storage hopper) or by any other reasonable method as the parties shall agree upon and at the Generator's expense.

b. Service Fees. The Generator shall pay NSF's service fees as provided herein. Generator shall pay NSF the sum of \$18.50 per wet ton delivered to a beneficial use land application facility mutually agreed upon by NSF and Generator. Of this amount, \$4.63 shall on the date of execution be allocated to fuel-related charges and \$13.87 shall on the date of execution be allocated to non-fuel-related charges.

These minimum service fees will be adjusted from time to time as set forth herein.

c. Price Adjustment for Change in Law. NSF may, after 10 days prior notice to Generator, increase the minimum service fee by one hundred percent (100%) of NSF's reasonable actual increased costs of performing its obligations under this Contract due to a change in law. For purposes of this section, a "change in law" includes new laws, regulations, ordinances of general application and modifications of them; new decisions of tribunals, either judicial or administrative, and any modifications of them; or the imposition of any material conditions on the renewal of any permit, license or approval which makes the transportation, storage, land application or other management of biosolids more burdensome financially than under the requirements in effect at the Effective Date; a "change in law" shall include, without limitation, a determination that performance by NSF

of the terms of this Contract requires that NSF pay prevailing wage rates, as may be required by law; it being a basis of the price terms in this Contract that NSF is and shall not be required to pay prevailing wage rates. Whether or not a change in law material to this Contract has occurred shall be determined by NSF, in NSF's sole discretion. Such increase in service fees may occur only for reasonable costs that are actually incurred, and shall not be allowed for any cost increases that are in any way attributable to activities caused by NSF or its subcontractors, employees, or agents, or are otherwise within NSF's control. In the event Generator does not approve an increase for a change in law as provided for herein, then NSF, at its option, may terminate this Contract upon written notice and with no further obligation to Generator.

- d. Other Changed Conditions. In the event of any material change in the nature of the biosolids subject to this Contract, including but not limited to any deviation from the test parameters set forth above, or in the event of any other change in circumstances that causes an increase in NSF's cost or the time and equipment required for performance of any part of the work under this Contract, an equitable adjustment in the service fee, the delivery schedule, or both shall be made and, if the same shall be acceptable to Generator and NSF, the Contract shall be modified in writing accordingly. If no such change may be agreed upon by the parties, then NSF shall be entitled, at its option, to terminate this Contract upon written notice and with no further obligation to Generator.
  - e. Soil Amendment Value. NSF agrees to work on a "best efforts" basis with farmers/landowners to establish a soil amendment value per dry ton of biosolids, and to provide Generator with said soil amendment value-related data; provided, however, that nothing contained in this Contract shall create any enforceable obligation on the part of NSF, and NSF shall have no liability to Generator whatsoever for obtaining any specific soil amendment value. In the event that NSF obtains from farmers/landowners a fee based on soil amendment value, NSF agrees to pay a portion of the same to Generator in an amount determined by NSF in its sole discretion by the 15<sup>th</sup> of February each year for the previous calendar year's applied biosolids, or 45 days after the end of this Contract upon its termination.
7. Conditions Precedent. The obligations of NSF hereunder are strictly contingent upon NSF obtaining all applicable and necessary permits, licenses and approvals of any federal, state, and local government or governmental authority.
8. Term and Extension; Adjustment of Fees. The term of this Contract shall expire on midnight, December 31, 2019; provided, however, that this term shall be

automatically extended for one additional five-year term, expiring on midnight, December 31, 2024, unless notice of non-renewal is provided by either party to the other party by not later than November 1, 2019.

The non-fuel-related service fee set forth above shall be adjusted annually on the yearly anniversary date of this Contract, beginning one year after the date of execution. Said adjustment shall be dictated by, and directly proportional to, the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for all U.S. cities over the same period of time.

