

## DEWATERED BIOSOLIDS TRANSPORTATION AND BENEFICIAL USE SERVICES AGREEMENT

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ (“Contract Date”). The Agreement is between the following parties:

**City:** The City of San José, a municipal corporation, and

**Contractor:** Lystek International Limited, a corporation.

### The City and Contractor Agree as Follows:

1. The Contractor will provide Dewatered Biosolids Transportation and Beneficial Use Services (“Services”) as set forth in this Agreement.
2. This Agreement incorporates the following exhibits by reference:
  - Exhibit A:** General Terms and Conditions
  - Exhibit B:** Scope of Services
  - Exhibit B-1:** Technical Requirements and Standards
  - Exhibit B-2:** Dewatering Facility 100% Design Drawings
  - Exhibit B-3:** Lystek’s Operations Plan, Contingency Plan, and Spill Response and Safety Plan
  - Exhibit C:** Compensation
  - Exhibit C-1:** Sample Calculation for Base Rate Adjustment
  - Exhibit D:** Administrative Charges
  - Exhibit E:** Claims and Dispute Resolution
  - Exhibit F:** Labor Compliance Addendum
  - Exhibit F-1:** City of San José Classification Determination
  - Exhibit G:** Insurance Requirements
  - Exhibit H:** Form of Payment and Performance Bonds
  - Exhibit I:** Notice of Exercise of Option
3. This Agreement is effective on the Contract Date. It expires on June 30, 2029 (“Initial Term”) unless terminated earlier in accordance with Section 21 of **Exhibit A**. After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for up to two (2) additional two-year terms (“Option Term(s)”) through June 30, 2033, by issuing a Notice of Exercise of Option as set forth in **Exhibit I**.
4. Maximum Compensation means the total, maximum amount the City will pay the Contractor for all Services required by this Agreement. The Maximum Compensation, and the way the City will pay it, is set forth in **Exhibit C**.
5. The Director of the Department of Environmental Services (“Director”) will administer this Agreement.

6.  If this box is checked, the Contractor cannot use subcontractors except as provided in Section 4 of **Exhibit A**.

If this box is checked, the Contractor will use the following subcontractors for the specified areas of work except as provided in Section 4 of **Exhibit A**.

Subcontractor's Name	Area of Work
1. Poncia Fertilizer Inc.	Transportation
2. Grow West Trucking LLC	Transportation
3. Synagro West, LLC	Transportation
4. Denali Water Solutions, LLC	Transportation

7. The City's contract manager ("City's Contract Manager") is:

<b>Name:</b> Nora Cibrian	<b>Phone:</b> (408) 635-4011
<b>Department:</b> Environmental Services	<b>Email:</b> <a href="mailto:nora.cibrian@sanjoseca.gov">nora.cibrian@sanjoseca.gov</a>
<b>Mailing Address:</b> 700 Los Esteros Road, San José, CA 95134	

The Contractor's contract manager ("Contractor's Contract Manager") is:

<b>Name:</b> James Dunbar		<b>Phone:</b> (707) 419-0084	
<b>Mailing Address:</b> 1014 Chadbourne Road, Fairfield, CA 94534		<b>Email:</b> <a href="mailto:jdunbar@lystek.com">jdunbar@lystek.com</a>	
<b>Must File Form 700?</b>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> On file Filed: Not Applicable

8. The City will not process this Agreement unless the Contractor indicates which of the following certifications is applicable. See Section 9 of **Exhibit A**.

The Contractor has a permanent place of business in California or is registered with the California Secretary of State to do business in California. The Contractor will file a California tax return and withhold on payments of California source income to nonresidents when required. If the Contractor stops having a permanent place of business in California or stops doing any of the above, the Contractor will promptly notify the City as specified in Section 22 of **Exhibit A**.

If the Contractor cannot make the above certification, it acknowledges and agrees to give the City the applicable tax forms issued by the Internal Revenue Service and California Franchise Tax Board, as specified in Section 9 of **Exhibit A**.

**The authorized representative(s) of each party executes the Agreement as follows:**

<p><b>City of San José:</b></p> <p>By _____ Date _____ Name: _____ Title: _____</p> <p><b>City Attorney approval as to form:</b></p> <p>_____ Date _____ Matthew Tolnay Deputy City Attorney</p>	<p><b>Contractor:</b></p> <p>By _____ Date _____ James Dunbar General Manager</p>
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## Exhibit A: General Terms and Conditions

### 1. General:

**1.1 Director's Designee:** Reference to "Director" includes the Director's designee.

**1.2 Person:** "Person" refers to both a person and an entity.

**2. Entire Agreement/Amendments:** The Agreement is the parties' full understanding on the matters herein. It supersedes prior communications and understandings on such matters. The parties can modify the Agreement only by written amendment.

### 3. Services:

The Contractor must perform the Services to the Director's satisfaction.

**3.1 Service Plans and Changes:** In any case where a provision of this Agreement is contrary to a provision in **Exhibit B**, **Exhibit B** prevails. Plans included in **Exhibit B** may be modified by mutual written agreement of City and Contractor. Contractor must submit to the City's Contract Manager, in writing, any proposed change to Contractor's Operations Plan, Contingency Plan, and Spill Response and Safety Plan not less than sixty (60) calendar days prior to the proposed date of implementation. The City's Contract Manager may provide written comments on such proposed change to Contractor no later than thirty (30) calendar days after receipt of proposal, and in such event, Contractor agrees to revise the Plan to address such comments and submit the revised Plan to the City's Contract Manager within fourteen (14) calendar days after receipt of the City's Contract Manager's comments. Contractor may not implement any changes without the prior written approval of the City's Contract Manager. City will not unreasonably withhold approval of change requests if the changes meet the City's Technical Requirements and Standards.

**3.2 Demonstration Project(s):** City may conduct demonstration projects that temporarily change the quantity of dewatered biosolids available from the Dewatering Facility and the corresponding level of Services required. Each demonstration project will be limited to no more than ten percent (10%) of the RWF's annual dewatered biosolids amount and to a term of no more than twelve (12) months if implemented. If a demonstration project affects the quantity of biosolids available for transportation and beneficial use, the Parties agree to temporarily reduce Contractor's Percent Share. A proportional reduction in the Percent Share shall be applied to all contractors that provide biosolids transportation and beneficial use services to the City.

If the demonstration project is to be conducted by Contractor, Contractor and Director shall execute a letter of agreement prior to the start of the demonstration project. The letter of agreement shall set forth the terms of the demonstration project including costs and compensation, operating parameters, and duration. If a demonstration project affects the cost of providing Transportation and Beneficial Use Services, the costs set forth in the letter of agreement may include an adjustment to the Contractor's per ton Base Rate otherwise payable to Contractor under this Agreement to reflect the benefits and/or burdens of the demonstration project.

- 3.3 Ownership of Materials:** Title to the biosolids which meet the characteristics set forth in Table 1 of **Exhibit B** at the time of loading into Contractor's vehicle at the RWF Dewatering Facility shall pass to Contractor at such time as the biosolids are loaded into Contractor's vehicle at the RWF Dewatering Facility. Title to biosolids which do not meet the characteristics set forth in Table 1 of **Exhibit B** at the time of loading into Contractor's vehicle at the RWF Dewatering Facility shall at all times remain with the City and shall not pass to Contractor. The Parties acknowledge and agree that determination of conformance with the characteristics set forth in Table 1 of **Exhibit B** may occur after biosolids have been loaded into Contractor's vehicle at the RWF Dewatering Facility, but transfer of title shall be solely determined based upon the conformance or non-conformance at the time of loading of biosolids into Contractor's vehicle at the RWF Dewatering Facility so that any action or inaction by Contractor prior to or after loading that causes any non-conformance shall not be basis for the title to revert to the City. The burden shall be on Contractor to demonstrate that any biosolids loaded into Contractor's vehicle(s) at the RWF Dewatering Facility failed to meet the characteristics set forth in Table 1 of **Exhibit B**.

#### **4. Subcontractors:**

- 4.1 Subcontractor Use:** The Contractor must obtain the Director's written consent before doing either of the following: **(a)** using a subcontractor if the Contractor is not authorized to use subcontractors in Section 6 of the Agreement, and **(b)** using a different subcontractor than one listed in Section 6 of the Agreement if the Contractor is authorized to use subcontractors. The use of a subcontractor to perform Services under this Agreement will not constitute delegation of Contractor's duties.
- 4.2 Subcontractor Work:** Contractor is responsible for directing the work of Contractor's subcontractors and any compensation due or payable to Contractor's subcontractor will be the sole responsibility of Contractor. The Contractor warrants all Services and deliverables provided by any subcontractor it uses, and represents that each such subcontractor is

specially trained, experienced, and competent to perform its portion of Services. The Director reserves the right to require the removal of any approved subcontractor for reasonable cause.

- 5. Change in Law:** City and Contractor understand and agree that the California Legislature and other governmental entities have the authority to make comprehensive changes in solid waste management legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Agreement. Contractor agrees that the terms and provisions of the San José Municipal Code, as it now exists or as it may be amended in the future, shall apply to all of the provisions of this Agreement. In the event any future change in the San José Municipal Code or in any federal, state, county or other local agency law, ordinance or regulation materially alters the obligations of either party, then the affected service rates, as established in **Exhibit C**, of this Agreement shall be adjusted. Nothing contained in this Agreement shall require any party to perform any act or function contrary to law. City and Contractor agree to enter into good faith negotiations regarding modifications to this Agreement which are required in order to implement changes in law. When such modifications are made to this Agreement, City and Contractor shall negotiate in good faith a reasonable and appropriate compensation for any increase or decrease in the services or other obligations required of Contractor due to any modification in the Agreement. City and Contractor shall not unreasonably withhold agreement to such adjustment.

Notwithstanding a change in law, Contractor agrees that any increase in cost to Contractor associated with modifying operations, sites, or facilities to meet obligations of service to persons other than the City will not be recovered through the adjustment.

Contractor acknowledges that any potential increase in cost to Contractor associated with modifying the operations, sites, and facilities; or securing the necessary entitlements that may be required to implement the initial required services under the terms of this Agreement were factored into the proposed compensation.

- 5.1 Senate Bill 1383:** City and Contractor are aware that SB 1383, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants, became law in 2016. As of the Effective Date of this Agreement, CalRecycle and other State regulatory agencies have developed regulations to implement the requirements established in SB 1383, which are expected to become operative on January 1, 2022, and additional statewide legislation may also be enacted which may change legal requirements on jurisdictions and facilities as it relates to the processing organic waste. Considering the Services that Contractor is contracted to provide to the San José-Santa

Clara Regional Wastewater Facility, City and Contractor may be impacted by such legislation regulating the processing of organic waste.

Contractor will provide support and reporting required by SB 1383 and its regulations and Contractor agrees to comply with all laws and regulations adopted pursuant to SB 1383 to ensure City meets its responsibilities to comply with the processing, reporting, auditing, and diversion obligations required by SB 1383 and its regulations for organic waste. Any additional cost associated with the program support, reporting, and regulatory compliance related to SB 1383 will not be considered a cost subject to additional compensation from the City due to a change in law.

- 6. Contractor's Contract Manager and Staffing:** The Contractor's Contract Manager must be authorized to act on the Contractor's behalf. The Contractor cannot do either of the following without the Director's prior written approval: **(a)** remove or replace Contractor's Contract Manager, and **(b)** change the persons listed by the Contractor as being principally responsible for providing the Services. Notwithstanding the foregoing, the Contractor may remove Contractor's Contract Manager without the Director's prior written approval, if exigent circumstances reasonably require the removal of the Contractor's Contract Manager and so long as the Contractor immediately replaces the person serving as the Contractor's Contract Manager with an employee qualified to serve in such a role. In instances where Contractor removes Contractor's Contract Manager without the Director's prior written approval due to exigent circumstances, Contractor shall immediately inform the Director of any such removal and provide the Director with all necessary information, including contact information, related to the appointment of the Contractor's Contract Manager.
- 7. Independent Contractor:** The Contractor has complete control over its operations and employees and is an independent contractor. The Contractor is not an agent or employee of the City. The Contractor does not represent or act as the City's agent or employee. The Contractor does not have any rights to retirement benefits or other benefits accruing to City employees, and expressly waives any claim it may have to any such rights.

  - 7.1 Subcontracts:** The Contractor is solely responsible for selecting, managing, and compensating any Person with whom it contracts in furtherance of the Agreement.
  - 7.2 Indemnity:** The Contractor will place in each subcontract indemnity obligations in favor of the City in the exact form and substance of those contained in Section 11 of this **Exhibit A**.
- 8. Standard of Performance:** Contractor represents and warrants that it has the expertise and qualifications to complete the Services described in **Exhibit B** of this Agreement, entitled "Scope of Services," and that every individual charged

with the performance of the Services under this Agreement has sufficient skill and experience and is duly licensed or certified, to the extent such licensing or certification is required by law, to perform the Services. City expressly relies on Contractor's representations regarding its skills, knowledge, and certifications. Contractor will perform all work in accordance with generally accepted business practices and performance standards of the industry, including all federal, state, and local operation and safety regulations.

**8.1 Administrative Charges:** If Contractor fails to perform the Services as set forth in this Agreement, the City may assess an administrative charge against Contractor and deduct such charge from any monies due or which may become due to Contractor for the acts or omissions listed in **Exhibit D**.

**9. Tax Forms Required:** The following are conditions on the City's obligation to process any payment under the Agreement.

**9.1 U.S. Based Person:** If the Contractor is a U.S. based Person, the Contractor acknowledges and agrees that the Contractor is required to provide the City with a properly completed Internal Revenue Service Form W-9 before the City will process payment. If the Contractor is a U.S. based Person but has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Contractor acknowledges and agrees that the Contractor is required to provide the City with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income.

**9.2 Non-U.S. Based Person:** If the Contractor is not a U.S. based Person, the Contractor acknowledges and agrees that the Contractor is required to provide the City with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before the City will process payment.

**10. Payment and Performance Bonds:** Contractor agrees to furnish to the City Clerk, and keep current, annual renewable payment and performance bonds in a form substantially as set forth in **Exhibit H** ("Form of Payment and Performance Bonds") to this Agreement or in such other form as is acceptable to the City Attorney, for the faithful performance of this Agreement and all obligations arising hereunder in an amount not less than \$1,600,000.00 each. If the term of this Agreement is extended, Contractor shall continue to keep current its annual renewable payment and performance bonds.

**10.1 Licensed Surety:** The Performance Bond must be executed by a surety company licensed to do business in the State of California; having an "A-"



or better rating by A. M. Best or Standard and Poors; and included on the list of surety companies approved by the Treasurer of the United States.

**10.2 Letter of Credit:** As an alternative to the Performance Bond required by Section 10, if approved by the City Manager or designee, Contractor may deposit with City an irrevocable letter of credit in an amount as set forth in Section 10. If allowed, the letter of credit must be issued by an FDIC insured banking institution chartered to do business in the State of California, in City's name, and be must callable at the discretion of City.

**11. Indemnification:** The Contractor will defend, indemnify and hold harmless the City and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities (collectively "Indemnifiable Event") to the extent such Indemnifiable Event arises out of, pertains to, or relates to any of the following: **(a)** the Contractor's negligent performance of any Services, **(b)** any negligent act or omission, recklessness or willful misconduct of the Contractor, any of its subcontractors, anyone directly or indirectly employed by either the Contractor or any of its subcontractors, or anyone that they control, **(c)** any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the City's use of any Services, deliverables or other items provided by the Contractor pursuant to the requirements of this Agreement, or **(d)** any breach of this Agreement.

**11.1 Applicable Law/Duty to Defend:** The Contractor's indemnity obligations apply to the maximum extent allowed by law and includes defending the City, its officers, employees, and agents. Upon the City's written request, the Contractor, at its own expense, must defend any suit or action that is subject to the Contractor's indemnity obligations.

**11.2 Insurance:** The City's acceptance of insurance in accordance with Section 12 of this **Exhibit A** does not relieve the Contractor from its indemnity obligations. The Contractor's indemnity obligations apply whether the required insurance covers any damages or claims for damages.

**11.3 Survival:** The Contractor's indemnity obligations survive the expiration or earlier termination of the Agreement.

**11.4 Damage to Public or Private Property:** Contractor agrees to, at its sole expense, repair in kind, or as the City direct, any damage to public or private property that occurs in connection with Contractor's performance of the Services. Examples of public property include the RWF Dewatering Facility, streets, and sidewalks.

- 11.5 Spillage and Litter:** Contractor must conduct Services so that no biosolids spill out of the vehicles. During transport, all biosolid collected shall be contained, covered, or enclosed so that leaking, spilling, and blowing of the biosolids are prevented. If there is a spill, Contractor will notify the City within three (3) hours of the spill and of its cleanup plan. City reserves the right to require modifications to Contractor's cleanup plan. Contractor will clean up the spill from the street surface or any other area in compliance with Contractor's cleanup plan, as modified in response to City required modifications, and all laws.
- 11.6 Tickets and Fines:** Contractor is responsible for the payment of all tickets, fines and penalties imposed arising from providing the Services including fines or tickets for exceeding the maximum legal weight limit.
- 11.7 Withholding Payment:** City may decline to approve and may withhold payment in whole or in part to such extent as may be necessary to protect City from loss because of defective work not remedied or other damage to the City occurring in connection with Contractor's performance of the Services. City will provide written documentation in support of such withholding upon Contractor's request. When the grounds for withholding payment are removed, City agrees to pay Contractor the amounts withheld.
- 12. Insurance Requirements:** The Contractor must comply with the insurance requirements in **Exhibit G** for the Agreement term. Before performing any Services, the Contractor must submit to the City's designated risk manager ("Risk Manager"), for the Risk Manager's written approval, documents demonstrating compliance with the requirements of **Exhibit G**. The Risk Manager can amend or waive, in writing, any of the requirements in **Exhibit G**.
- 13. Ownership of Work Product:** The City owns all rights in and to the following work product (including electronic equivalents) without restriction or limitation on use: reports, drawings, plans, data, software, models, documents, or other materials developed or discovered (collectively "Work Product"). City's ownership rights arise immediately when and as the Contractor, or any other person engaged by the Contractor in furtherance of the Agreement, creates the Work Product.
- 13.1 Copyright:** To the extent permitted by Title 17 of the United States Code, the Work Product is deemed a work for hire and all copyrights in such Work Product are the City's property. If it is ever determined that any Work Product is not a work for hire under United States law, the Contractor hereby assigns to the City all copyrights to such works when and as created.

- 13.2 City's Reuse:** The City's reuse of Work Product is subject to California Business and Professions Code Sections 5536.25, 6735, 6735.3, 6735.4 and 8761.2, whichever is applicable.
- 13.3 Contractor's Reuse:** With the Director's prior written consent, the Contractor can retain and use copies of the Work Product for reference and to document experience and capabilities.
- 14. Prohibited Disclosure of Work Product:** Except as authorized by the Director or as required by law, the Contractor cannot disclose any of the following to a third party: **(a)** Work Product, **(b)** discussions between the City and Contractor, or **(c)** information prepared, developed, or received by the Contractor or any of its subcontractors in the course of performing Services.
- 14.1 Notification:** The Contractor must promptly notify the Director if a third-party requests disclosure of any Work Product, discussions, or information that the Contractor is prohibited from disclosing.
- 14.2 Limit on Prohibition:** The prohibition in this Section does not apply to disclosures by the Contractor needed to perform the Services.
- 14.3 Survival:** This Section survives the expiration or earlier termination of the Agreement.
- 15. News Media Relations:** Contractor shall notify the City's Contract Manager by email or phone of all requests for news media interviews related to the RWF's biosolids within twenty-four (24) hours of Contractor's receipt of the request. Before responding to any inquiries involving the RWF's biosolids or any issues likely to affect services, Contractor will discuss Contractor's proposed response with the City's Contract Manager. Copies of draft news releases or proposed trade journal articles shall be submitted to the City's Contract Manager for prior review and approval at least seven (7) calendar days in advance of release, except where Contractor is required by any law or regulation to submit materials to any regulatory agency in a shorter period of time, in which case Contractor shall submit such materials to the City's Contract Manager simultaneously with Contractor's submittal to such regulatory agency. Copies of articles resulting from media interviews or news releases related to Contractor's providing servicing under this Agreement shall be provided to the City's Contract Manager within seven (7) calendar days after publication.
- 16. Records Retention:** The Contractor will retain the following records (collectively "Records") for a minimum of five (5) years from the date of the City's final payment to the Contractor under the Agreement or for any longer period required by law: **(a)** all ledgers, books of accounts, invoices, vouchers, canceled checks, and other records relating to the Contractor's charges for performing Services, or

to the Contractor's expenditures and disbursements charged to the City; and **(b)** all Work Product and other records evidencing Contractor's performance.

- 16.1 Producing Records:** During the Agreement term and Records retention period, the City Manager, the Director, the City Attorney, the City Auditor, or a designated representative of any of these officers may request, in writing, production of all or a portion of the Records. The Contractor must produce the requested Records at City Hall during normal business hours, or at any other location and time mutually agreed by the parties. The Contractor must produce the requested Records at no cost to the City.
- 16.2 State Auditor:** In accordance with Government Code Section 8546.7, the Contractor may be subject to audit by the California State Auditor regarding the Contractor's performance of the Agreement if the Maximum Compensation exceeds \$10,000.00.
- 16.3 Limitations:** Notwithstanding the foregoing, all audit rights shall be limited to that information required to verify compliance with Agreement.
- 17. Non-Discrimination/Non-Preference Prohibition:** The Contractor is prohibited from discriminating against, or granting preferential treatment to, any person based on race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.
- 17.1 Subcontracts:** The Contractor will include this prohibition in each subcontract it enters into in furtherance of this Agreement.
- 18. Conflict of Interest:** The Contractor represents that it is familiar with the local and state conflict of interest laws and agrees to comply with those laws in performing this Agreement. The Contractor certifies that, as of the date it executed this Agreement, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Contractor will avoid all conflicts of interest or appearances of conflicts of interest in performing the Agreement. The Contractor is obligated to determine if the way it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest and will promptly notify the City in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest.
- 18.1 Filing Form 700:** In accordance with the California Political Reform Act (Government Code Section 81000 et seq.), the Contractor will cause each person performing Services, and identified in Section 7 of the Agreement as having to file a Form 700, to do the following: **(a)** disclose the

categories of economic interests in Form 700 as required by the Director, **(b)** complete and file the Form 700 no later than 30 calendar days after the person begins performing Services and all subsequent Form 700s in conformance with the requirements specified in the California Political Reform Act, and **(c)** file the original Form 700 with the City's Clerk with a copy submitted to the Director.