The fuel-related service fee set forth above shall be adjusted semi-annually, beginning six months after the date of execution and continuing every six months thereafter. Said adjustment shall be dictated by, and directly proportional to, the percentage change in the data found in the Bureau of Labor Statistics Producer Price Index-Commodities Data for #2 diesel fuel (Series ID: WPU057303), or its successor index, as found at [www.bls.gov](http://www.bls.gov).

9. Insurance; Waiver of Subrogation. At all times during the term of this Contract, NSF shall maintain an insurance policy that insures all aspects of NSF's operation hereunder, regardless of what insurance the Generator may maintain, and which shall provide limits of liability of not less than \$2,000,000 comprehensive bodily injury and property damage. It is further agreed that certificates of insurance showing all of said coverage and endorsements shall be provided to the Generator, and that the Generator shall be named as an additional insured thereon.

The parties hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective insurance contracts, including any extended coverage endorsements thereto, provided, that this paragraph shall be inapplicable to the extent that it would have the effect of invalidating any insurance coverage otherwise available.

10. Termination; Default.

- a. NSF may terminate this Contract if:
- i. the Generator fails to make any payment required hereunder within fifteen (15) days after receiving notice of nonpayment from NSF;
  - ii. the Generator breaches any material representation or warranty set forth herein;
  - iii. the Generator defaults in the performance of any other obligation of the Generator under this Contract and fails to cure such default within thirty (30) days after receiving written notice thereof from NSF;



- iv. any applicable law or governmental regulations or other circumstances outside NSF's control cause the services required of NSF to be economically unfeasible for NSF, or NSF is otherwise prohibited from providing the services required of it by the Contract; or
  - v. as provided in Section 6(d) and 6(e) above.
- b. Generator may terminate this Contract if:
- i. NSF breaches any material representation or warranty set forth herein;
  - ii. NSF defaults in the performance of any other material obligation of the Generator under this Contract and fails to cure such default within thirty (30) days after receiving written notice thereof from the Generator;
  - iii. NSF fails to comply with any federal, state or local laws, rules, orders or ordinances, or regulations that pertain to the transportation or use of biosolids and fails to cure such non-compliance within thirty (30) days after receiving written notice from the appropriate agency or court; or
  - iv. as provided in Section 6(d) and 6(e) above.
11. Non-conforming Biosolids. NSF shall be entitled to inspect and analyze each load of biosolids tendered by the Generator. NSF's right to verify Generator's biosolids testing under this section is entirely discretionary and imposes no duty on NSF. Generator bears sole responsibility under this Contract for tendering only biosolids that conform to the warranty standards set forth in Section 3 above. If NSF tests Generator's biosolids and the biosolids are found to be non-conforming, Generator shall pay NSF's commercially reasonable costs incurred in the testing, provided, that NSF will allow Generator to come to the site to take a sample for additional testing. If NSF determines that the biosolids do not conform to the warranty standards set forth in Section 3 above, it may reject the biosolids by notifying the Generator in writing, with documented test results. Timely removal (if necessary) and disposal of biosolids rejected according to these warranty standards shall be at the Generator's sole cost and responsibility; provided that if NSF rejects biosolids as non-conforming, NSF reserves the right to transport the biosolids to a disposal site or to return the biosolids to Generator's site, and to collect from Generator any commercially reasonable expenses or damages incurred thereby, including but not limited to transport, storage or disposal costs.
12. Indemnification.
- a. NSF agrees to defend, indemnify and hold Generator harmless from and against: (I) any and all claims, demands, causes of action, damages, liabilities, losses, expenses, penalties and costs of defense relative thereto,

including legal fees, ("Losses") caused by or resulting from NSF's breach of this Contract; and (II) any and all Losses caused by or resulting from NSF's intentional or negligent act or omission in the performance of its duties as described in this Contract.

- b. Generator agrees to defend, indemnify and hold NSF harmless from and against: (I) any and all Losses caused by or resulting from Generator's breach of this Contract (specifically including any breach of Generator's obligation to tender only biosolids that conform to the warranty standards set forth above); and (II) any and all Losses caused by or resulting from Generator's intentional or negligent act or omission in the performance of its duties as described in this Contract.