**18.2 Future Services:** The Contractor's performance of the Services may create an actual or appearance of a conflict of interest regarding the Contractor performing or participating in the performance of some related **future** work, particularly if the Services comprise one element or aspect of a multi-phase process or project. The Contractor acknowledges each of the following about performing **future** services for the City: **(a)** an actual or appearance of a conflict of interest would be a ground for the City to disqualify the Contractor from performing or participating in the performance of such future work, and **(b)** the Contractor is solely responsible for considering what potential conflicts of interest, if any, performing the Services might have on its ability to obtain contracts to perform future work.

**19. Single Serving Bottled Water Prohibition:** City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single Serving Bottled Water," prohibits the Contractor from using City funds to purchase of single-serving bottled water except for any of the following:

- Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services;
- Situations in which a high risk of cross-contamination with non-potable water exists; or
- Situations in which no reasonable alternatives to bottled water exist, such as large public events and when large quantities of water need to be distributed for health and safety reasons.

An invoice seeking reimbursement from the City for the cost of single-serving bottled water under one of the above exceptions must be accompanied by a waiver form provided by the City and signed by the Director.

**20. Environmentally Preferable Procurement Policy:** City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," is on the City's website at <http://www.sanjoseca.gov/?nid=1774>. The website includes a brief description of the Policy. Environmental procurement policies and activities related to Contractor's performance of the Services will include, whenever practicable, but are not limited to:

- Using recycled and/or recyclable products in daily operations (i.e., 30%, 50%, 100% PCW paper, chlorine process free, triclosan-free hand cleaner, etc.);
- Using Energy-Star Compliant equipment;
- Using alternative fuel and hybrid vehicles, and implementation of protocols aimed at increasing the efficiency of vehicle operation;
- Implementing internal waste reduction and reuse protocol(s); and
- Water and resource conservation activities within facilities, including banning individual serving bottled water and using compostable food service products.

## 21. Termination:

**21.1 For Convenience:** The Director can terminate the Agreement at any time and for any reason by giving the Contractor written notice of the termination. The written notice must state the effective date of the termination, which must be at least sixty (60) calendar days after the date of the written notice.

If the City terminates the Agreement pursuant to this Section 21.1 prior to the issuance of the Notice to Proceed with Startup and Commissioning Services described in **Exhibit B**, the City agrees to reimburse Contractor the lesser of the actual annual bond premium costs paid by Contractor prior to the date of the written notice of the termination or sixty thousand dollars (\$60,000). For example, if Contractor pays a total of twenty thousand dollars (\$20,000) each year for the payment and performance bonds required under this Agreement and the City terminated this Agreement eighteen (18) months after execution of this Agreement, per this Section 21.1, prior to the issuance of the Notice to Proceed with Startup and Commission Services, then the City would reimburse forty thousand dollars (\$40,000) to Contractor.

**21.2 For Cause:** The Director can terminate this Agreement immediately upon written notice for any material breach by the Contractor. If the Director terminates the Agreement for cause and obtains the same Services from another contractor at a greater cost, the Contractor is responsible for such excess cost in addition to any other remedies available to the City.

In the event the City seeks to terminate this Agreement because Contractor has failed to perform one or more of its material obligations hereunder, then the Director shall give a default notice to Contractor. Such default notice shall list, with reasonable detail, the nature of the material default. Contractor shall have a right to cure a default within 14 calendar days. If Contractor fails to cure the default within 14 calendar days after

the receipt of the default notice (unless such cure requires more than 14 calendar days and Contractor has commenced and is diligently pursuing such cure, as determined by the City), then this Agreement may be terminated by the City by delivery of a notice of termination, which shall be effective in accordance with Section 22 of this **Exhibit A**.

- 21.3 Delivery of Work:** If the Director terminates the Agreement (for convenience or for cause), the Director has the option of requiring the Contractor to provide to the City any finished or unfinished Work Product prepared by the Contractor up to the date stated on the City's written notice of termination.
- 21.4 Compensation:** The City will pay the Contractor the reasonable value for Services satisfactorily rendered through the date stated on the City's written notice of termination. Services are "satisfactorily rendered" if the Director determines the Contractor provided them in accordance with this Agreement. The Director will determine the reasonable value of satisfactorily rendered Services based on **Exhibit C**.
- 21.5 Force Majeure:** Neither Party is in default of its obligations under this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to an "act of God" (including, but not limited to, flood, earthquake, fire or other catastrophic events), civil disturbance, strikes (except any strikes involving a Party's personnel), orders or judgments of any federal, state or local court, administrative agency or governmental body, or other similar cause affecting the City of San José, not the fault of, and beyond the reasonable control of, the Party claiming excuse. A Force Majeure event may include local, state, or federal mandates and advisories for managing public health and safety related to a pandemic. A party claiming excuse under this Section must (1) have taken reasonable precautions, if possible, to avoid being affected by the cause and (2) notify the other Party in accordance with this Section.

Any suspension of performance by a Party pursuant to this Section will be only to the extent, and for a period of no longer duration than, required by the nature of the event, and the Party claiming excuse from obligation must use its best efforts in an expeditious manner to remedy its inability to perform, and mitigate damages that may occur because of the event.

The Party claiming excuse agrees to deliver to the other Party a written notice of intent to claim excuse from performance under this Agreement by reason of an event of Force Majeure. Notice must be given promptly considering the circumstances, but in any event not later than three (3) calendar days after the occurrence of the event of Force Majeure. Such notice must describe in detail the event of Force Majeure claimed, the

Services impacted by the claimed event of Force Majeure, the expected length of time that the Party expects to be prevented from performing, the steps which the Party intends to take to restore its ability to perform, and such other information as the other Party reasonably requests.

The partial or complete interruption or discontinuance of Contractor's Services caused by an event of Force Majeure will not constitute an event of default under this Agreement. Notwithstanding the foregoing, in the event of non-performance excused by Force Majeure, where the Contractor's non-performance continues or is noticed to continue for fifteen (15) calendar days or more, City will have the right to terminate this Agreement immediately and will have no obligation to pay for Services that have not been performed.

**22. Notices:** All required notices and communications must be in writing, and must be made via e-mail, personal service or United States mail, postage prepaid.

**22.1 When Effective:** An emailed notice or communication is effective when sent, provided the sender receives an acknowledgement from the intended recipient (e.g., return receipt, return e-mail, or another written acknowledgement). A personally serviced notice or communication is effective when personally delivered. A mailed notice or other communication is effective three (3) calendar days after deposit in the United States mail.

**22.2 To Whom Given:** All notices and communications between the parties regarding the Agreement must be given to the City's Contract Manager and the Contractor's Contract Manager.

**22.3 Changing Contact Information:** Either party may change its contact information for receiving written notices and communications by providing notice of such change to the other party pursuant to this Section 22.

**23. Miscellaneous:**

**23.1 Gifts Prohibited:** The Contractor is prohibited from offering a City officer or designated employee any gift in violation of Chapter 12.08 of the San José Municipal Code. A violation of this prohibition is a material breach.

**23.2 Disqualification of Former Employees:** The Contractor is prohibited from using (either directly or indirectly) any former City officer or designated employee to provide services to the City connected with his/her former duties or official responsibilities if doing so would violate Chapter 12.10 San José Municipal Code. A violation of this prohibition is a material breach.



- 23.3 Waiver of a Violation:** The City's waiver of any violation of the Agreement by the Contractor is not a waiver of any other violation by the Contractor. The Contractor's waiver of any violation of the Agreement by the City is not a waiver of any other violation by the City.
- 23.4 Acceptance of Services Not a Waiver:** The City's acceptance of any Service or deliverable is not a waiver or release of any professional duty of care applicable to such Service or deliverable, or of any right of indemnification, any insurance requirements, or any other term or condition of the Agreement.
- 23.5 Compliance with Laws:** The Contractor will perform Services consistent with all applicable federal, state, and local laws, ordinances, codes, and regulations. This obligation is not limited by the Contractor's obligation to comply with any specific law, ordinance, code, or regulation set forth elsewhere in this Agreement.
- 23.6 Business Tax:** The Contractor represents that it currently has a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Agreement term.
- 23.7 Assignability:** Except to the extent this Agreement authorizes the Contractor to use subcontractors, the Contractor cannot assign any part of this Agreement without the Director's prior written consent. In determining whether to consent, the Director can consider, among other factors, the assignee's ability to meet the standards and requirements applicable to the procurement of the Agreement.
- 23.7.1 Processing Costs:** The Director can require the Contractor to pay the City's reasonable costs of reviewing the proposed assignment and preparing any documents in connection therewith.
- 23.7.2 Voidability:** The Director, at the Director's discretion, can void the Agreement if a violation of this provision occurs.
- 23.8 Governing Law:** California law governs the Agreement's construction and performance.
- 23.9 Claims and Dispute Resolution Process:** The Contractor agrees to the early identification and resolution of claims and dispute resolution process set forth in **Exhibit E**.
- 23.10 Venue:** Litigation resulting from this Agreement will be filed and resolved by a federal or state court in California.

**23.11 Survival of Provisions:** If a court finds any part of this Agreement unenforceable, all other parts will remain enforceable.

**23.12 Headings:** The section and exhibit headings are for convenience only and are not to be used for interpreting the Agreement.

**23.13 Use of Electronic Signatures:** Unless otherwise prohibited by law or City policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the City.

## Exhibit B: Scope of Services

### 1. OVERVIEW

The City of San José (“City”) requires year-round transportation and beneficial use services to manage dewatered biosolids from the San José - Santa Clara Regional Wastewater Facility (“RWF”) that will be produced by the Digested Sludge Dewatering Facility (“Dewatering Facility”). The services will start during the startup and commissioning period of the Dewatering Facility.

The City has allocated up to eight percent (8%) of the RWF’s annual dewatered biosolids amount to Contractor (“Contractor’s Percent Share”).

### 2. BIOSOLIDS INFORMATION

#### Biosolids Characteristics

The Contractor must accept dewatered biosolids with the characteristics in Table 1.

<b>Table 1. Acceptable Dewatered Biosolids Characteristics</b>	
Total Solids	17% or greater
Class <sup>a</sup>	B
Metals Content <sup>b</sup>	Less than Pollutant Concentration Limits
Notes:	
a. As defined by the U.S. Environmental Protection Agency in the Part 503 Biosolids Rule	
b. As defined by the U.S. Environmental Protection Agency in the Part 503 Biosolids Rule	

The City is currently upgrading its mesophilic digestion process to temperature-phased anaerobic digestion (“TPAD”). The TPAD process will be online and operational by the time the Dewatering Facility is completed but the actual characteristics of the TPAD sludge will remain somewhat uncertain until the process begins operating and is stabilized. Based on current engineering studies and design assumptions, the City estimates volatile solids downstream of the TPAD process will be about 64% (as a fraction of total solids).

#### Biosolids Tonnages

Table 2 shows the estimated annual average and peak day tonnages to be produced by the Dewatering Facility during the Initial Term and Option Terms of the Agreement. A range is shown for the estimated annual average tonnage and estimated average daily tonnage because of inherent uncertainties with forecasting the RWF’s flows and loads, percent solids that will be achieved by the Dewatering Facility’s centrifuges, and timing of when the RWF might begin accepting fats, oils, and grease. The City will work with the Contractor to refine these estimates after the Dewatering Facility comes online based on its operating history.

<b>Table 2. Estimated Dewatered Biosolids Production during the Term of the Agreement</b>	
Annual Average (wet tons per year) <sup>a, b</sup>	95,000-122,000
Average Daily (wet tons per day) <sup>c</sup>	250-390
Peak Day (wet tons per day) <sup>c, d</sup>	1,100
Notes:	
a. Rounded to the nearest 1,000 tons	
b. Assumes the percent solids would average 22%	
c. Assumes the percent solids would typically range from 19% to 23%	
d. Based on estimated peak seven-day amounts	

To arrive at a range of wet tons of dewatered biosolids that may be provided to Contractor each year, Contractor’s Percent Share may be multiplied by the estimated annual average amounts in Table 2. This range is expected but not guaranteed due to the uncertainties in forecasting previously noted.

The maximum daily amount that Contractor must be capable of handling generally will be based the Contractor’s Percent Share multiplied by the estimated peak day production shown in Table 2.

If the RWF’s production of dewatered biosolids exceeds the amounts listed in Table 2 and Contractor does not have sufficient capacity to accept the excess, then the lowest cost contractor with available capacity will be offered the first option to take additional tonnage. If the lowest cost contractor does not have available capacity or does not agree to take the additional tons, the option will be offered to the second lowest cost contractor. In the event no contractor can accept the additional tonnage at its Designated or Backup Beneficial Use Site(s) or Seasonal Storage Site(s), the City may direct that one or more contractors transport the additional tonnage to a landfill.

In addition, the City has the right to divert up to ten percent (10%) of its annual average biosolids production to demonstration projects for up to 12 months in accordance with Section 3.2 of **Exhibit A**, General Terms and Conditions.

### **3. DESCRIPTION OF SERVICES**

Provided that the dewatered biosolids meet the characteristics defined in Table 1, Contractor must provide the following transportation and beneficial use services (“Services”). The provision of these Services must comply with the Technical Requirements and Standards in **Exhibit B-1** and be consistent with Contractor’s Operations Plan, Contingency Plan, and Spill Response and Safety Plan in **Exhibit B-3**.

In the event the RWF’s dewatered biosolids do not meet some or all the characteristics in Table 1, the Contractor must cooperate with the City to identify options for the appropriate disposition of such material. The City may also, at its sole discretion, direct Contractor to dispose of the material in a landfill.

## **Task 1: Services During Startup and Commissioning of the Dewatering Facility**

On the date indicated in the Notice to Proceed with Startup and Commissioning Services from the City, the Contractor must begin providing the services described in Task 2. However, the amount of biosolids provided by the City may be at a reduced amount and/or on a more infrequent basis than will be required once full operations of the RWF's Dewatering Facility begins.

## **Task 2: Services During Full Operations of the Dewatering Facility**

On the date indicated in the Notice to Proceed with Full Operations Services from the City, the Contractor must begin providing the services described below.

Task 2.1 Transportation, Loading, and Unloading Services. The Contractor must provide truck drivers, trucks, top-loading containers with covers, and all other equipment, staffing and materials, all in sufficient numbers and with sufficient availability, to transport the Contractor's share of dewatered biosolids (calculated by multiplying Contractor's Percent Share by the estimated daily production up to the estimated peak day production shown in Table 2) from the RWF's Dewatering Facility to the Contractor's Beneficial Use Site(s) and, if applicable, to and from Seasonal Storage Site(s). The number of drivers and equipment provided by Contractor on any given day must be based on the estimated dewatered biosolids production for the RWF, Contractor's Percent Share, and Contractor's schedule for picking up dewatered biosolids from the RWF's Dewatering Facility as coordinated with the City.

The Contractor must pay all costs associated with providing the transportation, loading, and unloading services, including but not limited to payment of all licenses, certifications, permits, taxes, tolls, fees, tickets, and fines.

Transportation, loading, and unloading services must meet the applicable Technical Requirements and Standards in **Exhibit B-1**.

The Contractor must be available to provide transportation and loading services 24 hours per day, seven days per week, 365 days per year, including holidays. However, loading of dewatered biosolids at the Dewatering Facility will only occur during times designated by the City.

Transportation services must be provided using experienced and skilled personnel and may be provided by City-approved Subcontractor(s) or directly by the Contractor. The Contractor must ensure that transporters have proper and valid licenses and certifications, and Contractor must provide proof of such to the City upon request. Contractor must also ensure all truck drivers have received the City-provided training on how to access the Dewatering Facility site, enter the loadout structure, receive and weigh biosolids, and use on-site truck wash amenities prior to transporting any of the RWF's dewatered biosolids.

The Contractor must provide all other services associated with transportation, loading, and unloading of RWF's dewatered biosolids including but not limited to the following.

- Scheduling biosolids to be picked up from the Dewatering Facility in coordination with the City. Preliminary coordination must occur no later than one (1) week in advance with scheduled pickups confirmed no later than the day before. If a change is required, the Contractor must provide the City a minimum three (3) hour notice.
- Delivering trucks as scheduled with empty and clean containers with covers to the Dewatering Facility. Upon arrival at the Dewatering Facility, containers must be free from dirt, biosolids, and other materials.
- Providing a form of identification upon arrival at the Dewatering Facility's entrance gate.
- Queuing at designated locations at the Dewatering Facility prior to entering the loadout structure if there are no immediately available truck bays.
- Uncovering containers and loading them with dewatered biosolids. During loading operations, the container must be positioned directly under the cake storage bins, and the Contractor must monitor the weight of biosolids in the container and the load distribution within the container.
- Weighing unloaded and loaded trucks and containers using scales at the Dewatering Facility to determine the amount of biosolids received by the Contractor for billing purposes and for confirming compliance with highway weight limits. Contractor must verify loaded containers and trucks do not exceed highway weight limits prior to leaving the Dewatering Facility site. ***There is no location within the Dewatering Facility site for the unloading of dewatered biosolids to achieve legal highway weight limits.***
- Covering and securing the loaded containers prior to leaving the Dewatering Facility site to minimize odors and spillage during transport.
- Sweeping the loading bay after use if Contractor caused a spill or tracked-in dirt, biosolids, or other materials.
- Cleaning trucks, containers, and tires while at the Dewatering Facility site after loading biosolids but prior to exiting onto Zanker Road, if needed to prevent tracking biosolids around the Dewatering Facility site and/or public roadways. The Dewatering Facility site will have a washdown area for this activity to occur.
- Prompt cleanup of any spills caused by the Contractor at the Dewatering Facility site, and during transport of the RWF's dewatered biosolids to any sites or facilities used by the Contractor. The Contractor must notify the City of any spills and of Contractor's cleanup plans within three (3) hours of the spill in accordance with Section 11.5 of **Exhibit A**, General Terms and Conditions, of the Agreement. No later than three (3) calendar days following cleanup, Contractor must provide a written report to the City describing: the spill (amount and type of materials spilled, date and hour of spill), cleanup efforts and date/time of completion, cause(s) of the spill, changes made to avoid reoccurrence of such spill, and certification that the spill was cleaned up to the satisfaction of all agencies with jurisdiction.
- Informing RWF staff of any problems with the Dewatering Facility's entrance area, loadout structure, scales, or truck wash amenities.

- Promptly exiting the Dewatering Facility site after loading, weighing, covering, and cleaning activities are completed.
- Transporting dewatered biosolids from the Dewatering Facility directly to the Contractor's Designated Beneficial Use Site(s) and, if applicable, Backup Beneficial Use Site(s), Designated Seasonal Storage Site(s), and Backup Seasonal Storage Site(s).
- Unloading loaded containers at the Contractor's Designated Beneficial Use Site(s) and, if applicable, Backup Beneficial Use Site(s), Designated Seasonal Storage Site(s), and Backup Seasonal Storage Site(s). If the Contractor delivers dewatered biosolids to a Seasonal Storage Site, the Contractor must also provide loading, transportation, and unloading services necessary to deliver the stored biosolids to Contractor's Beneficial Use Site(s).
- Ongoing maintenance of trucks and containers to assure reliable service.
- Compliance with all applicable federal, state, and local laws, regulations, statutes, ordinances, orders, decrees and permits that affect the transportation, loading, and unloading services.

Task 2.2 Beneficial Use Services. The Contractor must provide sufficient permitted capacity at its Designated Beneficial Use Site(s) for the RWF's dewatered biosolids up to the Contractor's share (calculated by multiplying Contractor's Percent Share by the estimated peak day production shown in Table 2).

The Contractor must provide all facilities, labor, equipment, insurance, and fuel to provide the required beneficial use services. The Contractor is responsible for payment of all costs associated with providing the beneficial use services, including but not limited to payment of all permits, taxes, fees, tickets, and fines.

Beneficial use services must meet the applicable Technical Requirements and Standards in **Exhibit B-1**.

If any of the Contractor's Designated Beneficial Use Sites or Backup Beneficial Use Sites are not available to receive biosolids year-round, including on weekends and holidays, the Contractor must coordinate deliveries of containers loaded with the RWF's dewatered biosolids with the Beneficial Use Site(s) and, if applicable, with Seasonal Storage Site(s) in a manner that complies with those sites' operating permits and local land use regulations. In no event will Contractor be allowed to store empty or loaded containers at the Dewatering Facility site.

Beneficial use services must be provided using experienced and skilled personnel and may be provided by City-approved Subcontractor(s) or directly by the Contractor. The Contractor must ensure that personnel at the Designated and Backup Beneficial Use Site(s) and, if applicable, Seasonal Storage Site(s) have proper and valid permits, and Contractor must provide proof of such to the City upon request.

The Contractor must provide all other services associated with beneficial use of the RWF's dewatered biosolids including but not limited to the following.

- If applicable, provision of backup capacity if Contractor's Designated Beneficial Use Site(s) or Designated Seasonal Storage Site(s) becomes unavailable. Landfill disposal and landfill alternative daily cover may only be used during emergencies and requires City approval prior to their use.
- If applicable, prompt land application or processing of the RWF's dewatered biosolids upon delivery to a Backup Beneficial Use Site.
- If applicable, temporary wet season storage at Designated or Backup Seasonal Storage Site(s). Any dewatered biosolids that are stored at a Seasonal Storage Site must be removed from storage by Contractor and transported to a Beneficial Use Site. Year-round storage of the RWF's dewatered biosolids must not occur.
- Compliance with all applicable federal, state, and local regulatory and reporting requirements for the Designated and Backup Beneficial Use Site(s) and, as applicable, Seasonal Storage Site(s).

Task 2.3 Communication and Coordination Services. The Contractor is responsible for ongoing coordination and communication with the City. The Contractor must:

- Provide updates to the Operations Plan, Contingency Plan, and Spill Response and Safety Plan for City review and approval prior to making a material change, including but not limited to a proposed change to a Subcontractor, proposed change in Designated or Backup Beneficial Use Site(s) or Seasonal Storage Site(s), and a proposed change in the equipment, vehicles, or routes used to transport the RWF's dewatered biosolids.
- Update, as necessary, the contact information of individuals responsible for managing services for the City that are named in Contractor's Operations Plan, Contingency Plan, and Spill Response and Safety Plan.
- Make emergency contacts available to be called 24 hours per day, seven days per week, 365 days per year in the event of an emergency or unusual operating condition. The Contractor's emergency contacts must be available to respond to City staff within three (3) hours of receiving a request from the City.
- Coordinate service with the City. The Dewatering Facility will be producing dewatered biosolids 24 hours per day, seven days per week, 365 days per year, including holidays. Production rates may vary or may be stopped to match overall RWF process and maintenance requirements. As a result, the Contractor must coordinate and schedule the number and timing of containers that will be delivered to the Dewatering Facility each day. Preliminary coordination must occur no later than one (1) week in advance with scheduled pickups confirmed no later than the day before. This coordination must include the City's estimate of the amount of dewatered biosolids to be provided to the Contractor during the next day; confirmation from the Contractor that it is able to provide the required service; and Contractor's development of a pickup schedule that is acceptable to the City. In addition, the Contractor must provide additional scheduling coordination as requested by the City.
- Upon request, provide copies of all permits and agreements required to operate the Designated and Backup Beneficial Use Site(s) and Seasonal Storage Site(s). Contractor must provide the City with copies of all approved federal, state, and local regulatory permits, including subsequent renewals. Permits must be current



and must accommodate the handling of Contractor's Percent Share of the RWF's dewatered biosolids throughout the entire term of the Agreement. Any actual or anticipated changes in permit requirements or litigation that may affect the Contractor's operations or ability to provide services must be reported to the City's Contract Manager within five (5) calendar days of the date that the Contractor learns of or reasonably begins to anticipate the change.

- Provide notices to the City of any reportable events as defined in Task 2.4. Such notices must be provided to the City's Contract Manager within three (3) hours of the time the incident occurred or could be expected to occur.

Task 2.4 Monitoring and Reporting Services. The Contractor must monitor loading, transportation, and unloading operations; storage and beneficial use operations; and administrative and billing functions to identify and promptly resolve any issues that could adversely affect regulatory compliance, compliance with the Agreement, or the quality of services provided to the City. The Contractor must provide reports on its operations to the City as follows.

- Monthly reports documenting the daily and cumulative amounts (wet tons) of dewatered biosolids received, transported, stored (if applicable), and beneficially used. Reports must also identify the weight of biosolids in each transported container and must identify the site(s) where each container was delivered. Monthly reports must include backup information to support invoicing, including weight tickets from sites to which each container was delivered. These reports must be submitted along with invoices.
- Monthly reports on the environmental compliance status of sites named in Contractor's Operations Plan and Contractor's Contingency Plan. Reports must specifically identify any inspections related to environmental compliance, findings of such inspections, notices, and violations from regulatory agencies. These reports must be submitted along with invoices.
- Reports summarizing the use of any Backup Beneficial Use Site(s), Backup Seasonal Storage Site(s), or landfill (for disposal or alternative daily cover). Such reports must be provided on a weekly basis whenever a Backup Site or a landfill is used and must describe the circumstances necessitating the use of the Backup Site or landfill, and the expected duration of use.
- Annual reports summarizing information from the reports listed above and describing any anticipated issues potentially affecting service during the upcoming year. Annual reports must include all documentation necessary for 40 CFR Part 503 regulatory reporting requirements including but not limited to: total quantity received; maps of the sites where the RWF's dewatered biosolids were applied, stored, and/or processed during the year; and, for land application sites, documentation of application rates (e.g., information on crop type and agronomic rate calculations). Each annual report must also include an Excel file of all data that is accompanied by a Word or PDF file that describes anything unusual in the data and the quality control procedures used to evaluate the data. Excel files must be provided in a flat file type format. Annual reports, summarizing the most recent calendar year, must be provided to the City within 20 calendar days of the end of the calendar year.

- Any other information pertaining to Contractor's services that the City must report to local, state, and federal agencies.
- Reports of any incidents requiring notice to regulatory agencies or otherwise considered a reportable event. Contractor must notify City's Contract Manager within three (3) hours of the time the incident occurred or could be expected to occur. Reportable events include:
  - Any incidents or equipment-related breakdowns, repairs or maintenance that occurs during transport or at a Designated or Backup Beneficial Use Site, or Seasonal Storage Site that will negatively impact Contractor's ability to provide the City services.
  - Any situation that causes a deviation from normal operations (e.g., spills, discharges or releases, and fires) at any Designated or Backup Beneficial Use Site or Seasonal Storage Site that has a potential to or creates a hazardous condition or disruption in Contractor's ability to provide the City services.
  - Revocation or violation of any license, certificate, permit, or regulatory approval for a driver, truck, or site named in Contractor's Operations Plan or Contractor's Contingency Plan.
  - All violations of a permit, law, ordinance, or regulation associated with transportation, processing, storage, and beneficial use of the RWF's biosolids, including any violations at the Contractor's Designated or Backup Beneficial Use Site(s) or Seasonal Storage Site(s).
  - Any odor or other complaints received by the Contractor or a Subcontractor regarding transport, a Designated or Backup Beneficial Use Site or Seasonal Storage Site.
  - Any inspections or investigations of any Designated or Backup Beneficial Use Site or Seasonal Storage Site by any federal, state, or local regulatory agency.
  - Injuries or death of any of Contractor's or Subcontractor's personnel during the provision of transportation and beneficial use services to the City.
  - Damage to City property and equipment reasonably attributable to Contractor.
  - Traffic accidents involving Contractor's trucks when traveling to the Dewatering Facility, transporting the RWF's dewatered biosolids to a site used by Contractor, or that would otherwise adversely affect the Contractor's ability to provide the City services.
  - Incidents or operations at a Designated or Backup Beneficial Use Site or Seasonal Storage Site that may result or has resulted in a release of odor.
  - Any other incident that may cause a disturbance to the services provided to the City, or a harm to the environment and/or people.

The City may monitor Contractor to determine whether Contractor's work is completed in a satisfactory manner and in a manner that complies with the provisions of the Agreement. Contractor must grant the City and its representatives access to the Designated and Backup Beneficial Use Sites and Seasonal Storage Sites as well as the sites used to store vehicles and containers used to transport the RWF's dewatered biosolids during normal business hours to conduct inspections of site activities. If

Contractor is unable to grant access because it does not own or operate a site, Contractor must work with the site owner/operator to arrange for City access. The City is not required to give the Contractor advance notice of such inspections.

#### 4. SCHEDULE FOR PROVIDING SERVICES

Contractor’s initiation of services will depend on the completion of the RWF’s Dewatering Facility. The estimated service initiation dates in Table 3 are based on the Dewatering Facility’s current schedule and are subject to change; regardless, the City will notify Contractor prior to when services must start.

<b>Table 3. Estimated Service Initiation Dates</b>	
<i>Milestone</i>	<i>Estimated Date</i>
Notice to Prepare to Initiate Services <sup>a</sup>	Second Quarter of 2024 (no less than three (3) months prior to substantial completion of the Dewatering Facility’s construction)
Notice to Proceed with Startup and Commissioning Services	Third Quarter of 2024 (no less than two (2) weeks prior to the required start of Task 1 services)
Notice to Proceed with Full Operations Services	First or Second Quarter of 2025 (no less than two (2) weeks prior to the required start of Task 2 services)
First Notice of Exercise of Option	First Quarter of 2029 (if decided by the City, approximately six (6) months prior to end of Initial Term)
Notes: a. Once the City issues a Notice to Prepare to Initiate Services, Contractor must begin active coordination with the City and, if needed, update its Operations Plan, Contingency Plan, and Spill Response and Safety Plan in accordance with Section 3.1 of <b>Exhibit A</b> , General Terms and Conditions, to the Agreement.	

#### 5. GENERAL CITY RESPONSIBILITIES

In providing the Services, Contractor may assume the City will complete the following.

- Issue Notices to Proceed and other notifications as provided for in the Agreement.
- Schedule deliveries in coordination with the Contractor and coordinate with other contractors to reduce wait times at the Dewatering Facility.
- Test dewatered biosolids for metals, pathogens, volatile organic compounds, and nitrogen, and share the results of such tests with the Contractor. Except for metals which will be tested monthly, testing frequencies may vary during the term of the Agreement; however, City will test for metals, pathogens, volatile organic compounds, and nitrogen at least monthly during the first year of full operations.
- Train truck drivers on how to access the Dewatering Facility site, enter the loadout structure, load biosolids, use scales, and use truck wash amenities prior to their first loading of the RWF’s dewatered biosolids.
- Direct the Contractor to use a particular landfill.

- Consider Contractor's proposed changes that would materially affect Contractor's Operations Plan, Contingency Plan, or Spill Response and Safety Plan. City will not unreasonably withhold approval of change requests if the changes meet City's Technical Requirements and Standards in **Exhibit B-1**.

## Exhibit B-1: Technical Requirements and Standards

### 1. INTRODUCTION

Contractor must comply with the following technical requirements and standards while providing Services.

### 2. ACCEPTABLE AND UNACCEPTABLE APPROACHES

Table 4 describes acceptable and unacceptable approaches to providing Services. The Contractor must only use those approaches listed under “acceptable” and must avoid using any approaches listed under “unacceptable.”

<b>Table 4. Acceptable and Unacceptable Approaches</b>		
<i>Service</i>	<i>Acceptable</i>	<i>Unacceptable</i>
Loading	<ul style="list-style-type: none"> <li>• Trucks, chassis, and containers that in combination are compatible with the Dewatering Facility’s configuration and dimensions (see <b>Exhibit B-2</b>)</li> <li>• Containers must be top loading and have removable covers</li> </ul>	<ul style="list-style-type: none"> <li>• Trucks, chassis, and containers that in combination are incompatible with the Dewatering Facility’s configuration and dimensions (see <b>Exhibit B-2</b>)</li> <li>• Containers that are not top loading or do not have removable covers</li> </ul>
Transportation	<ul style="list-style-type: none"> <li>• Truck, chassis, and containers that meet California Department of Transportation regulations</li> <li>• Loaded containers that allow vehicles to meet regulatory weight limits</li> </ul>	<ul style="list-style-type: none"> <li>• Truck, chassis, and containers that do not meet California Department of Transportation regulations</li> <li>• Overloaded containers that result in vehicles exceeding regulatory weight limits</li> </ul>
Seasonal Storage	<ul style="list-style-type: none"> <li>• Temporary, wet season storage in permitted sites followed by Beneficial Use in the dry season</li> </ul>	<ul style="list-style-type: none"> <li>• Dry season storage</li> <li>• Year-round storage</li> </ul>
Beneficial Use	<ul style="list-style-type: none"> <li>• Class B land application</li> <li>• Compost production (except using an open or uncovered windrow composting process)</li> <li>• Soil blend production (with interim processing to meet Class A requirements)</li> <li>• Fertilizer production</li> <li>• Processing technologies that are commercially proven at the scale required to provide the City services and that result in a beneficial use product permitted by existing federal and state regulations</li> </ul>	<ul style="list-style-type: none"> <li>• Open or uncovered windrow composting</li> <li>• Landfill disposal or landfill alternative daily cover (may only be used in emergencies and if directed by City)</li> <li>• Processing technologies that are not commercially proven at the scale required to provide the required services</li> </ul>

### **3. GENERAL REQUIREMENTS AND STANDARDS**

#### **3.1 Management of Subcontractors**

The Contractor must ensure that all workers Contractor and its Subcontractor(s) employ have the proper licenses and certifications and are aware of the laws, regulations, permit requirements applicable to their work.

#### **3.2 Inclement Weather**

The Contractor must provide all facilities, equipment, and labor to ensure its ability to load, transport, temporarily store (if applicable), and beneficially use the RWF's dewatered biosolids during inclement weather.

#### **3.3 Delays**

The Contractor must take reasonable precautions to foresee and prevent delays to the transport and beneficial use of the RWF's dewatered biosolids. When the Contractor foresees a delay event, and upon the occurrence of a delay event, the Contractor must notify the City's Contract Manager within three (3) hours of the probability or the actual occurrence of a delay, and its cause.

### **4. TRANSPORTATION AND LOADING REQUIREMENTS AND STANDARDS**

#### **4.1 Licenses, Permits, and Certifications**

Transportation services must be provided by a U.S. Department of Transportation ("USDOT") licensed and registered firm.

All transporters must possess the appropriate and valid licenses.

#### **4.2 Transportation Vehicles and Containers**

The Contractor must maintain all vehicles, equipment, and containers used to transport the RWF's dewatered biosolids in good working order as required to reliably fulfill its obligations to the City. The City may reject any vehicles, equipment, or containers not found to meet this standard. In the event of such rejection, the Contractor must immediately provide a replacement that is in good working order without additional expense to the City.

The Contractor's trucks must be California Air Resources Board compliant. The Contractor must operate and maintain trucks per USDOT regulations. All trucks used to transport the RWF's dewatered biosolids must be equipped with an audible, working back-up alarm that activates whenever the truck is operating in reverse. Trucks must also be equipped with splashguards, first aid kits, and spill kits suitable for containing gas, oils, other hydrocarbons, and for cleaning up small spills of biosolids.

All trucks and containers must be clearly and conspicuously labeled with the Contractor's or Subcontractor's name, an identification number, and the maximum legal loaded weight.

Containers must be durable, top-loading and leakproof with gasketed tailgates and/or doors. Containers must have removable covers that must be put in place to prevent spills and contain odors once loaded with biosolids.

Prior to arrival at and departure from the Dewatering Facility, the Contractor's truck and container must be clean and free of any foreign matter/contamination such that only the RWF's dewatered biosolids will be transported. Contractor must not mix the RWF's biosolids with any other materials prior to delivery to Designated or Backup Beneficial Use Site(s). Contractor must not backhaul products for human consumption in containers used to transport the RWF's biosolids.

#### **4.3 Arrival at the Dewatering Facility**

The Contractor must coordinate biosolids loading operations with the City prior to arrival of trucks at the RWF's Dewatering Facility. Coordination must include confirmation of the expected quantity of biosolids to be transported and the number and timing of truck arrivals. Coordination must also include a tentative schedule for the ensuing week.

Trucks must access the Dewatering Facility site via a shared driveway connected to Zanker Road and exit through a separate driveway that is also connected to Zanker Road. The access driveway also serves the adjacent Silicon Valley Advanced Water Purification Center. Access to the Silicon Valley Advanced Water Purification Center must always be maintained. Contractor must not queue trucks on public streets leading to or departing from the Dewatering Facility.

To access the Dewatering Facility, truck drivers must pass through a secured entrance gate. Access will be granted to truck drivers by an RWF representative upon their arrival. All truck drivers must be wearing identification badges or provide a form of identification at the gate to be granted entry into the Dewatering Facility site.

#### **4.4 Truck Loading**

Two trucks can be loaded simultaneously in the two bays in the Dewatering Facility's loadout structure if both bays are in service. Assuming a truck bay is operating and not occupied by another truck, the City expects it will take approximately 60 minutes for truck loading (i.e., from arrival at the Dewatering Facility to the filling of a container). If both truck bays are occupied, the duration may be longer. The City will strive to schedule truck arrivals to keep the truck loading duration at or below one (1) hour.

Truck loading procedures must be completed by each truck driver as follows.

- Open entry roll-up door, enter loading bay, and position truck and its uncovered container below overhead cake storage bins.
- Close entry and exit roll-up doors to contain odors.
- Initiate transfer of biosolids from overhead cake storage bins to container using local control station.
- Monitor weight and weight distribution during loading to guard against overloading containers and exceeding transportation weight limits. There is no location within the Dewatering Facility site where Contractor will be able to unload a container if it is overloaded.
- Stop transfer of biosolids when container is full or weight limit approaches, whichever occurs first.
- Print weight ticket.
- Cover container securely to contain odors and prevent spills.
- Sweep the loading bay if Contractor caused a spill or tracked-in material.
- Open exit roll-up door, leave truck loading bay, and close exit roll-up door.
- If needed, wash truck and/or container to remove any biosolids attached to tires, truck body, or container using the Dewatering Facility's truck wash amenities.
- Promptly depart from the Dewatering Facility via the site's exit gate.

#### **4.5 Weighing**

The Contractor must use City-provided scales at the Dewatering Facility for obtaining tare and loaded weights. The City will maintain the scales and will test and recalibrate each of the scales as frequently as required by applicable law.

The Contractor may conduct more frequent testing of the scales by a certified scale testing company, at its sole expense. If at any time, such testing indicates a scale does not meet accuracy requirements, the Contractor may request a reasonable adjustment of weight measurements recorded by such scale during the preceding thirty (30) calendar days, which the City may grant at its sole discretion.

If no scales at the Dewatering Facility are in service, the Contractor must weigh every loaded truck at the nearest available certified scale.

#### **4.6 Transportation Routes**

Truck routing in the vicinity of the RWF must maximize the use of California State Route 237 ("SR 237") and Zanker Road north of SR 237, and minimize the use of residential roads.

Truck routing outside the immediate vicinity of the RWF must use interstate freeways and state highways to the maximum extent possible. Truck routing through residential areas must be avoided or minimized to the greatest extent possible.

Truck routing in the vicinity of the Contractor's Designated and Backup Beneficial Use Site(s) and Seasonal Storage Site(s) must comply with the requirements of the



owners/operators of these sites and with the requirements of all governmental authorities having jurisdiction. Truck routing and offloading of containers loaded with the RWF's biosolids must also comply with any operating permits and authorizations associated with the receiving site, including but not limited to any restrictions on seasonal use, daily hours of operation, and suitability of receiving site's access roadways and unloading area conditions.

#### **4.7 Transportation Safety**

The Contractor is responsible for transportation safety and for ensuring that all drivers comply with all speed limits and other vehicle and traffic laws, rules, and regulations.

### **5. BENEFICIAL USE AND SEASONAL STORAGE REQUIREMENTS AND STANDARDS**

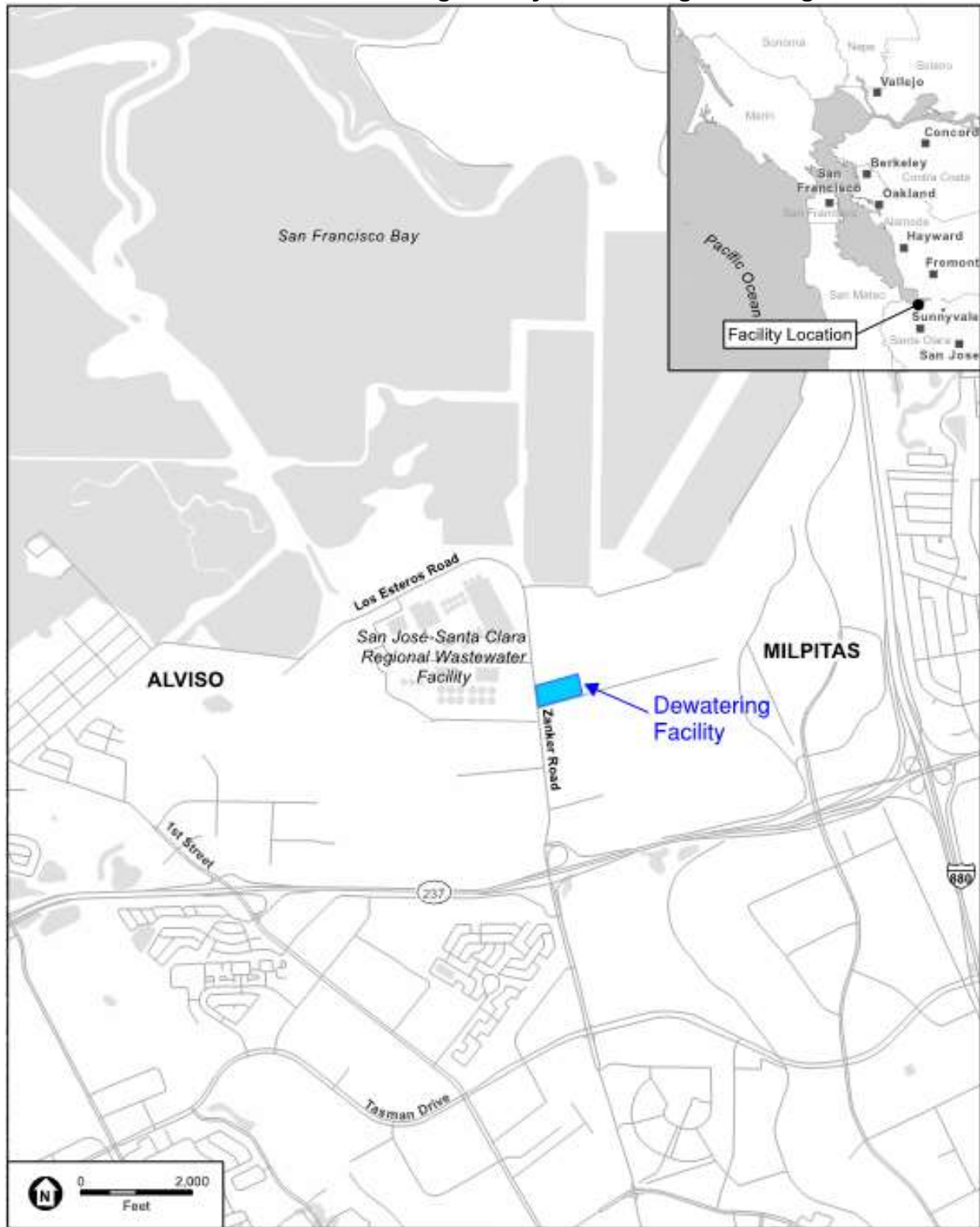
Contractor must use the Designated Beneficial Use Site(s) and Designated Seasonal Storage Site(s) listed in Contractor's Operations Plan in **Exhibit B-3** to routinely manage the RWF's dewatered biosolids.