Notwithstanding any other provision herein, the obligations created by this section shall survive any termination of this Contract.

13. Safety Standards and Instruction. NSF shall provide adequate training of its personnel involved in management of biosolids. NSF shall inform its personnel that sewage treatment plants process sanitary and industrial waste, that any workers involved in biosolids management may be exposed to pathogens, and that such workers should follow proper hygiene and workplace safety practices.
14. Compliance with Laws. The Generator and NSF shall each fully comply with all applicable laws, ordinances, decisions, orders, rules or regulations of any government or governmental agency pertaining to its handling, storage, transportation, treatment, use or management of the biosolids.
15. Disputes, Governing Law, Venue. This Contract shall be governed by and construed in accordance with the laws of the State of Washington. If litigation arises concerning the interpretation of any of the terms of this Contract, venue for such litigation shall be in the Superior Court of the State of Washington in Yakima County. The prevailing party in any legal action brought to enforce this Contract shall be entitled to reasonable attorney's fees incurred therein.
16. Savings. If any part of this Contract is declared to be invalid or unenforceable, the rest of the Contract shall remain binding, unless such invalidity or unenforceability destroys the purpose and intent of this Contract.
17. Independent Contractor, No Partnership. 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. Neither party nor anyone employed by it shall be, represent, act, purport to act or be deemed to be the agent, representative, employee, partner or servant of the other party.
18. Force Majeure. Should either party be prevented wholly or in part from performing its 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, strike, lockout, accidents, storms, earthquake, fire, acts of God or public enemy or any similar cause beyond the control of the parties, then such party shall be excused hereunder during the time and to the extent that the performance of such obligations are so prevented, and such party shall have no liability whatsoever for any damages, consequential or otherwise, resulting therefrom.

19. Non-Waiver. Either 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.
20. Assignment. This Contract shall not be assignable by either party without the written consent of the other, which shall not be unreasonably withheld. Generator presently anticipates that such assignment may be requested by Generator as regards a regional intergovernmental entity known as the Discovery Clean Water Alliance.
21. 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:

Solids Program Manager  
Clark County Public Works  
15100 N.W. McCann Road  
Vancouver, WA 98685

If to NSF, addressed to:

Natural Selection Farms  
P.O. Box 419  
Sunnyside, WA 98944

With a copy addressed to:

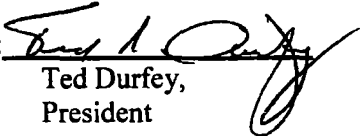
Kenneth W. Harper  
Menke Jackson Beyer, LLP  
807 N. 39<sup>th</sup> Ave.  
Yakima, WA 98908

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 U.S. Mail.


22. Equal Employment Opportunity Requirements. NSF will not discriminate against any employee or applicant for employment because of creed, color, race, sex, age, national origin, or the presence of any sensory, mental or physical handicap, unless based on a bona fide occupational qualification.
23. 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.
24. Parties and Successors. Subject to the limitations on assignment provided in this Contract, this Contract shall inure to the benefit of, and be binding upon the parties, their successors and assigns.
25. Counterparts/Facsimile. This Contract may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Facsimile transmissions of any signed original document, and re-transmissions of any signed facsimile transmissions, shall be the same as delivery of an original.
26. 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 by a writing signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date first above written.

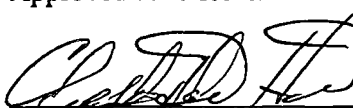
NATURAL SELECTION FARMS, INC.,  
A Washington corporation

By:   
Ted Durfey,  
President

CLARK COUNTY,  
a Washington municipal corporation

By:   
Name: HEATH HENDERSON  
Title: PLW DIRECTOR

Approved as to form:

  
Deputy Prosecuting Attorney