Contractor may use the Backup Beneficial Use Site(s) or Backup Seasonal Storage Site(s) listed in Contractor's Contingency Plan in **Exhibit B-3** if: 1) there is a disruption to normal operations that makes a Designated Beneficial Use Site or Designated Seasonal Storage Site unavailable; 2) a Designated Beneficial Use Site or Designated Seasonal Storage Site becomes inaccessible; or 3) use of the Backup Beneficial Use Site or Backup Seasonal Storage Site would otherwise benefit the City. In addition, the Contractor may request that the City approve another backup site provided Contractor follows the procedure described in Section 3.1 of **Exhibit A**, General Terms and Conditions, to the Agreement.

In emergency situations, when Contractor's Designated and Backup Beneficial Use Site(s) and Seasonal Storage Site(s) become unavailable or inaccessible, the Contractor may request that the City approve use of a landfill for biosolids disposal or use as alternative daily cover. Neither landfill disposal nor alternative daily cover are considered beneficial use.

The Contractor must utilize the RWF's biosolids in accordance with each site's permits and with all applicable local, state, and federal laws and regulations. The Contractor is responsible for meeting the monitoring and reporting requirements imposed by agencies with jurisdiction over the Designated and Backup Beneficial Use Site(s) and Seasonal Storage Site(s) used to manage the RWF's biosolids. The Contractor is also solely responsible for obtaining the financing for sites and facilities used, and for implementing any improvements necessary to meet regulatory requirements or expand capacity. The Contractor must provide documentation of site permits, orders, decrees, registrations, and other regulatory approvals to the City upon request.

### Exhibit B-2: Dewatering Facility 100% Design Drawings



SOURCE: ESA, 2019

San José-Santa Clara Regional Wastewater Facility Digested Sludge Dewatering Facility Project

**Figure 1 - Location Map**

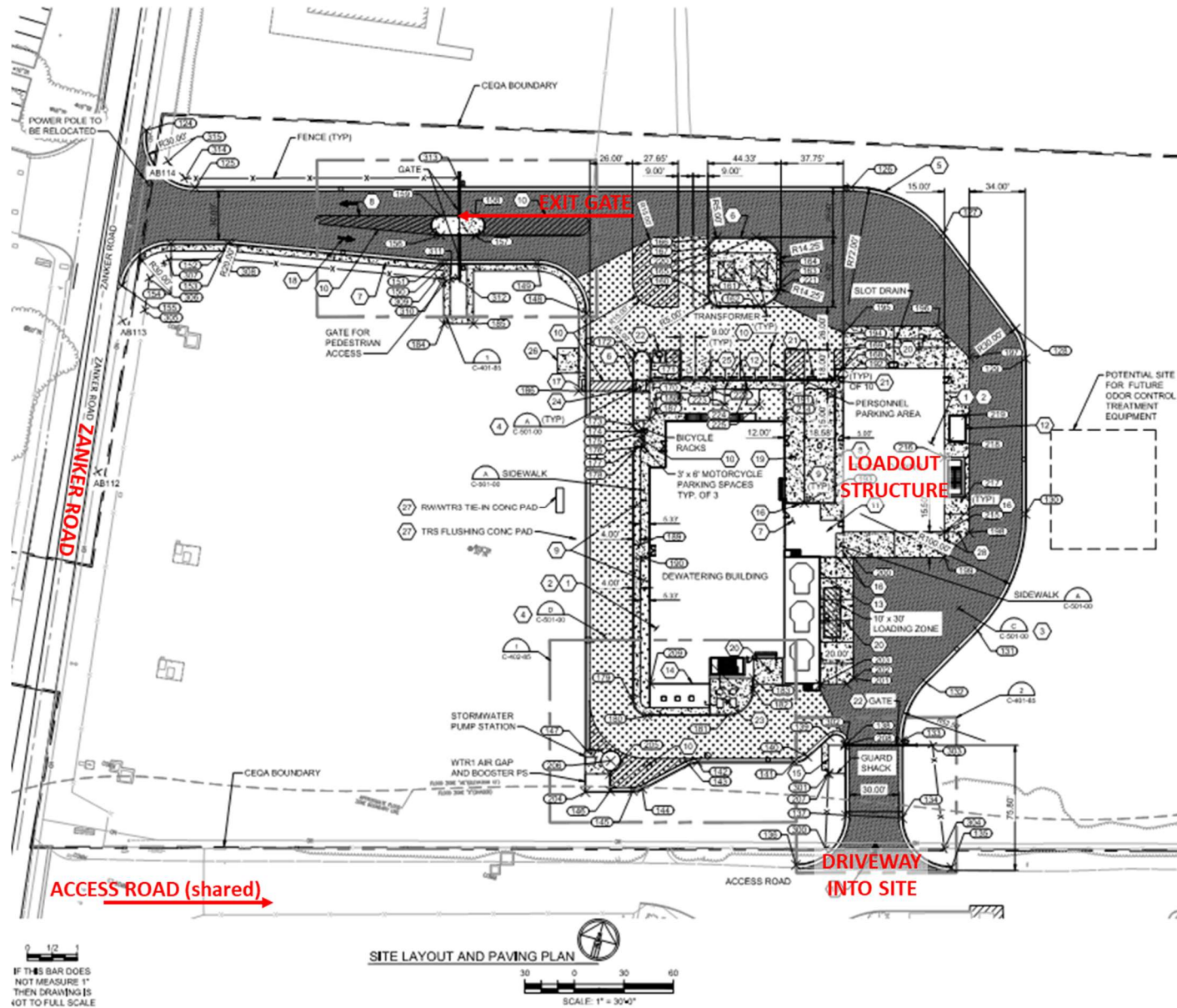
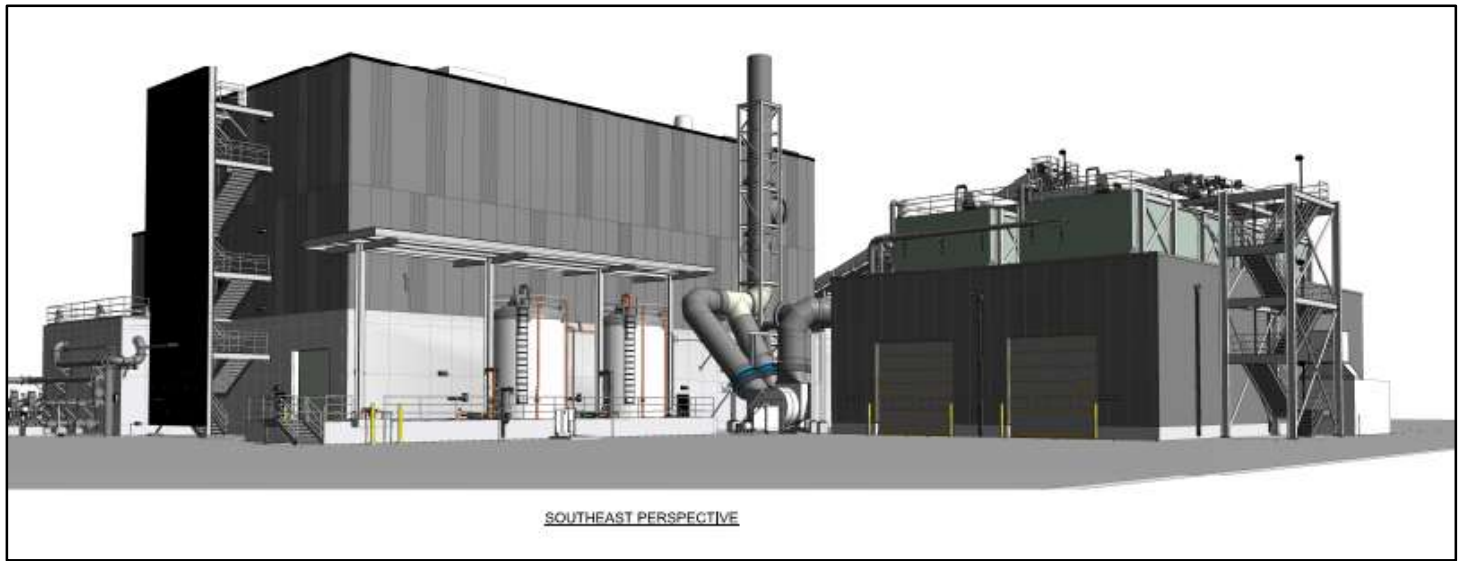
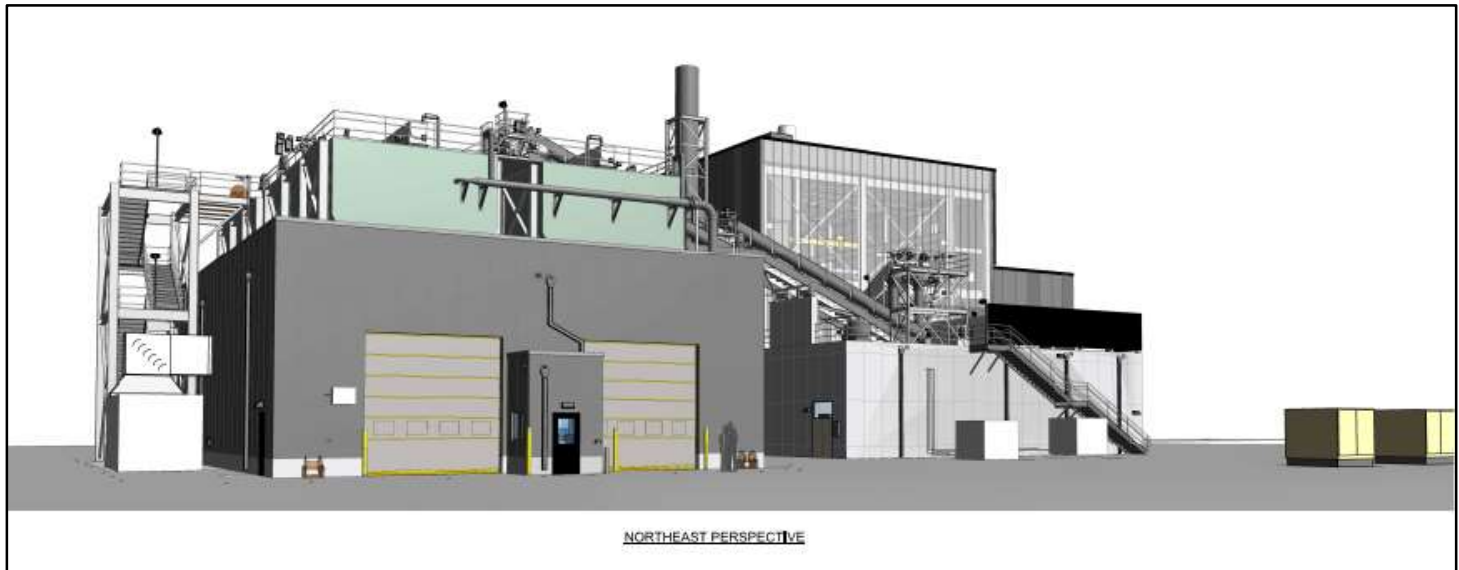


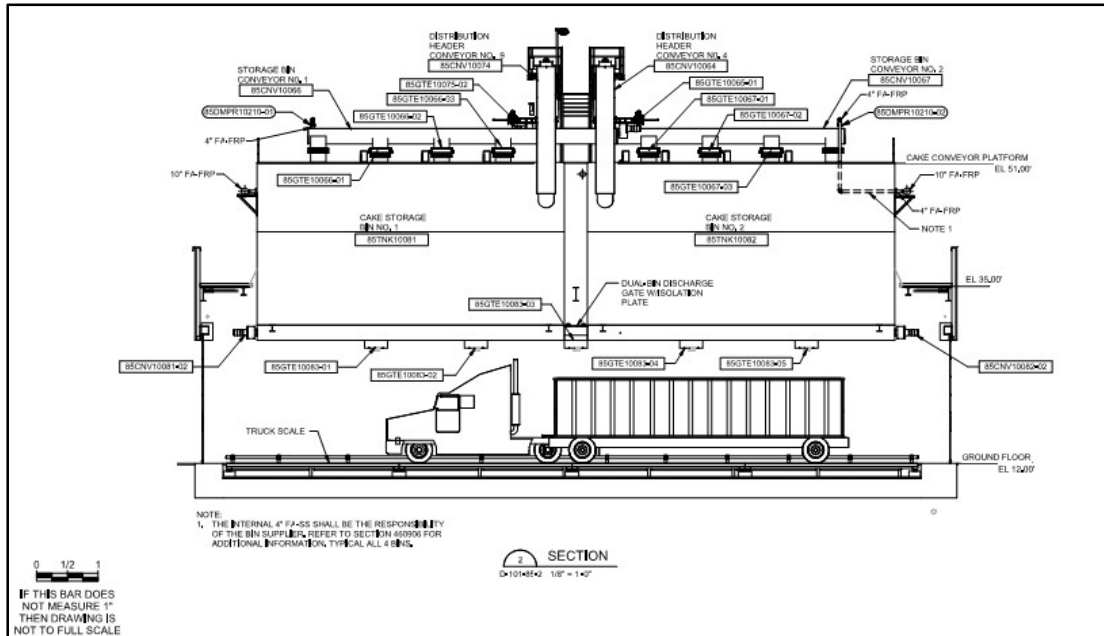
Figure 2 – Site Plan



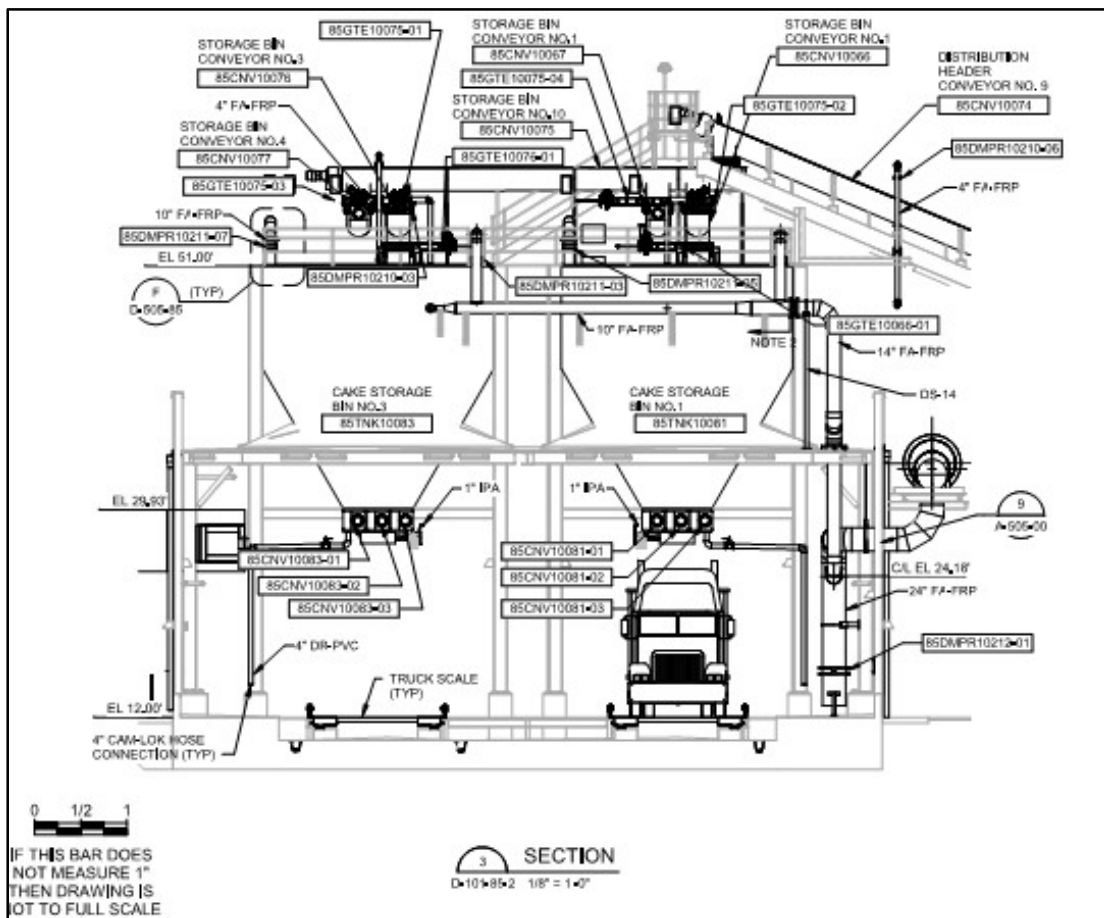
**Figure 3 - Loadout Structure Entrance Rendering**



**Figure 4 - Loadout Structure Exit Rendering**



**Figure 5 - Loadout Structure Section (Truck Side)**



**Figure 6 - Loadout Structure Section (Truck Front)**

## **Exhibit B-3: Lystek's Operations Plan, Contingency Plan, and Spill Response and Safety Plan**

Lystek Fairfield  
Organics Material Recovery Center  
(OMRC)

**Operations Plan**  
Revision 1.0



October 2022

## Contents

Contact List.....	3
Coordination Protocols: .....	4
Biosolids Receiving, Operations and Processing.....	6
LysteGro Beneficial Use Product Management.....	7
Training, Licenses, and Certifications: .....	9
Transportation: .....	10
Beneficial Use Site Information: .....	14
Billing and Reporting:.....	18
Regulatory Compliance:.....	21
Exhibit A: Sample Invoice.....	22
Figure 1: Biosolids receiving pit and conveyance .....	5
Figure 2: FSSD Aerial View .....	6
Figure 3: Lystek THP Reactor at the Fairfield OMRC .....	7
Figure 4: Advantages of Subsurface Injection .....	8
Figure 5: Subsurface Injection Equipment .....	9
Figure 6: Poncia Trucking Trailer.....	10
Figure 7: California Highway .....	13





## Contact List

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## Coordination Protocols:

Lystek proposes to follow a simple procedure for communication(s) to the city: direct and one-on-one. This means that both the City and Lystek will have a main point-of-contact for the purposes of successful execution of this project. While back-up individuals will be needed for each role, the main contacts will be the responsible parties for key-decision making items. Should the above contact list change, the city will be notified within three calendar days.

Behind the City and Lystek will be the operations staff at the RWF and subcontractors, respectively. The main contacts will be responsible to extend the communication(s) to applicable sub-parties on an as-needed basis.

It is envisioned that during commissioning and initial periods of the project, communications will be frequent and likely daily. This will involve onsite meetings to resolve issues first-hand and without unnecessary delays. Emails, phone and texting will be considered the primary form of communication beyond the in-person meetings. The issuance of letters and formal documents will be used for contract support and regulatory compliance. All parties will follow any protocols for Covid-related (or similar) issues with respect to in-person meetings and site visits.

As the project progresses into a more routine operating mode, the frequency and topical nature of communications is expected to subside. The City and Lystek will agree as to the nature of continued onsite meetings, but it is anticipated that quarterly meetings should be established at a minimum to address new or ongoing issues that will inevitably occur.

Lystek International is very familiar with start-up and commissioning of biosolids handling equipment. The operations and engineering staff of Lystek will be ready to assist and respond to the work effort needed for a successful and smooth transition to routine loadout procedures at the RWF Dewatering Facility.

Within the last 10 years, Lystek has designed, constructed, installed, and commissioned 10 biosolids storage, handling, and/or conveyance systems. We believe that this expertise, including the transportation subcontractor, would be beneficial during the start-up and commissioning of the RWF loadout infrastructure. There are many challenges and trial-by-error steps to getting a new system to work as designed and meet the expectations of the users and operators. This can include issues related to mechanical, electrical, automation, and integration components of the overall system.





**Figure 1: Biosolids receiving pit and conveyance**

When the RWF staff is ready to begin initial start-up, Lystek will be at the site to observe and lend input(s) as necessary. The knowledgeable lessons-learned and work-around solutions that we have seen in the past could be useful for this implementation. Once the system passes the start-up phase, the commissioning portion will follow.

During commissioning, Lystek and its transportation subcontractor will be available for as many hours/days as is needed to see through a successful operation. This may include hours of work beyond the normal workday and on weekends. Both the transporter and the Fairfield OMRC receiving destination will be committed to the loading and removal of the dewatered biosolids and initial processing for beneficial use on a 24/7 availability.

It is expected that there will be other involved parties during the start-up and commissioning phase. These are likely to include: design engineer(s), equipment fabricator or supplier reps, equipment installers, general contractor(s) and support mechanical and electrical service technicians. Lystek will work with these parties in a cooperative and supportive role and provide operational inputs for a successful outcome.

One clear advantage of having the Fairfield OMRC as a designated beneficial use facility is the ability to accept a wide range of biosolids quality material. During equipment commissioning, it is likely that dewatered biosolids quality and consistency will be variable. The Fairfield OMRC can accept these material quality variations (including Sub-Class B quality) and still produce a Class A fertilizer-grade end product. This will allow the City of San José to immediately earn recycling and diversion credits for material that might have otherwise gone to a landfill (even if for disposal).

The Fairfield OMRC is open 7 days a week, 365 days a year. Normal operations during summer are 4:00AM-to-6:00PM, and during winter from 1:00am-to-10:00PM.



However, should the City request service outside of these hours, the Fairfield OMRC is capable of extending hours on short-notice as requested.



**Figure 2: FSSD Aerial View**

The Fairfield OMRC has sufficient capacity, in terms of receiving capacity, operating/processing capacity, and end-product storage capacity for the requested quantity of biosolids in this proposal. If the city requests service above our percent share or above the peak day dewatered biosolids production, Lystek has agreements with Napa Recycling as a back-up site, FSSD as seasonal storage and Recology Hay Road Landfill as a contingency disposal option if necessary.

## Biosolids Receiving, Operations and Processing

To summarize, we propose the following operations and processing approach:

- ➊ Lystek sub-contract hauler(s) will pick up dewatered biosolids from the RWF in San José, and follow prescribed transportation routes to the Fairfield OMRC.
- ➋ Incoming deliveries are weighed via a certified scale under the direction of a licensed weighmaster. Registered weights at the Fairfield OMRC are used for comparative purposes to scales at the RWF. In cases where the RWF scale is out-of-service, the Fairfield OMRC scale can function as the certified scale system for billing purposes. On a regular basis, the Lystek lab technician will take dewatered biosolids grab samples to verify material characteristics as permitted under the contract.
- ➌ After weighing, San José's biosolids are unloaded into a dedicated receiving pit and transferred to interim storage. This storage bin is fully enclosed to eliminate fugitive contamination and nuisances.
- ➍ The City's biosolids and residuals are then pumped using progressive cavity feed pumps to our process Reactor.
- ➎ Within the Reactor(s), dewatered biosolids are processed for a minimum of



thirty minutes using high-speed shearing, while an alkali material is added to raise the pH to a minimum of 9.0, and low pressure steam is injected to raise the temperature to 70-degrees C (minimum). The combination of these process parameters enables the technology to hydrolyze the biosolids materials to produce a USEPA Class A biosolids (LysteGro) for use on local lands as a fertilizer or as a feed to optimize digester performance (LysteMize).



**Figure 3: Lystek THP Reactor at the Fairfield OMRC**

All processing activities are under the direction of the plant operator and plant supervisor. Process equipment is described in greater detail below.

A significant advantage of the Lystek technology is the ability to accept Class B, sub-Class B, raw sludge(s), digested or undigested biosolids and convert these to a Class A, unrestricted end use product. The patented Lystek process provides the best opportunity for any biosolids generator to ensure a high-value (Class A) beneficial use product at the most economical basis.

The final product is then pumped to large storage reservoirs until field conditions permit land application.

## LysteGro Beneficial Use Product Management

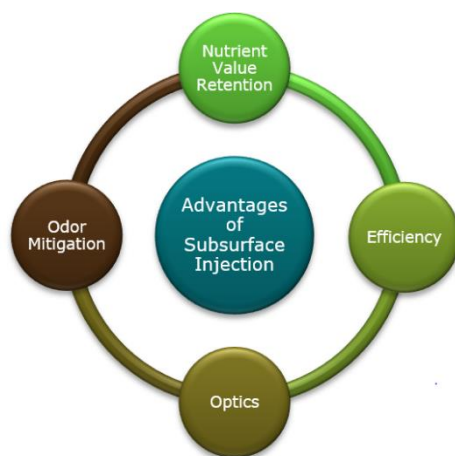
The Lystek THP system transforms biosolids and other organic residuals into a pathogen free, Class A biosolids fertilizer product that is in high demand by agricultural customers. LysteGro meets criteria for Class A biosolids fertilizer as classified by the USEPA and has also received state registration as a bulk fertilizer from the CDFA. Within Solano, Yolo, and Colusa Counties, LysteGro is recognized as a fertilizer product and is not subject to the normal biosolids land application ordinances and/or permitting requirements.

We will promote the benefits of producing Class A biosolids and successfully manage the marketing, sales, and distribution of the product.



LysteGro is a valuable fertilizer with predictable Nitrogen, Phosphorus, and Potassium (NPK) values that is high in solids (12%-14%) and remains pumpable with conventional liquid handling and application equipment. Through the process, the inherent value in the biosolids feedstock is preserved, while odors are mitigated and pathogens are eliminated. In addition to the NPK macronutrient value, LysteGro is beneficial to farmers for several reasons, specifically:

- Cost Savings:** We market the material to the agricultural sector at an affordable price based on the NPK content of the material. By using the processed material, farmers save on the input costs that they normally pay when purchasing inorganic fertilizer. They also see year-over-year value from LysteGro due to the slow release nature of the nutrients in the product and improvements in soil health.
- Micronutrients:** Micronutrients important for crop growth, including Calcium, Sulfur, Zinc, Copper, and several others inherent in biosolids, provide the farmer with an affordable option for these nutrients that are expensive to purchase in the commercial fertilizer form.
- Organic matter:** The addition of organic matter to soils help to improve overall soil health, including improved water holding capacity, soil structure and tilth, increased microbial activity as well as increased resilience to severe weather conditions (excess water or drought conditions).



**Figure 4: Advantages of Subsurface Injection**

The combination of macro- and micro-nutrients as well as organic carbon provides a valuable cost-effective resource to customers who want an alternative fertilizer source (replacing chemical or synthetic fertilizers and reducing greenhouse gas emissions) to improve long-term soil health and crop yields.

In order to ensure maximum nutrient use efficiency, limit odor concerns, and the potential for run-off, LysteGro is injected into the soil subsurface during application. The in-field aesthetics and cleanliness of the injection operation that we employ is superior to other forms of historical land application practices.



Sub-surface injection also increases soil contact, and essentially removes the risk of run-off. Additionally, because the material is concentrated, there is a reduction in the overall volume that must be applied per acre versus traditional liquid (low-solid) programs. Figure 5 shows the equipment used to subsurface inject LysteGro in agricultural fields.



Figure 5: Subsurface Injection Equipment

### Training, Licenses, and Certifications:

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Throughout the year there are safety presentations on a monthly basis following a prescribed training calendar. These are mandatory meetings for all employees; missed meetings will require individual make-up sessions. The topics covered during these meetings include safety, first aid, spill and emergency response. Beyond the required topics each month, added items are discussed such as: near-miss accidents, best working practices, operational lessons-learned, and situational awareness. With respect to loading and unloading services, we strive for an accident-free, incident-free and non-reportable event outcome. Lystek employees are encouraged to be involved with the community through organizations and events that educate other businesses on our technology and its benefits. Lystek communicates with the news and public organizations to showcase achievements and actively uses social media. This document also discusses Lystek's training on the management of biosolids and other organic materials. There are operational procedures for minimizing odors that occur from biosolids receiving, soil blending and composting. Lystek employees are trained on how to respond to an odor complaint.

Each employee will be provided information related to Covid health and safety issues: wearing of masks, social-distancing standards, physical contact for office infrastructure. Lystek requires that employees be vaccinated. A proof-of-medical exemption status is allowed with regular testing. Lystek requires the same for subcontractors and anyone working within the limits of the Lystek operations.



At the time of this proposal submittal, the drivers being identified (along with any applicable license and/or certificates) for use on this project are in [Table 2](#):

**Table 1: Driver Information**

Name	Designation	License Class	Special Endorsement(s)
Pablo Canel	Primary Driver	A	Hazardous material
Salvador Sanchez	Primary Driver	A	Doubles/ triples hauler tanker endorsement
Braulio Chavez	Back-up Driver	A	n/a
Nick Silva	Back-up Driver	A	n/a

It is possible that substitute driver(s) may be needed during the term of this project. Driver(s) will have the appropriate license(s) and/or endorsement(s) applicable to provide the requested transportation services.

Each transportation company maintains the appropriate local licenses and/or permits within the jurisdiction it operates in. These permits are renewed as needed so that transportation vehicles can be identified as hauling biosolids and similar types of material(s). Transportation companies routinely inquire (via CalTrans and DOT websites) and are regularly informed of changes to required certifications and the need for any added certification(s).

### Transportation:

The primary mode of transportation for moving dewatered biosolids from the RWF to Beneficial Use Site/Seasonal Storage Sites will be with sealed, water-tight end dump trailers. The entities responsible for providing transportation services will be Poncia



Trucking and Grow West Trucking. Refer to

[Figure 6](#) for an example trailer from Poncia Trucking.







**Figure 6: Poncia Trucking Trailer**

Lystek has identified the availability of year-round storage as part of its offering for beneficial use. This storage is readily available at the FSSD plant. Transportation/access for the storage areas is the same as for the primary beneficial use site (i.e., Lystek Fairfield OMRC); no additional transportation is required.

Lystek does not plan to use intermodal transfer for biosolids.

The availability of storage at the FSSD plant is year-round to offer flexibility and contingency for this project and is not restricted to any particular month(s). Material that would be stored is likely a result of planned operations being curtailed for maintenance or similar short-duration periods. The biosolids can be easily staged for many months but preference is to move the material from storage to the Lystek processing infrastructure within the shortest reasonable time period. Storage of a few weeks to a few months could be expected under normal conditions.

The routes for transporting materials are as follows (and adhere to the guidance in the RFP documents):

RWF Facility to Beneficial Use Site (Lystek)/Seasonal Storage Site (FSSD):

Starting at the RWF dewatering facility, trucks will exit to Zanker Road south to Highway 237, then eastward to I-680-North. Alternative routes could include Highway 237 to I-880 and then Highway 262 to I-680-North. Once on I-680-North, it is approximately 50 miles to I-80-East in Fairfield. Trucks would exit onto Highway 12-East and use the Chadbourne Road exit through the Solano Business Park to access the Lystek facility. In the event of severe traffic conditions on I-680-North, trucks can alternatively use I-880-North to I-80-East in Oakland and follow the same local routing in the Fairfield area. All roadways are rated for heavy or industrial vehicle traffic. The suggested route eliminates the need for uses of residential streets.

The Beneficial Use Site and Seasonal Storage Site are both located on 1014 Chadbourne Road, Fairfield, CA 94534 thus, the transportation route between them is negligible.

Lystek has proposed a target maximum capacity commitment for this project (see the value on Form L). Based on the reasonable inputs for average wet tons per load



(22 net tons) and a delivery schedule of 365 days per year, the calculated number of delivery loads to Lystek will be as follows:

Annual Average Tonnage = 27,500 wet tons or 4 loads per day (3.3 loads)

Peak Day Tonnage = 3 times daily average or 10 loads per peak day

Based on the above calculation, Lystek is proposing to have two full-service tractor-trailer units dedicated to this project. With an average day of 4 loads, two units can easily accommodate this with each unit performing 2 deliveries each day. The Lystek location is less than 75 miles from the RWF, so a conservative round-trip travel time of five hours per delivery is used. This would also allow for meeting the peak day tonnage scenario of 10 truck deliveries with 24-hour day utilization of the equipment. Drivers would work as team shifts to meet the needed hours of service and stay in compliance with federal driving hours per week.

Table 3 summarizes the equipment inventory being proposed for this project.

**Table 2: Equipment Inventory**

Equipment Type	ID Numbers	Equipment Manufacturer	Maximum Legal Load Limits	Equipment Year	Notes
Tractor	#58	Peterbilt	80,000 lbs	2017	CA#565732
Tractor	#31	Peterbilt	80,000 lbs	2017	CA#565732
Trailer	#130	MAC Trailers	80,000 lbs	2018	With auto-tarp
Tractor	#138	MAC Trailers	80,000 lbs	2018	With auto-tarp

The maximum legal load limits are for a combined unit of a fully-loaded tractor and trailer.

Not only does Lystek and its team of subcontractors offer a system of project redundancies and options for biosolids management, but the impact of technology on the transportation component can not be dismissed. Lystek and our primary transportation subcontractor understand the need to reduce the environmental effects of any increased roadway traffic. We are committing to the following steps in this regard:

- Maximize net truck load weights so that extra trips can be reduced or avoided
- Investigation of alternative fuel vehicles during the term of the project
- Documenting the greenhouse gas emission reductions by use of the Lystek THP and land application synergy

For alternative fuel vehicles, the transportation subcontractor is already researching methods of generating self-made biogas for CNG-fueled tractors. In addition, with the State of California' emphasis on vehicle electrification, the transporter has acknowledged this and is determining suitable vendors that are expressing a



manufacturing desire to produce electric-charged transport vehicles. If proven to be viable, safe, and suitable for the project needs, alternative fuel vehicles will be utilized on this project.

The transportation subcontractor(s) have a rigorous maintenance and inspection program for vehicles which travel on the road. Drivers are required to perform a VCR (Vehicle Condition Report) at the start of each day or shift. This allows the driver to note any needed service or safety items requiring attention, repair or replacement. For any safety related item(s), the vehicle is considered out-of-service until the item has been corrected. The next level of condition assessment is the monthly inspection program which follows the manufacturers recommended list of inspections and services. These items and inspection results are tracked in an automated program to maintain a service record on each piece of equipment.

Items which would qualify as being in need of repair or replacement would follow one of the following standards:

- Manufacturers recommended replacement schedule
- New/updated transportation code or standard notices
- OSHA safety or air quality related items
- Post accident/incident re-conditioning
- Visual observation of wear-and-tear items requiring attention

Lystek's standard practice is to wash the inside of the trailer at the end of the material unloading operations. Prior to the truck leaving the Lystek site, the equipment wheels and undercarriage are hosed to remove any residual materials. All wash water is drained to the FSSD onsite sewer collection system and treated through the wastewater treatment plant facility.

The vehicle and trailer (container) maintenance and repair records are maintained in an automated program for storage and retrieval by the transportation subcontractor.

The transportation subcontractor follows a regular program of equipment inspections using prescribed checklists. While the majority of the checklist items follow the equipment manufacturers recommendations, additional inspection items are used due to the type of material being transported. This also takes into account the roadway conditions for specific projects.

For this project, the planned vehicle routing follows well established and maintained roadways and highways. In addition, both the RWF dewatering facility and the Lystek Fairfield OMRC have all-paved roadway surfaces to reduce equipment wear-and-tear.





**Figure 7: California Highway**

Both Lystek and the transportation subcontractor jointly manage the equipment needs for this project based on the actual service requirements being requested by the City. The proposal is to have two full-service units (tractor and trailer) assigned and staged at the Lystek Fairfield OMRC facility. This reduces overall travel time for more distance truck yard locations. If there is a need for an equipment substitution, Lystek will request the necessary equipment item(s) from the transportation subcontractor (there are multiple units which can be put into service with less than 6-hours' notice).

### **Beneficial Use Site Information:**

---

The "Designated Beneficial Use Site" will be the Fairfield OMRC, owned by Lystek. The site information is as follows:

**Location:** 1014 Chadbourne Road, Fairfield, CA 94534

**Status of permits:** USEPA Class 1 Sludge Management Facility permit

**Total permitted capacity:** 150,000 wet tons annually

**Current available capacity for the RWF's biosolids:** 27,500 wet tons annually

**Permit conditions:** None

**Days and hours of operation:** 24/7/365. Normal operations during summer are 4:00AM-to-6:00PM, and during winter from 1:00am-to-10:00PM.

**Provisions for temporary storage during hours when the site is not operating:** Built-in contingency storage capacity options

The "Designated Back-Up Site" will be with Napa Recycling LLC to use the Yolo Composting facility. The site information is as follows:

**Location:** County Road 28H & County Road 104, Davis, CA 95616

**Status of permits:** CalRecycle SWFP 57-AA-0001



**Total permitted capacity:** 1000 tons per day

**Current available capacity for the RWF's biosolids:** 200 tons per day

**Permit conditions:** Dewatered sludges to be received before 9:00AM, Mon-Fri

**Days and hours of operation:** Mon-Sat: 6am to 5pm, Sun: 7am-6pm

**Provisions for temporary storage during hours when the site is not operating:** During non-operational periods, dewatered sludges can be stored at the FSSD storage/drying beds

The "Disposal Contingency Site" will be with Recology Hay Road Landfill. The site information is as follows:

**Location:** 6426 Hay Road, Vacaville, CA 95687

**Status of permits:** CalRecycle SWFP 48-AA-0002

**Total permitted capacity:** 37,000,000 cubic yards

**Current available capacity for the RWF's biosolids:** >20,000,000 cubic yards

**Permit conditions:** None

**Days and hours of operation:** 365 days per year/24 hours per day

**Provisions for temporary storage during hours when the site is not operating:** During non-operational periods, dewatered sludges can be stored at the FSSD storage/drying beds

The "Designated Seasonal Storage Site" will be seasonal and year-round storage at the Fairfield OMRC. The availability of storage at the FSSD plant is year-round to offer flexibility and contingency for this project and is not restricted to any particular month(s). Storage of a few weeks to a few months could be expected under normal conditions. The site information is as follows:

**Location:** 1014 Chadbourne Road, Fairfield, CA 94534

**Status of permits:** WDR R2-2015-0013

**Total permitted capacity:** 500 tons/day, 150,000 tons/year

**Current available capacity for the RWF's biosolids:** 250 tons/day, 75,000 tons/year

**Permit conditions:** None

**Days and hours of operation:** 365 days per year/24 hours per day

**Provisions for temporary storage during hours when the site is not operating:** Year-round storage is available in 20-acre, asphalt-lined drying beds



**A list of federal, state, and local agencies with jurisdiction over each Designated Beneficial Use Site and, if applicable, Designated Seasonal Storage Site, including contact information for each agency:**

The Lystek Fairfield OMRC (as designated beneficial use site) is owned and operated by Lystek International Limited and co-located on the Fairfield-Suisun Sewer District plant in the City of Fairfield. Agencies with jurisdiction including contact information are:

<u>Local Agency</u>	<u>Federal Agency</u>
Fairfield-Suisun Sewer District Talyon Sortor General Manager 707-429-8930	USEPA – Region IX Lauren Fondahl Biosolids Coordinator 415-972-3514

The Yolo Compost facility (as designated beneficial use back-up site) is operated at the Yolo County Landfill. Local and state agencies with jurisdiction including contact information are:

<u>Local Agency</u>	<u>State Agency</u>
Yolo County Environmental Health April Meneghetti Acting Director of Environmental Health 530-666-8646	CalRecycle Joseph Rasmussen Section Manager, Local Assistance 916-341-6199

The year-round storage facility at FSSD is owned/operated by the District. Agencies with jurisdiction including contact information are:

<u>Local Agency</u>
Fairfield-Suisun Sewer District Talyon Sortor General Manager 707-429-8930

The contingency disposal site is the Recology Hay Road Landfill in Solano County. Agencies with jurisdiction including contact information are:

<u>Local Agency</u>	<u>State Agency</u>
Solano County Terry Schmidtbauer Director, Dept of Resource Management 707-784-6765	CalRecycle Joseph Rasmussen Section Manager, Local Assistance 916-341-6199



**A list of testing, monitoring, and reporting required by all federal, state, and local agencies with jurisdiction over each Designated Beneficial Use Site and, if applicable, Designated Seasonal Storage Site:**

The Lystek Fairfield OMRC (as designated beneficial use site) is owned and operated by Lystek International Limited. The regular testing that is performed includes analysis for nutrients to validate CDFA fertilizer registration and metals to confirm USEPA Part 503, Class A product classification. Agencies with jurisdiction including contact information are:

State Agency  
California Dept of Food and Agriculture  
Param Singh  
Division of Inspection Services  
916-900-5020

Federal Agency  
USEPA – Region IX  
Lauren Fondahl  
Biosolids Coordinator  
415-972-3514

The Yolo Compost facility (as designated beneficial use back-up site) is operated at the Yolo County Landfill. Routine testing of compost includes time and temperature for pathogen reduction, and contamination to meet quality requirements. Local and state agencies with jurisdiction including contact information are:

Local Agency  
Yolo County Environmental Health  
April Meneghetti  
Acting Director of Environmental Health  
530-666-8646

State Agency  
CalRecycle  
Joseph Rasmussen  
Section Manager, Local Assistance  
916-341-6199

The year-round storage facility at FSSD is owned/operated by the District. There is no testing required for the use of this facility. Agency with jurisdiction including contact information are:

Local Agency  
Fairfield-Suisun Sewer District  
Talyon Sortor  
General Manager  
707-429-8930

The contingency disposal site is the Recology Hay Road Landfill in Solano County. Regular testing includes: groundwater, surface water, air emissions, waste acceptance verification. Agencies with jurisdiction including contact information are:

Local Agency  
Solano County  
Terry Schmidtbauer  
Director, Dept of Resource Management  
707-784-6765

State Agency  
CalRecycle  
Joseph Rasmussen  
Section Manager, Local Assistance  
916-341-6199



A detailed description of the operating protocols at the Lystek Fairfield OMRC (as designated beneficial use site) has been provided above in Coordination Protocols. Following will be a broad overview of the normal operating protocols for the other Lystek partner sites.

At the Yolo Compost facility, operations begin with the receiving of trucks at the scale/attendee office. Loads are identified by the generator, material type, and destination. As applicable, load weights will be verified against the generator weight ticket. Records are maintained to validate receipt of material at this location. Truck(s) will then be directed to the composting receiving area and unloaded. A visual inspection is performed to ensure that no foreign or unauthorized materials are present. The material is then incorporated into the active composting process. Scheduled testing is performed over the prescribed time period to meet the regulatory standards for compost quality. Material is then cured, screened, and stored for off-site beneficial uses. Unacceptable material is taken to the adjacent landfill for proper disposal.

At the FSSD Storage site, the designated drying beds are adjacent to the Lystek Fairfield OMRC plant. Operations begin with the receiving of trucks at the Lystek scale. Loads are identified by the generator, material type, and destination. As applicable, load weights will be verified against the generator weight ticket. Records are maintained to validate receipt of material at this location. Truck(s) will then be directed to the storage area and unloaded. A visual inspection is performed to ensure that no foreign or unauthorized materials are present. The date of each delivery is logged so that a record exists when it is removed for processing at the OMRC plant. The material is staged from the storage area to the OMRC receiving pit to accommodate the processing schedule throughout the year. After the material is placed in the receiving pit, the normal Lystek process operations continue through final beneficial use as a land application product.

At the Recology Hay Road Landfill (as contingency disposal location), operations begin upon notice or designation that material is unacceptable for beneficial use or other acceptable destination options. A notice of unacceptable designation can be made by the City or by Lystek in consultation with the City staff. It is expected that regular testing of the biosolids will be sufficient to satisfy the waste acceptance criteria at the Landfill. If this is the case, then loads are directed to the Landfill and identified by the generator, material type, and destination. The City will issue a material manifest meeting the requirements of the landfill waste acceptance criteria. In cases where the material is determined (mutually by the City and Lystek) to be unacceptable for treatment after departure from the RWF, Lystek will provide a material manifest meeting the requirements of the agreed upon disposition (i.e., landfill). A copy of any manifest will be retained by Lystek and a copy will be sent to the City.

As applicable, load weights will be verified against the generator weight ticket. Records are maintained to validate receipt of material at this





location. Truck(s) will then be directed to the disposal area and unloaded. A visual inspection is performed to ensure that no foreign or unauthorized materials are present. In the event that further testing is required, material can be temporarily staged at the FSSD storage site for later transport to the Landfill for final disposition.

Lystek (as Proposer/Contractor) will be the responsible party for communication in the event of a need to utilize another site.

### Billing and Reporting:

Lystek uses a simple system for the preparation of invoices to its customers. This includes the use of a single page cover invoice and any necessary back-up documentation to support the invoice.

The invoice will include the remitting party and the invoicing party with contact names, emails and phone numbers. The monthly totals of biosolids units received (typically in wet tons) along with the applicable per unit fee will be used to calculate the periodic amount(s) owed. The cover invoice will also provide the following information:

- Daily and cumulative amounts (in wet tons) of dewatered biosolids received, transported, stored, and beneficially used
- Individual container weights will be reported (on back-up sheets)
- Identity and quantities of each site used during the reporting period

If requested, Lystek can provide a summary of contract amounts used and remaining on the cover invoice. Payment terms, payment due date, and any applicable surcharges for the invoice period will also be itemized.

Incoming trucks will have a certified weight ticket from the scales at the RWF. Each truck will also weigh (both inbound and outbound) at the Fairfield OMRC via a certified scale under the direction of a licensed weighmaster. Registered weights at the Fairfield OMRC are used for comparative purposes to scales weights at the RWF. In cases where the RWF scale is out-of-service, the Fairfield OMRC scale will function as the certified scale system for billing purposes.

Back-up information will include a spreadsheet-format which has the following:

- Date/day of transaction or truck delivery
- Treatment plant name (origin of biosolids)
- Transporter name
- Billable party
- Truck/trailer number
- Gross weight empty (lbs)
- Gross weight full (lbs)



- Net weight biosolids (tons)
- Ticket number

Lystek retains original Fairfield OMRC weigh tickets for at least 5-years and can make them available for inspection with prior notice.

A copy of a sample invoice is included for reference, refer to [Exhibit A](#).

Along with each invoice, a monthly report on the environmental compliance status of site(s) named in the Operations and Contingency Plans, including any inspections and/or violations (and resolutions as applicable) can be attached.

Weekly reports will be filed summarizing the use of any back-up sites (beneficial, storage, disposal), the circumstances for their use and expected duration.

An annual report will be submitted summarizing the information from the previously identified reports and any anticipated future events which could impact service(s). At a minimum, the annual report will provide the City of San José with the necessary documentation for 40CFR503 (e-reporting) to USEPA and other regulatory reporting requirements. The submitted information will include:

- Total quantity of biosolids received by Lystek
- Maps of sites where the dewatered biosolids were applied, stored or processed during the prior year; for direct land application, documentation of the application (agronomic loading) rates
- Details and explanations of the data with analysis for any unusual results

This annual report will be submitted to the City of San José contact by January 20<sup>th</sup>, or earlier, of each contract year.

Lystek will provide the City of San José with reports and/or documentation of any notable incidents or reportable events (i.e., spills or operational violations received). Lystek is obligated to report such incidents, or the expected occurrence of an incident, within 3 hours of the event. Examples of an incident or reportable event include:

- Major equipment issues causing service interruptions at any of the Lystek primary, back-up, storage, or beneficial sites
- A disruption to the normal practice at any of the Lystek facilities caused by third-party interference
- Loss or denial of a permit or receipt of an operating violation
- An odor complaint or incident causing an odor issue at one of the Lystek facilities in the management of biosolids
- Accidents, investigations or inspections from regulatory/authoritative bodies which could adversely impact Lystek providing biosolids management services



- Damage, injury/death to equipment or personnel as a result of Lystek in the performance of this project.

Lystek invites City of San José staff and any applicable regulatory inspection staff to view the services being provided as part of this contract. We believe an open and transparent process allows for the mitigation and awareness in advance of potential issues occurring. As a partnership in the services we offer, Lystek looks to a close working relationship and the shared expertise of the City of San José staff.



## Regulatory Compliance:

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The Lystek facility is fully authorized for the acceptance and processing of biosolids products. A list of currently held permits/authorizations include:

- USEPA Class I Sludge Management Facility
- State of California Statement of Information
- State of California, Weights & Measures Weighmaster License
- California Depart of Food and Agriculture for LysteGro fertilizer registration
- Bay Area AQMD Small Boiler Registration
- Solano County Hazardous Waste Business Plan / CUPA
- City of Fairfield Business license
- FSSD Recycled Water Use Permit

Lystek uses an internal permit and reporting tracking system to ensure that necessary reports and permit filings are submitted accurately and timely.

James Dunbar, General Manager, is the responsible individual for communicating permit and regulatory compliance issues to the City.



## **Exhibit A:** Sample Invoice



# INVOICE

Date: February 1, 2022  
 Invoice # 153-XXX

LYSTEK INTERNATIONAL LTD      TO      San Jose-Santa Clara RWF  
 1014 CHADBOURNE ROAD      700 Los Esteros Road  
 FAIRFIELD, CA 94534      San Jose, CA 95134  
 707-430-5500  
 Billing contact:  
 Email:  
 Ph:

PROJECT	JOB	PAYMENT TERMS	DUE DATE
Biosolids	San Jose, CA	30-days	March 1, 2022

QTY	DESCRIPTION	UNIT PRICE	LINE TOTAL
XXX.XX WT	Biosolids delivered to Lystek in JANUARY 2022	\$XX.XX per WT	\$XXXX.XX
SUBTOTAL			\$XXX.XX
SALES TAX			0.00
TOTAL			\$XXX.XX

Remit to: LYTEK INTERNATIONAL LTD, 1014 CHADBOURNE ROAD, FAIRFIELD, CA 94534

*All invoices are payable within 30 days of receipt. A monthly service charge of 1.5% per month (18% annum, nominal) is payable on all overdue balances.*



Lystek Fairfield  
Organics Material Recovery Center  
(OMRC)

**Contingency Plan**  
Revision 1.0



October 2022



The Fairfield OMRC and processing capability is designed with built-in contingency options. In addition, on-site year-round storage with the FSSD drying beds are available.



**Figure 1: FSSD Drying Beds**

However, in the unlikely, but possible, event or emergency situation that these two options become unusable, Lystek has as part of its service portfolio to City of San José the Yolo Composting facility (as designated back-up site) and the Recology Hay Road Landfill (as disposal contingency site). Lystek would still provide the scheduled loading and transport services at the RWF dewatering facility and deliver the biosolids to the applicable end-use destination. Both of these contingency locations have the available capacity to manage the expected volume of biosolids until normal operations can resume at the Lystek Fairfield OMRC. Site information for these can be found in the Preliminary Operations Plan.

## Communication Protocols

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### **Timing and notice requirements Proposer will follow to request use of a Backup Site, including protocols for communicating with the operator(s) of the site(s) and with the City, and procedures for obtaining City approval:**

Lystek (as Proposer/Contractor) will be the responsible party for communication in the event of a need to utilize a Back-Up site. An event of this nature can be classified as necessary, or foreseen, or emergency (unforeseen). A necessary event could take the form of major equipment repairs/replacement at the Designated Beneficial Use Site (i.e., Fairfield OMRC), or major roadway projects which make scheduled transport impossible. These types of events will allow Lystek to advise/request to the City for approval to switch to the Back-up site(s). This type of coordination would involve the Back-up site management/staff in advance as well. Communications would be by phone or email and describe the nature of the event and the expected duration. Lystek, in consultation with the City, would also analyze if more practical alternatives were possible.



**Protocols for communication and coordination of services between the City and Proposer in the event of a City emergency (e.g., the Dewatering Facility is unavailable) or there is an emergency disrupting the transportation network between the RWF’s Dewatering Facility and the Beneficial Use Site(s) and/or Seasonal Storage Site(s):**

An emergency event, such as a natural disaster impacting transportation or a catastrophic equipment failure at Fairfield OMRC would necessitate an immediate transfer of material to maintain the performance of the City’s project goals. Emergencies can be a short or long duration, and Lystek would immediately communicate (by phone) with City management about the circumstances of the emergency and the likelihood/estimate of duration. The same would occur with the Back-up site(s) to notify them of a transfer of material. During the early stages of a long-duration switch, Lystek and City staff would analyze alternatives, including the possibility of deferring any material to Lystek and rely on the (potential) increased capability of other Contractor(s).

A major benefit of the Lystek partnership of subcontractors is the ability to quickly accept material in sufficient quantities to fulfill Lystek’s contract obligation for an extended period of time (if needed/desired).

**Timing, notice requirements, and protocols Proposer will follow to notify the City of an emergency requiring landfill disposal:**

The likely events leading to a need for emergency landfill disposal would include notification from the City after a load has left the RWF that material is unsuitable for processing, or if the Lystek operations team observed excessive contamination in a specific biosolids load that would render it as unacceptable. In these cases, Lystek would notify the City to request approval of its intent to landfill the material. These cases would be documented such that the City had a complete history of management for its biosolids material.

As a complimentary protocol, the City would notify Lystek directly of a need to perform emergency landfill disposal activities. These loads would not need to pass to or through the Lystek facility and instead would be directed to the applicable landfill site.

**Operational Contingency Protocols**

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**Protocols for using other certified scales in the event the scales at the RWF’s Dewatering Facility are unavailable:**

As for use of other certified scales, Lystek owns and operates a State of California, Weights and Measures scale unit at the Fairfield OMRC; Lystek also has multiple licensed weighmasters on staff. This scale is conveniently located along the I-80 transportation corridor that any transport vehicle would use to arrive at the Fairfield OMRC or any of the partnership service providers. In the rare event of the Fairfield OMRC scale being out-of-serve at the same time as the RWF scale, there is a public



certified truck scale within two miles of the Fairfield OMRC, also conveniently located near the I-80 highway. Refer to [Figure 2](#) for the Fairfield OMRC on site scale.



**Figure 2: Fairfield OMRC Scale**

**Protocols for providing services during emergencies affecting the availability of transportation routes and modes, Beneficial Use Sites, Seasonal Storage Sites, and Intermodal Facilities, including but not limited to infrastructure damage, severe weather disruptions, planned or unplanned construction, and labor strikes:**

The Lystek proposal is uniquely structured to provide redundancy and alternatives in the event of any emergency or reasonably foreseen service disruption possibility. Lystek and its service providers and subcontractors provide the immediate and normal service requested in this RFP. In addition, the year-round accessibility to a beneficial use back-up site, convenient storage, and contingency disposal can provide assurances to the City that biosolids management will continue under even the most dire of circumstances. An added benefit of the Lystek service providers is that 3 options (Lystek, storage and contingency disposal) are available on a 24/7/365 basis.

For the potential of infrastructure damage at the main Lystek facility, a seamless transfer of material can be undertaken to the beneficial use back-up site (composting). Lystek will notify the City of the infrastructure damage assessment and expected duration of primary disruption, but this will not interfere with the provide-of-service support from the Lystek team. Any extended loss of primary site usability will be regularly communicated to the City. Upon return to normal service, a detailed incident report will be sent to the City. This same protocol will be followed if the infrastructure damage and loss of service were to occur at the primary and back-up site; biosolids management will continue uninterrupted by use of the storage and/or contingency disposal site as appropriate.

The issue of severe weather disruptions will be handled similar to the circumstance of infrastructure damage. Typical weather conditions which could likely cause a service disruption would be heavy, prolonged, and/or unseasonal precipitation, high winds or freakish ice/hail storms. A weather condition such as described would typically be a short duration of hours (not days) and could be initially managed by delaying transportation services until the issue has abated. For longer weather



related delays, the use of both primary (Lystek) and beneficial use back-up site could be used to accommodate a short-term increase in volumes until normal scheduling resumes.



**Figure 3: Road Construction**

Around the Bay Area, it is reasonable to assume that construction is a year-round activity and could be a cause of concern for regular biosolids service. However, similar to the situations described above, the multiple-layered service providers being offered as a part of this Lystek response provides redundancy and security as a group. It gives a reason to regularly ask drivers: “Do you know the way from San José?”, so that they are aware of alternate routes if it becomes necessary. During the last 3 (and more) years of service, each of the options have been available to receive biosolids as part of a contract service. In addition, Lystek has made routine accommodations for non-contract WWTP customers in the event of issues at other biosolids generating locations and during holiday or off-hour service requests. Notices of any construction activities which may have the effect of reducing service at any Lystek provider location will be communicated to the City so that contingency planning be made ready in the event of need.

Lystek provides an at-will work environment and is not as subject to labor disruption potential. While back-up or contingency site(s) could be subject to labor-related issues, the primary and storage accessibility would remain open and operational. This circumstance is the same for transportation providers, and Lystek has access to those transportation firms listed in this proposal, but can also make use of additional qualified trucking subcontractors based on approval from the City.

**Backup for providing transportation and loading/unloading services including timing, notice requirements, and protocols for implementing the backup service. This shall include protocols for communicating with the City and ensuring truck drivers are trained on the City’s requirements:**

Lystek has identified for this project two equally qualified, competent, well-equipped, and staffed transportation firms. Drivers have experience in the handling of biosolids and organic-type materials. While it is the intent of Lystek to make use of a primary



transportation company, the back-up will be equally suited and available for the requested work. As the transportation industry could be subject to labor and equipment changes, the Lystek subcontractors will provide properly licensed/qualified drivers. Any driver rotation or staffing changes will require immediate onsite training, especially for loading operations at the RWF. Lystek will notify the City of any need for training of drivers and schedule such training at the City's earliest convenience. Lystek will act as the broker-of-information for communicating between the City and transportation firm(s). Lystek and the transportation company will assign appropriate supervision, including ride-along oversight, to ensure that newly trained drivers understand and adhere to the City's requirements. It will also be the policy that even experienced drivers will be subject to the same ride-along audits to ensure that loading/unloading skills are maintained to the prescribed standards.

**Procedures for returning to normal operation following an emergency:**

To return to normal operations, Lystek and the City will coordinate the activities of each site to engage the needed transportation equipment and beneficial use site(s). This should involve a relatively quick series of phone calls to ensure that re-start-up schedules are understood (and avoid potential conflicts between transportation companies). Based on the cause(s) for the emergency event, Lystek and City staff will review the operations conducted during the event and judge whether any change(s) to protocols would be appropriate. This could involve coordination with multiple Contractors under the City's control.



Lystek Fairfield  
Organics Material Recovery Center  
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**Spill Response Plan**  
Revision 1.0



October 2022

Lystek has procedures to prevent accidents/spills and react if a spill occurs at the City's dewatering facility, on the road and at the Lystek processing facility. The following section is our proposed Spill Response and Safety Plan for the Fairfield OMRC.

To prevent spills, training, proper loading, unloading and transport procedures will be followed. During loading and unloading, drivers must position their trailer under the loadout chutes and operate the unloading mechanism as they have been trained. During transport, drivers must be ready and on-schedule, keep equipment in optimal operating conditions, and safely traveling the prescribed route(s) for the project.

Each truck is required to carry the following spill kit items:

- Personal protective equipment (safety glasses, gloves, boots etc)
- Shovel
- Broom
- Plastic sheeting (or other blocking material)
- Absorbent materials
- Liquid detergents
- Disposal bags

If a spill were to occur on the roadway, depending on the severity 911 would be initially called. If the spill can be managed by the driver, personal protective equipment must be put on first. Then, the spill will need to be contained using absorbent materials. This material should be placed in a disposal bag and returned safely to the facility. If water is used in the clean-up process, storm drains will be protected using blocking material such as plastic sheeting. For large quantity spills, the material would be contained and then small-scale equipment (i.e., bobcat loader) will be used to recover the material and transport it for safe disposal. Since biosolids are considered a non-hazardous material, final clean-up would be with a vacuum truck and water wash-down.

If a spill were to occur at the dewatering facility or the Lystek processing facility, the main point of contact would be notified immediately. Then appropriate measures will be taken to stop and contain the spill. At the RWF, it is likely that if a spill would occur, the material would be within the dewatering building and it would be washed down through the floor drain system. At the Lystek OMRC, a spill that would likely occur would be at the truck unloading area; this has a contained surface pad which drains back to the FSSD onsite sewer system (and ultimately treated as incoming wastewater).

Lystek will also provide the City of San José with reports and/or documentation of any spills that occur. Lystek is obligated to report such incidents, or the expected occurrence of an incident, within 3 hours of the event.

All drivers have access to the following emergency assistance contact information:

- Lystek International Limited Fairfield OMRC – James Dunbar – 707-419-0084
- Fairfield-Suisun Sewer District – Brian Hawley – 916-838-1233
- Fire/Police/Ambulance - 911
- Solano County Sheriff Dispatch - 707-421-7090
- Solano County Office of Emergency Services (OES)
  - CUPA - 707-784-6765
  - OES - 800-852-7550
- Regional Water Quality Control Board - 510-622-230
- Bay Area Air Quality Management District - 415-771-6000
- United State Environmental Protection Agency - 415-947-4400
- National Response Center - 800-424-8802
- Hospital; North Bay Medical Center
  - Main Number - 707-429-3600
  - Emergency Number - 707-429-7830

Each truck is required to carry the following first-aid kit items:

- Adhesive bandages
- Sterile gauze pads and cloth tape
- Antiseptic wipes and wash
- Antibiotic ointment
- Elastic bandages
- Disposable gloves
- Instant cold pack
- Scissors



It is our commitment to provide a safe and healthy work environment for all employees. Excellent emergency responses and preparedness do not occur by chance. They are the result of diligent work and careful attention to all policies by everyone at Lystek. This responsibility is shared at all levels.



Figure 1: Site Safety

Our Emergency Response Plan has been developed to assure Lystek complies with federal, state, and local regulations to meet appropriate rules and regulations.

We believe emergencies can be handled in a manner that reduces risk and exposure to our employees, customers and the general public. We encourage reporting of all emergency occurrences, hazards, incidents, and near misses. We respect the diverse environments and cultures in which we operate, and we promote emergency preparedness on and off the job.

To maintain safe working conditions at the Lystek Fairfield OMRC, training about safe work practices are implemented.

Substantive training is provided in the field by an experienced senior employee as well as third-party and invited experts; this is done regularly through initial and annual training cycles. At no time is a new employee allowed to operate or work at the OMRC without knowledge of existing hazards and the solutions to mitigation. Field hazards may consist of any of the following items:

- Confined Space
- Hazardous Atmospheres
- Fall Hazards
- Exposure Hazards
- Traffic Hazards
- Construction Hazards
- Other hazards that exist within a wastewater collection and processing system.



Training is provided in one of the following ways:

- Direct hands on training provided by a senior member of the workforce.
- Monthly and/or Classroom training, which covers many safety, legal and regulatory issues.
- Computer based training.
- Books, handouts, and quizzes covering the subject matter.

Computer based training allows each of us to attain an awareness level of the subject discussed. Individual training courses are selected for employees based upon their title and work tasks.

Throughout the year there are safety presentations on a monthly basis for all workers. These presentations allow for employee feedback and discussion on safety-related topics.



**Figure 2: Fairfield OMRC Workroom**

On a monthly basis, the Lystek operations team performs a safety and maintenance review to identify needed repairs and issues of concern. This uses a checklist-type format so that notes can be taken during the inspections. At the completion of each inspection, Operations reviews the required repairs and/or issues with Maintenance and management to schedule resolution(s). These are typically corrected within the following month. Extended repair or maintenance items are entered as work-orders in the site-specific equipment and maintenance tracking system.

Safety audits are conducted by management to ensure that safety measures are in place and protocols are used. In cases where a safety issue is identified beyond the experience of management, certified 3<sup>rd</sup>-party expertise is used to identify issues and



solutions. These formal audits are entered into the site tracking system and followed until implementation is complete.

In cases of personnel safety issues, training and re-training are conducted on a regular basis. In cases of a safety accident or incident, protocols such as drug-testing and competency re-training are conducted.



**Lystek Fairfield  
Organics Material Recovery Center  
(OMRC)**

**Safety Manual  
Revision 1.0**



**December 2018**

## Table of Contents

Forward	3
Safety Commitment	4
The Safety Committee	5
Employee Personal Safety	6
Protective Clothing and Equipment	7
Personal Protective Equipment	8
Cellular Telephone Use	8
Safety Shoes	9
Hazard Training for New Employees	9
Eye Protection	9
Hearing Protection	10
Vehicle Safety	11
Color Coding and Signs	12
Equipment Care and Use	13
Housekeeping	13
Moving and Lifting	14
Training	14
Working at Heights	15
Confined Space	15
Lockout/Tagout	16
Hot Work	16
Work over Water	16
Electrical work and Arc Flash	16
Safety Impairments	17
Safety Programs	17
General Site Work Practices	18
DOT Drug and Alcohol Testing	18

## **Forward**

This manual is a guide for establishing and maintaining safe working conditions at the Lystek Fairfield Organics Material Recovery Center (OMRC) and promoting safe work practices by our employees. Through implementation of these safety policies, we set an example for each other and our entire community.

We recognize that our responsibility is to provide a safe and healthful working environment. As part of this commitment, we include prompt investigation and attention to health and safety issues. We require employees to perform tasks which do not pose undue risk and to do so with adequate training and appropriate safety equipment. We are bound by law to do so, but more importantly, we want every employee to return home without harm.

Applying this manual will not in itself ensure a safe workplace or promote safety. We must develop a philosophy of injury and illness prevention. The OMRC will harbor open communication rather than establishing a book of rules. Prevention of hazards will always be preferable to protection from hazards. We exist in a safety culture where we all share the responsibility for establishing and maintaining the safest possible working environment. To that end, we will always provide training, materials, safety equipment and technical advice to foster a safe workplace for us all.

## **Safety Commitment**

***We, the employees of the Lystek Fairfield Organics Material Recovery Center, commit to safeguarding each other and our neighbors by making safety an integral part of all our activities.***

This will be accomplished through:

- Consistently targeting a goal of "zero unsafe incidents";
- Continually focusing on safe behavior;
- Developing a culture of timely reporting, investigation, and correction;
- Openly sharing our knowledge;
- Continuously improving our safety performance;
- Providing appropriate training to enable each of us to fully contribute;
- Celebrating our successes.

## **The Safety Committee**

The site safety committee is comprised of representatives from the various functional groups within the OMRC. These groups include:

- Administration/Management/Safety
- Operations/Maintenance

Each group brings a wealth of knowledge to the table. The committee meets on a regular basis at least once a month. While some members are permanent, other members are appointed for an unspecified period of time.

### **Mission**

The mission of the safety committee is to work toward the elimination of workplace injuries and to promote our safety culture through example. The committee works to fulfill these goals:

- Increased attention toward identifying and mitigating health and workplace hazards.
- Increase the understanding and awareness of all employees and the hazards inherent to their jobs, which in turn will enable employees to recognize hazardous and dangerous situations.
- Promptly investigate and respond to unsafe situations.
- Assist in the methodology to eliminate hazards and dangers.

If you have any safety related questions, comments or suggestions you may ask any member of the committee to bring them forward to the monthly meeting. If you wish, you may remain anonymous throughout the process.



## **Employee Personal Safety**

The following are general safety practices-

- Know and use proper safety equipment for your job.
- It may be dangerous to wear jewelry on the job. Ask your supervisor for guidance if you are in doubt.
- Do not remove, alter or make inoperable any safety device or feature on any site equipment. If the safety device on the equipment you are using has been disabled, immediately contact your supervisor for direction.
- Become aware of pinch points in your work area.
- Walk carefully. Clean up or report hazards in any walkway.
- Replace hatches, covers or grating after you are done. Reattach the piece with screws, bolts or clips as required.
- Proceed with caution around blind corners. This includes office areas around cubicles.
- Running is seldom necessary on the job. Do not run.
- Use hand railings when present.
- Do not pass under suspended loads of materials or machinery.
- Whenever possible, the area beneath a suspended load shall be made inaccessible.
- Obey all warning signs.
- Do not carry sharp or pointed tools in your pockets.
- Remove or bend down all nails used in lumber, boxes, containers or other places where they pose a hazard.
- Close all doors and drawers when not in immediate use.
- If using solvents on the job, use only in a well ventilated space or within a laboratory hood.
- Minimize skin contact with biological agents and organics. Avoid breathing the mists of either and wear appropriate personal protective equipment.
- See your supervisor for appropriate personal protective equipment if you do not have what is needed to safely complete your job task.

## **Protective Clothing and Equipment**

It is each employee's responsibility to obtain, use, maintain and properly clean personal protective equipment (PPE). It is your supervisor's responsibility to furnish the necessary PPE as required by the job task. All equipment and clothing should be checked periodically to make sure all safety features remain intact.

Avoid loose fitting clothing and gloves. When clothing and PPE do not fit well, the chance of injury is increased. Gloves are provided and must be carefully selected for each job task. Shirts with sleeves and long pants must be worn while working in the plant to avoid exposures or injuries.

Employees are responsible to wear appropriate clothing for the scheduled work tasks each day. For certain employees, uniforms, shirts and trousers may be provided. Uniforms are never to be taken home to launder.

Head protection (hard hats or helmets) must be worn on jobs where there is a danger of being struck by falling objects, in areas where head room is limited or obstructed and during any emergency operations.

Respirators must be worn in certain cases where adequate local exhaust or general ventilation cannot be provided. Prior to using a respirator, you must be fit tested and trained in the use of respiratory equipment. If you are required to wear a respirator on the job, the specific training will be provided to you.

If you have questions, please see your supervisor.

## **Personal Protective Equipment**

### **Plant Site –**

The following minimum personal protective equipment is required:

#### **Employees** (working in the plant):

- Safety footwear which complies with ASTM F 2413-05 (steel toe).
- Long pants covering all exposed surfaces of the leg.
- Long sleeve shirts when working with wastewater or wastewater products.
- A hardhat which meets the requirements of ANSI Z89-1 – 2003 when in areas where overhead work is occurring.
- Safety glasses or other appropriate safety eye protection when working with liquids or any equipment with the potential to cause damage or biological exposure to the face and/or eyes.
- Impervious gloves, when working with sewage, or equipment which has come in contact with sewage.
- Abrasive resistant gloves when working with abrasive or mechanical equipment such as manholes, covers, ladders, saws, ropes, cables, etc.

#### **Office Staff and Visitors** (includes vendors, etc. visiting the plant):

- Closed toed sturdy shoes. No sandals, flip flops, high heels, open toed shoes.
- Long pants if the potential is present for exposure to wastewater or wastewater products or in active work areas.
- A hardhat which meets the requirements of ANSI Z89-1 – 2003 when in areas where overhead work is occurring.
- Safety glasses or other appropriate safety eye protection if in areas where work is occurring with liquids or any equipment with the potential to cause damage or biological exposure to the face and/or eyes.

## **Cellular Telephones**

Cellular telephones shall only be used in a “hands free” mode when operating a motor vehicle. If you are required to answer a telephone call while driving, pull over to the side of the road and out of the way of traffic; turn off your engine and only then may you answer the call. Remember to be safe and allow a large buffer area as you pull back into traffic.

## **Safety Shoes**

If you work in the plant, you are required to wear protective footwear conforming to the ASTM F 2413-05 (steel toed footwear).

Prior to starting work, a pair of ASTM conforming work shoes will be provided (either by direct purchase or reimbursement).

## **Hazard Training for New Employees**

Substantive training is provided in the field by an experienced senior employee as well as through initial and annual training. At no time is a new employee allowed to operate or work at the OMRC without knowledge of existing hazards and the solutions to mitigation. Field hazards may consist of any of the following items:

- Confined Space
- Hazardous Atmospheres
- Fall Hazards
- Exposure Hazards
- Traffic Hazards
- Construction Hazards
- Other hazards that exist within a wastewater collection and processing system.

## **Eye Protection**

Eye Protection is required for certain jobs and areas of work. It is your responsibility to use and your supervisor's responsibility to provide eye protection, as required, for the task performed.

You will be provided with appropriate eye protection, shields or goggles if you are exposed to such hazards as flying objects, particles of dirt, dust, wind, molten metal, gasses, fumes, smoke, liquids, reflected light or glare in work areas. Supervisors may designate jobs requiring eye protection. An eyewash and deluge shower is required where there is the potential for chemical splashes.

In the event that a foreign object should become lodged into an employee's eye, move the employee to an eye wash station and try to flush the object from the eye - if feasible. If this action will only exacerbate the situation, follow the procedures for taking the employee to Sutter Urgent Care (Low Court and Chadbourne Road). Report the action to your supervisor and the appropriate management staff.

Eye protection equipment is available through your supervisor or the safety officer.

The National Society for the Prevention of Blindness recommends not wearing contact lenses in certain situations. If you wear contact lenses, contact your eye doctor for instructions.

## **Hearing Protection**

Noise hazards are properly signed throughout the plant. Observe the requirements of using hearing protection.

All employees working in known noise hazard areas will be provided with:

- Their choice of hearing protectors from several types,
- Annual training in the use and importance of hearing protection,
- Hearing testing subject to the discretion of the safety officer.

If you believe the noise level in your workplace is high, you should notify your supervisor to request a sound survey.

Use hearing protection around noisy equipment if it is bothersome to you. While some areas do not meet the requirements for hearing protection, it is okay to voluntarily wear PPE to lower the impact of noise.

## **Vehicle Safety**

Both vehicle operators and supervisors share the responsibility to ensure that vehicles are safe. Supervisors will promptly correct any unsafe conditions.

- Make sure you understand your equipment. Ask questions if necessary.
- Obey all traffic and parking regulations.
- Any moving violations received while operating a vehicle (whether personal or Company) counts against your driver's license and therefore is a personal violation, not one that the Company will pay.
- Guard against driving accidents by making routine checks of your brakes, steering, tires, lights, windshield wipers, horn and fluid levels. Regularly clean your windshield, rearview mirrors and the lenses of all lamps.
- Do not carry unauthorized passengers. Riding on the tailgates or in the bed of a pickup truck is prohibited. Do not exceed the seating specifications for the vehicle. Ride only in seats equipped with safety belts and use them.
- Vehicles used to transport materials must protect the driver from shifting cargos.
- Maintain clear areas rearward when backing. When areas are not clear, another employee should assist with the backing operation.
- Engines must be turned off when the vehicle is not in use or is being refueled.
- Some vehicles require a Commercial Driver's License. Check with your supervisor to see what license may be required for your equipment.
- Only trained employees may use a forklift or basket lift equipment.
- The driver is responsible for the positioning and security of passengers or items in the back of trucks and vans. Passengers are to be carried only in designated areas of vehicles. See that your items are properly secured and stable. Red warning flags should be attached to material that extends beyond the conveyance, as required by California law.
- The plant speed limit is 20 mph - obey the limit.

## Color Coding and Signs

Color coding is a visual reminder system to warn, inform and guide employees. OSHA assigns specific meanings to certain colors. Colors can be a warning of a particular or group of hazards, give information or directions. NFPA diamonds are covered separately and should not be confused with signage colors.

These colors usually mean the following:

**Red** – indicates Danger, Stop, or the presence of fire protective equipment.

**Orange** – marks the dangerous parts of machines or energized equipment which may cut, crush, shock or injure employees.

**Yellow** – warns of physical hazards and means Caution. A striped or checkered pattern of yellow and black may be used to help attract attention.

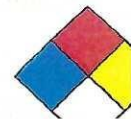
**Blue** – Denotes "Caution" and is used in warning signs.

**Green** – indicates either the location of safety equipment or conveys safety information.

**Purple** – light purple indicates the use of utility or recycled water.

**White** – designates traffic patterns or housekeeping markings.

In addition to general safety signs, plant buildings are equipped with NFPA diamonds. The diamond colors differ significantly from other plant signs and mean the following:



**Blue** – Denotes a health level.

**Red** – Denotes fire or explosive level.

**Yellow** – Denotes the reactivity level of the material.

**White** – Descriptor space for incompatibilities.

## **Equipment Care and Use**

Employees and their supervisors share the responsibility that equipment and tools are safe. Supervisors will promptly correct unsafe items.

- Equipment shall be maintained in a clean and repaired condition.
- Only appropriately trained employees may operate equipment. If you require training, see your supervisor.
- Electrical tools must be either double insulated or grounded. All extension cords must be used with a ground fault interrupter.
- Tractors or other equipment with a power takeoff shaft must be guarded. This equipment shall be turned off prior to the operator getting off to make any repairs or adjustments.
- Only certified employees may use a powder actuated device. (Ramset, nail gun, etc.)
- Use tools only for the purpose intended.
- Keep all tools sharp or properly lubricated.
- Do not carry a tool by the cord or yank on the cord to disconnect it from electrical power.
- Secure your work by using clamps or a vise.
- When sawing, never reach across your work or the material being cut.

## **Housekeeping**

The following housekeeping policies shall be followed:

- Keep your work area clean and orderly. Promptly remove trash or scrap from the work area.
- Do not obstruct stairways, aisle ways, or passageways. Do not run on stairways.
- Dispose of flammable or combustible materials in the proper containers. Store used rags in the proper containers.
- Keep all floor surfaces clean and dry. Use "Caution or Wet Floor" signs as needed.
- Look for and correct tripping hazards.
- Use gloves whenever there is a chance for hand abrasion or laceration.
- Dispose of trash in the proper receptacles
- Dispose of hazardous waste in the proper containers.

Do not place batteries, lamps, asbestos tiles, electronic waste or fluorescent tubes into the trash. These items are universal wastes and must be disposed of in a different manner than trash.



## ▪ **Moving and Lifting**

The mantra here is work smarter - not harder.

- Do not attempt to carry a load which is more than you can carry safely – get another person to help you. Do not try to lift heavy items higher than waist level. Lift with your leg and arm muscles not with your back. Always maintain a clear view over the load. Do not carry a load that will impede your vision.
- Supervisors should see that mechanical lifting devices are available for assisting with heavy load lifting.
- Wipe off all greasy, wet, dirty or slippery objects before handling.
- Keep your hands free of oil and grease when lifting.
- Always lift gradually and smoothly, without jerking or twisting, and keep the load close to your body. Also set loads down close to your body.
- When two or more people are moving an object, one should be designated as the signal caller. Anyone assisting should let that person know if they are losing or relaxing their grip.

## **Training**

Training is provided to you in one of the following ways:

- Direct hands on training provided by a senior member of the workforce.
- Monthly and/or Classroom training, which covers many safety, legal and regulatory issues.
- Computer based training.
- Books or handouts covering the subject matter.

Computer based training allows each of us to attain an awareness level of the subject discussed. Individual training courses are selected for you based upon your title and work tasks.

Throughout the year there will be a safety presentations, usually on a monthly basis.

## **Working at Heights**

Whenever you are working more than six feet above grade, you must wear a full body harness and lanyard securely fastened to an anchored object, able to support 5,000 lbs.

Full body harnesses are the only style of harness allowed to be used within the plant and at the pump stations.

Keep your harness and lanyard clean and inspect them regularly for rips, frays or other damage. If your harness or lanyard becomes damaged, do not wear it and report the equipment problem immediately to your supervisor. The item will be immediately replaced.

It is your responsibility to store harnesses and lanyards in a clean and dry environment. Do not leave them in the plant when they are not in use.

Harnesses and lanyards shall be used whenever there is a potential for fall. This includes when riding or working in scissor lifts or boom lifts.

## **Confined Space**

Confined spaces are one of the hazards we face in the plant. All operators and maintenance personnel will be trained to recognize a confined space. In addition there is a listing of the three types of confined spaces on site (permit required, alternate and no permit required).

Training is required prior to entering any confined space on the site.

Please see the Confined Space Safety Policy for instructions.

See your supervisor if you have any questions or if you believe that you have been asked to go into a confined space without the proper training.

## **Lockout/Tagout**

The purpose of this Program is to provide procedures to employees who service and/or maintain machines and equipment where the unexpected startup or release of energy could cause injury. Please see the Lockout/Tagout Safety Program for more information.

Lockout Tagout is strictly enforced on site.

## **Hot Work**

Hot work is any work that produces sparks, heat or flame. Hot work permits are required in all areas of the plant except for the maintenance building. Please see the Hot Work Permit Procedure for more information.

## **Work Over Water**

Whenever you work over water deeper than 5 feet, there is a heightened chance for falling and drowning. In order to prevent this, any work you do over water in an unguarded area (no rails, cables or other restraint system in use) must also include a personal flotation device as additional PPE.

Personal floatation devices will ensure that in the event an unconscious person falls into the water, their head will be kept above the water and they will float face up.

## **Electrical Work and Arc Flash**

Only authorized employees are allowed to work on the electrical systems in the plant. An authorized employee has been trained in the hazards of arc flash and has learned how to mitigate those hazards through the use of P.P.E. In addition, clothing worn by the employee minimizes any injuries due to sudden arc flash.

Arc flash labels denote the hazard and protective equipment needed for the job task. Electrical cabinets are labeled with this information.

## **Safety Impairments**

A safety impairment exists when a safety system has been removed from service or is bypassed. As an example, if a fire alarm were to be taken offline so that maintenance can be done, an impairment exists. Prior to any employee creating a safety impairment they must notify their supervisor or safety officer and the operations group as to the nature and extent of the impairment.

## **Safety Programs**

Several safety programs that govern work on site. Please take the time to review each of the programs. They are located in the IRR/Safety Programs binder/folder. These are site specific policies that control how you may do your work. They are:

- Confined Space
- Injury and Illness Prevention Plan
- Code of Safe Practices
- Hazard Communication
- Fire Protection Program
- Emergency Action Plan
- Ergonomics
- Driver Safety
- Bloodborne Pathogens
- Lockout/Tagout
- Respiratory Protection
- Construction Safety Manual
- Hearing Conservation
- New Hire Orientation
- OMRC Training
- Laboratory Chemical Hygiene Plan

## **General Safe Work Practices**

The following safety practices must be followed at all times to ensure the safety of all personnel and equipment:

- There is to be no running on the property unless during an emergency.
- You may operate equipment only if you are authorized and trained to do so.
- All speed limits, seat belt requirements, traffic signs and signals, and parking regulations must be observed at all times.
- Appropriate guards and safety devices must remain in place when operating equipment.
- Improvised staging and structures shall not be used.
- Hand tools shall be kept in good working order and shall be kept clean.
- All extension cords shall be GFCI protected.
- All temporary lines, power cords and openings must be well marked.
- The correct tool must be used for the job. Non-sparking tools must be used in designated areas.
- Carrying tools and materials must be done so with care. Pay attention to overloading, balance and grips.
- Movement with obscured vision shall be avoided.
- Good housekeeping practices shall be used at all times.
- Properly store and dispose of solvents and cleaners.
- Remember to wash up before smoking, eating and leaving the site.

## **DOT Drug and Alcohol Testing**

The OMRC will follow, at a minimum, the United States Department of Transportation, Drug and Alcohol Testing protocols. This means that if you hold a commercial driver's license and work at the OMRC you will be subject to drug and/or alcohol testing for the following events:

- Pre-employment
- Reasonable Suspicion/Cause
- Random
- Return-to-duty
- Follow-up
- Post-Accident

If you have any questions please see your supervisor.

## Exhibit C: Compensation

1. **Maximum Compensation:** The amount of compensation provided for in this **Exhibit C** is the full, entire, and complete compensation due to Contractor for all costs necessary to provide all Services required by the Agreement in the manner and at the times prescribed and to cover all costs for complying with the terms of the Agreement, including but not limited to the payment of wages to all employees providing services to the City whether it is an employee of Contractor or a subcontractor in accordance with **Exhibit F**. The City will pay Contractor up to a total of \$7,300,000.00 for work performed under this Agreement.
2. **Base Rates and Compensation to Contractor:** The payment for tasks will be as follows.
  - a. **Task 1:** During the startup and commissioning of the Dewatering Facility, the City will pay Contractor an amount equal to \$234.00 per wet ton (“Task 1 Base Rate”) multiplied by the wet tons of dewatered biosolids loaded at the RWF’s Dewatering Facility and subsequently transported and beneficially used by Contractor in accordance with **Exhibit B**. The Task 1 Base Rate accounts for the variability in the amount of dewatered biosolids provided by the City to Contractor, schedule for pickups, and wait times at the Dewatering Facility due to the nature of the Dewatering Facility’s startup and commissioning activities. The Task 1 Base Rate multiplied by the wet tons of dewatered biosolids loaded by Contractor will be the full and total compensation for dewatered biosolids that meet the characteristics specified in Table 1 of **Exhibit B** provided by City to Contractor for Task 1 and will not be subject to adjustment except for the annual adjustment to the Base Rate described in Section 3 of this **Exhibit C**.
  - b. **Task 2:** During full operations of the Dewatering Facility, the City will pay Contractor an amount of equal to \$156.00 per wet ton (“Task 2 Base Rate”) multiplied by the wet tons of dewatered biosolids loaded at the RWF’s Dewatering Facility and subsequently transported and beneficially used by Contractor in accordance with **Exhibit B**. The number of wet tons provided to the Contractor will be up to eight percent (8%) of the annual amount of dewatered biosolids produced at the RWF’s Dewatering Facility (“Contractor’s Percent Share”). The Task 2 Base Rate multiplied by the wet tons of dewatered biosolids loaded by Contractor will be the full and total compensation for dewatered biosolids that meet the characteristics specified in Table 1 of **Exhibit B** provided by City to Contractor for Task 2 and will not be subject to adjustment except for the annual adjustment to the Base Rate described in Section 3 of this **Exhibit C** and for any demurrage charges as described in Section 4 of this **Exhibit C**.
3. **Annual Adjustment to Rates:** The Task 1 Base Rate, Task 2 Base Rate, and Landfilling Rate (as hereinafter defined in **Exhibit C**) (sometimes referred to

individually as “Rate” or collectively as “Rates”) will be adjusted upward or downward on July 1 of each year beginning July 1, 2023. The Task 1 Base Rate, Task 2 Base Rate, and Landfilling Rate may be increased or decreased only by the calculated adjustment factor (“Adjustment Factor”).

**a. Adjustment Factor:** The Adjustment Factor will be calculated as follows.

**Adjustment Factor** = ((Percent 1) X Net Annual Change in CPI) + ((Percent 2) X Net Annual Change in DPI) where:

**Percent 1** = 75 percent of the Adjustment Factor attributable to the annual change in the CPI calculated for the two preceding years, expressed as a decimal

**CPI** = Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco – Oakland – Hayward, CA Area (All Items)

**Percent 2** = 25 percent of The Adjustment Factor attributable to the annual change in the DPI calculated for the two preceding years, expressed as a decimal

**DPI** = Producer Price Index for No. 2 Diesel Fuel (Series ID: WPU057303)

The CPI and DPI values will be as published by the United States Department of Labor, Bureau of Labor Statistics, or its successor. Any successor index used will be the one most closely equivalent to the discontinued index as recommended by the United States Department of Labor, Bureau of Labor Statistics. Index values used in these calculations will not be revised in the event an originally published index value is subsequently adjusted by the Department of Labor.

The Net Annual Change to the CPI and DPI indices will be calculated by the following formula and will be truncated at ten (10) decimal places.

**Net Annual Change** =  $\frac{V(i)-V(i-1)}{V(i-1)}$  where:

**V(i)** = Average Annual Value for Year i (the year immediately preceding the year in which the adjustment becomes effective) calculated by averaging the monthly or bimonthly index values for that year

**V(i-1)** = Average Annual Value for the year immediately preceding Year i calculated by averaging the monthly or bimonthly index values for that year

- b. Adjusted Rate:** The adjusted rate (“Adjusted Rate”) will be calculated as follows.

**Adjusted Rate** = (1+ Adjustment Factor expressed as a decimal) X Rate

The Adjusted Rate calculation shall be applied separately to the Task 1 Base Rate, Task 2 Base Rate, and Landfilling Rate to determine the Adjusted Rate for each. A sample calculation is provided in **Exhibit C-1**.

- c. Contractor’s Rate Adjustment Statement:** No later than August 1 of each year or as soon as possible thereafter if there is a delay in the publishing of the June indices, Contractor must submit a Rate Adjustment Statement setting out the following information for City approval.
- i. The index values for each index (CPI and DPI) for each month published for the year immediately preceding the adjustment (Year i). For example, for an Adjusted Rate effective on July 1, 2025, the index values would be for each month from July 2024 through June 2025.
  - ii. The index values for each index for each month published for the year preceding Year i (Year i-1). For example, for an Adjusted Rate effective on July 1, 2025, the index values would be for each month from July 2023 through June 2024.
  - iii. The Average Annual Value for Year i and Year i-1 for CPI and DPI calculated by averaging the monthly or bimonthly values for each index for each respective year.
  - iv. The Net Annual Change in each index calculated using the Average Annual Values of each index for Year i and Year i-1.
  - v. The Adjustment Factor based on the Net Annual Change in CPI multiplied by Percent 1 plus the Net Annual Change in DPI multiplied by Percent 2.
  - vi. The Adjusted Rate resulting from application of the Adjustment Factor to the Task 1 Base Rate, Task 2 Base Rate, and Landfilling Rate.

In the event the Contractor fails to submit an accurate and correctly calculated Rate Adjustment Statement, the City will determine the new Adjusted Rate for the Task 1 Base Rate, Task 2 Base Rate, and Landfilling Rate by September 1 of each year or as soon as possible thereafter if there is a delay in the publishing of the June indices. If Contractor disagrees with any Adjusted Rate determined by the City, Contractor may notify the City in accordance with **Exhibit E**.



- d. Application of each Adjusted Rate:** Contractor will apply each Adjusted Rate beginning with Contractor's invoice for services provided during the month of July of the year during which the adjustment will take effect. Thereafter, the Rates will be fixed until the next rate adjustment is calculated and approved by the City. If published indices are not available for Contractor's initial invoices during the year the adjustment takes effect, Contractor will retroactively invoice the difference.

Adjustments to each Rate will only be made in units of one cent (\$0.01). Fractions less than one cent (\$0.01) will not be considered.

- 4. Demurrage:** Contractor may be entitled to additional compensation for demurrage provided that Contractor can demonstrate that a driver was delayed by the City or other City contractors such that from the time entering the Dewatering Facility site to the time exiting the loadout structure totaled more than 60 minutes up to a maximum of three (3) hours. Contractor shall provide documentation describing delay, along with its invoice, supporting its assertion that demurrage is owed by the City. The City, at its sole reasonable discretion, will determine if Contractor has sufficiently supported its assertion that demurrage is owed by the City. The demurrage fee will be \$200.00. The fee will not be subject to annual adjustment.
- 5. Landfilling:** In the event of an emergency and the City directs Contractor to take the RWF's dewatered biosolids to a landfill, the City will pay Contractor \$5.00 for each ton of dewatered biosolids delivered and one-way mile traveled from the RWF's Dewatering Facility to the landfill ("Landfilling Rate"). The Landfilling Rate will be subject to annual adjustment in accordance with Section 3 of this **Exhibit C**. The City will also reimburse Contractor for the disposal charges assessed to Contractor by the landfill for the disposal of the RWF's dewatered biosolids as documented by the landfill's invoice. No other payments for fuel, vehicle maintenance, vehicle use/depreciation, labor, insurance, overhead, profit, or other costs will be made to Contractor.

For example, if the City directs and Contractor delivers 60.75 tons of the RWF's dewatered biosolids to a landfill that is 41.5 miles away from the RWF's Dewatering Facility, the City will pay Contractor a total of \$12,605.63 and reimburse Contractor for the disposal charges assessed to Contractor by the landfill for the disposal of the RWF's dewatered biosolids.

- 6. Taxes and Charges:** Contractor shall be responsible for the payment of all taxes, fees, contributions, and charges applicable to the conduct of Contractor's business.
- 7. Invoices:**
  - a. Preparation of Invoices:** Contractor shall prepare and submit an invoice no later than the tenth (10<sup>th</sup>) day of each month following the month such services were rendered. All supporting documentation, including but not

- limited to the tonnage report required by **Exhibit B**, shall be provided with the invoice.
- b. City Review:** The City shall review the monthly invoice prepared by the Contractor within fourteen (14) calendar days of receipt and will notify Contractor of any discrepancies or deficiencies in the invoice. Contractor may dispute City's invoice determinations following the procedures in **Exhibit E**.
  - c. Payments to Contractor:** Except as otherwise provided in this Agreement, the City shall make payments to Contractor within thirty (30) calendar days of City's approval of Contractor's invoice for undisputed amounts.
  - d. Late Payments to Contractor:** Any undisputed amount that is not paid within forty-five (45) calendar days shall be subject to late payment interest on the undisputed amount equal to the lesser of (i) 1.5% per month or (ii) the maximum rate allowed by law from the date due until the date paid.

## Exhibit C-1: Sample Calculation for Base Rate Adjustment

This sample calculation of a base rate adjustment assumes a new rate would take effect January 1, 2021. It also assumes the 2020 Base Rate is \$80.00 per ton of dewatered biosolids, and that 70% and 20% of the Base Rate is related to general inflation and diesel fuel costs, respectively. These assumptions are subject to change.

### STEP 1: Determine CPI and DPI Index Values for 2019 and 2020

**1A.** Lookup the Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco—Oakland—Hayward, CA Area (All Items) on the United States Department of Labor, Bureau of Labor Statistics' website (<https://data.bls.gov/PDQWeb/cw/>).

**CPI for Urban Wage Earners and Clerical Workers (CPI-W)** Help ?

Select how you want to view the data  
 View items within an area  View areas within an item

---

**1 Select an Area ?** Search

- Riverside-San Bernardino-Ontario, CA
- Phoenix-Mesa-Scottsdale, AZ
- San Diego-Carlsbad, CA
- San Francisco-Oakland-Hayward, CA
- Seattle-Tacoma-Bellevue WA
- Los Angeles-Riverside-Orange County, CA
- Portland-Salem, OR-WA
- Mountain
- Pacific
- West - Size Class A
- West - Size Class B/C

**2 Select one or more Items ?** Search

- All items
- All items - old base
- Food and beverages
- Food
- Food at home
- Cereals and bakery products
- Meats, poultry, fish, and eggs
- Dairy and related products
- Fruits and vegetables
- Nonalcoholic beverages and beverage materials

---

**3 Select Seasonal Adjustment ?**

Seasonally Adjusted  
 Not Seasonally Adjusted

---

Add to selection

Clear selection

Your selection : (1 series selected) NOTE: Select a maximum of 200 series.

San Francisco-Oakland-Hayward, CA All items Not Seasonally Adjusted : CWURS49BSA0,CWUSS49BSA0

Get Data

---

**CPI for Urban Wage Earners and Clerical Workers (CPI-W)**

**Series Id:** CWURS49BSA0,CWUSS49BSA0  
 Not Seasonally Adjusted

**Series Title:** All items in San Francisco-Oakland-Hayward, CA, urban wage earners and clerical workers, not seasonally adjusted

**Area:** San Francisco-Oakland-Hayward, CA

**Item:** All items

**Base Period:** 1982-84=100

**Download:** [xls](#) [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2019		284.758		288.266		288.581		288.514		291.707		289.456	288.192	286.615	289.770
2020		292.010		290.304		292.420		293.062		294.442		295.687	292.601	291.297	293.906

**1B.** Lookup the Producer Price Index for No. 2 Diesel Fuel (Series ID: WPU057303) on the United States Department of Labor, Bureau of Labor Statistics' website (<https://data.bls.gov/PDQWeb/wp>).

**PPI Commodity Data** Help ?

**1 Select a Group ?**

- 00 All commodities
- 01 Farm products
- 02 Processed foods and feeds
- 03 Textile products and apparel
- 04 Hides, skins, leather, and related products
- 05 Fuels and related products and power
- 06 Chemicals and allied products
- 07 Rubber and plastic products
- 08 Lumber and wood products
- 09 Pulp, paper, and allied products

**2 Select one or more Items ?**

- 05720201 Kerosene
- 057203 Jet fuel
- 05720301 Jet fuel
- 0573 Light fuel oils
- 057302 Home heating oil and distillates
- 05730201 Home heating oil and distillates
- 057303 No. 2 diesel fuel
- 05730302 No. 2 diesel fuel
- 0574 Residual fuels (heavy fuel oils, incl. #5, #6, & other residual fuels)
- 057407 Residual fuels (heavy fuel oils, incl. #5, #6, & other residual fuels)
- 05740703 Residual fuels (heavy fuel oils, incl. #5, #6, & other residual fuels)

**3 Select Seasonal Adjustment ?**

Seasonally Adjusted  
 Not Seasonally Adjusted

---

Add to selection

Your selection : (1 series selected) NOTE: Select a maximum of 200 series.

Fuels and related products and power No. 2 diesel fuel Not Seasonally Adjusted : WPU057303

Get Data

Clear selection

---

**PPI Commodity Data**

**Series Id:** WPU057303  
Not Seasonally Adjusted

**Series Title:** PPI Commodity data for Fuels and related products and power-No. 2 diesel fuel, not seasonally adjusted

**Group:** Fuels and related products and power

**Item:** No. 2 diesel fuel

**Base Date:** 198200

**Download:** [XLS](#) [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
2019	201.1	218.3	239.3	237.7	235.0	204.4	220.0	207.2	218.4	220.5	223.1	231.1	221.3
2020	214.5	193.3	169.7	123.6	108.3	137.8	179.2	191.0	177.5	187.3	201.1	224.6	175.7

**STEP 2: Calculate the Change in CPI and DPI from 2019 to 2020**

**2A.** Calculate the Average Annual Value for each index (CPI and DPI) for the year prior to the adjustment (V(2020)) and the preceding year (V(2019)).

CPI

$$V(2020) = (292.010 + 290.304 + 292.420 + 293.062 + 294.442 + 295.687) / 6$$

$$V(2020) = 292.9875$$

$$V(2019) = (284.758 + 288.266 + 288.581 + 288.514 + 291.707 + 289.456) / 6$$

$$V(2019) = 288.547$$

## DPI

$$V(2020) = (214.5 + 193.3 + 169.7 + 123.6 + 108.3 + 137.8 + 179.2 + 191.0 + 177.5 + 187.3 + 201.1 + 224.6) / 12$$

$$V(2020) = 175.65833$$

$$V(2019) = (201.1 + 218.3 + 239.3 + 237.7 + 235.0 + 204.4 + 220.0 + 207.2 + 218.4 + 220.5 + 223.1 + 231.1) / 12$$

$$V(2019) = 221.34167$$

**2B.** Calculate the Net Annual Change for each index (CPI and DPI) between 2019 and 2020 using the Average Annual Value for each year.

$$\text{Net Annual Change} = ((V(2020) - V(2019)) / V(2019))$$

Net Annual Change in CPI

$$= (292.9875 - 288.547) / 288.547$$
$$= 0.0153892$$

Net Annual Change in DPI

$$= (175.65833 - 221.34167) / 221.34167$$
$$= -0.206392859$$

### **STEP 3: Calculate the Adjustment Factor**

Calculate the Adjustment Factor using the Net Annual Change for each index (CPI and DPI).

Adjustment Factor = ((Percent 1) X Net Annual Change in CPI) + ((Percent 2) X Net Annual Change in DPI)

$$= (0.7 \times 0.0153892) + (0.2 \times -0.206392859)$$
$$= 0.01077244 - 0.04127857$$
$$= -0.03050613$$

### **STEP 4: Calculate the Base Rate for 2021 Using the Adjustment Factor**

Calculate the new rate for 2021 using the Adjustment Factor.

Adjusted Base Rate = (1 + Adjustment Factor) x 2020 Base Rate

$$= (1 + -0.03050613) \times \$80/\text{ton}$$
$$= \$77.56/\text{ton}$$

### Exhibit D: Administrative Charges

- 1. Administrative Charges:** Contractor has the duty to perform services under this Agreement in such a manner that meets the requirements in the Agreement.

Contractor and City agree that Contractor’s failure to provide services set forth in the Agreement in accordance with the requirements will cause the City damage but that the amount of damages for certain types of failure will be impractical or difficult to determine. Therefore, the parties agree that the City will have the right to assess an administrative charge against Contractor and may deduct such charge from any monies due or which may become due to Contractor in the following amounts.

Administrative charges will not be subject to adjustment.

1.	Failure to pick up biosolids on scheduled day without providing prior notice	\$2,500 per incident
2.	Failure to deliver trucks with empty and clean containers—free from dirt, biosolids, and other materials—to the Dewatering Facility site	\$1,000 per incident
3.	Failure of truck driver to provide form of identification upon arrival at the Dewatering Facility site	\$250 per incident
4.	Failure to properly cover a container loaded with the RWF’s biosolids prior to leaving the Dewatering Facility site	\$500 per incident
5.	Failure to cleanup spill caused by Contractor during loading at the Dewatering Facility site	\$1,000 per incident
6.	Failure to clean truck, container, or tires prior to leaving the Dewatering Facility site resulting in the tracking of biosolids around the Dewatering Facility site and/or onto public roadways	\$250 per incident
7.	Failure to submit an annual report within 20 calendar days of the end of the calendar year	\$1,000 per day
8.	Use of a subcontractor or site that is not approved by the City	\$3,000 per truck load delivered by an unapproved subcontractor AND \$3,000 per truck load delivered to an unapproved site

- 2. Procedure for Review of Administrative Charges:** The City’s Contract Manager may assess administrative charges pursuant to this **Exhibit D**. If administrative charges are applicable, the City’s Contract Manager will issue a written notice to Contractor of the administrative charges assessed with supporting documentation (“Notice of Assessment”). The City may, subject to the review process described

below, withhold any administrative charges from Contractor's invoice following the Notice of Assessment.

The administrative charges assessment shall become final unless, within fourteen (14) calendar days of the date of the Notice of Assessment, Contractor provides a written request for a meeting with the Director of Environmental Services ("Director") to present evidence that the assessment should not be made.

The City's Contract Manager shall schedule a meeting between Contractor and the Director or the Director's designee as soon as reasonably possible after timely receipt of Contractor's request.

The Director or the Director's designee shall review Contractor's evidence and render a decision sustaining or reversing the administrative charges as soon as reasonably possible after the meeting. Written notice of the Director's or Director's designee's decision shall be provided to Contractor.

In the event Contractor does not submit a timely written request for a meeting as set forth above, the City's Contract Manager determination shall be final, and the City may deduct the administrative charges from amounts otherwise due to Contractor.

The City's assessment or collection of administrative charges shall not prevent the City from exercising any other right or remedy, including the right to terminate this Agreement, for Contractor's failure to perform the work and services in the manner set forth in the Agreement.

- 3. Application of Administrative Charges:** In the determination of the total administrative charges imposed during a calendar year, the administrative charge will be deemed imposed in the calendar year in which the event giving rise to the administrative charge occurred. However, the administrative charge will not be deemed effective until the Procedure for Review of Administrative Charges set forth in Section 2 of this **Exhibit D** has been completed or the time for initiating review has lapsed, whichever occurs later.

## Exhibit E: Claims and Dispute Resolution

**Intent of Procedures:** The early identification and resolution of Claims benefits all parties and advances successful completion of the service. Knowing about potential Claims and Claims before the Contractor performs disputed service and having documentation from the Contractor concerning a dispute as service is being performed, is critical for the City to make informed decisions impacting the Agreement's compensation and schedule.

### I. Required Claims Procedures

- A. **Scope of Application:** This Section sets forth the requirements for handling all Claims except the following:
1. A Claim by the City,
  2. A dispute respecting a stop notice,
  3. A dispute respecting a penalty for a forfeiture prescribed by statute or regulation that a government agency is specifically authorized to administer, settle, or determine, or
  4. A dispute respecting personal injury, death, reimbursement, or other compensation arising out of or resulting from property damage, personal injury, or death.
- B. **Survives Termination:** The requirements in this Section survive the expiration or earlier termination of this Agreement.

### II. Notice of Potential Claim

- A. **Time for Submitting:** The Contractor must submit a Notice of Potential Claim to the City within thirty (30) calendar days of the event, activity, occurrence, or other cause giving rise to a potential Claim.
- B. **Contents:** A Notice of Potential Claim must include each of the following:
1. A description of the nature of, and circumstances giving rise to, the potential Claim;
  2. The reason(s) the Contractor believes it may be due additional compensation and/or time to perform; and
  3. A good faith estimate of the cost and/or time impact to which Contractor believes it may be entitled based on information reasonably available at the time the Contractor submits the Notice.



- C. **Waiver of Rights:** The Contractor's failure to submit a timely and proper Notice of Potential Claim is a waiver of its right to seek an adjustment of the compensation and time to perform based on any event, activity, occurrence, or other cause giving rise to a potential Claim.

### III. Submission of Contract Claim

- A. The Contractor must submit a Claim to the City on or before forty-five (45) calendar days of submitting the Notice of Potential Claim if:
  - 1. The Contractor and City do not resolve the Notice of Potential Claim, and
  - 2. The Contractor wishes to preserve its right to pursue the Claim.
- B. The Contractor's failure to submit a timely and proper Claim conforming to the requirements of this Subsection is:
  - 1. A waiver by the Contractor of any adjustment of the compensation and time to perform based on the event, activity, occurrence, or other cause underlying the Notice of Potential Claim, and
  - 2. A failure by the Contractor to exhaust its administrative remedies.
- C. The Claim must include a certification executed under penalty of perjury by a person who is legally authorized to act on the Contractor's behalf. The certification must read as follows:

"I, \_\_\_\_\_, being the \_\_\_\_\_ of \_\_\_\_\_,  
Name Title Contractor's Name

Declare under penalty of perjury under the laws of the State of California, and do personally certify and attest as follows: (1) I have thoroughly reviewed the attached Claim for additional compensation and/or extension of time and know its contents, (2) the Claim is made in good faith, (3) the data submitted by the Contractor in support of the Claim is truthful and accurate, (4) the amount of compensation and/or time requested in the Claim accurately reflects the Contract adjustment for which the Contractor believes the City is liable, (5) I am familiar with California Penal Code Section 72 and California Government Code 12650 et seq pertaining to false claims, and (6) I know and understand that the submission or certification of a false Claim may lead to fines, imprisonment, and/or other severe legal consequences."

- D. In addition to the required certification, the Claim must include a detailed analysis that the Contractor believes demonstrates the merits of its Claim.
  - 1. The analysis must reference the specific provision(s) of the Agreement and any other document(s) the Contractor believes support(s) its Claim.
  - 2. The Contractor must attach to the Claim copies of all documents referenced in the analysis.
  - 3. The Claim must include all documents and information that reasonably support the Claim and are reasonably available to the Contractor at the time it submits the Claim. The failure to comply with this requirement might preclude the Contractor from later pursuing the Claim.
- E. The Contractor must prepare all cost information submitted in its Claim in accordance with generally accepted accounting principles. The cost information must be in sufficient detail to enable the City to reasonably evaluate the merits of the Claim. The City has the right to audit Contractor's costs if the City considers the costs excessive, questionable, or unsupported.
- F. The Contractor acknowledges and agrees that if it submits a false claim, on behalf of itself or a Subcontractor, the Contractor may be subject to civil penalties, damages, debarment, and criminal prosecution in accordance with local, state, and federal statutes.

#### **IV. City Review of Claims**

- A. The City will review timely, certified, and properly documented Claims that conform to the requirements of this **Exhibit E**.
- B. The City will respond, in writing, to a Claim within forty-five (45) calendar days of receipt of such Claim. If the City does not respond to a Claim within forty-five (45) calendar days, the Claim is deemed denied in its entirety.
- C. A written response to a Claim by the City may do any of the following.
  - 1. The City can grant the Claim, in whole or in part.
  - 2. The City can deny the Claim, in whole or in part, with a written explanation of the denial.
  - 3. The City can request, in writing, more time to consider the Claim.

4. The City can request, in writing, additional information and clarification of the Claim. As part of such a request, the City may request additional time to consider the Claim.

## **V. Dispute Resolution**

- A. Following the City's rejection of any Claim(s), the Contractor may, in the Contractor's discretion, request to engage in the dispute resolution.
- B. The Contractor may request the parties meet with a trained, neutral facilitator to reach a mutually agreeable resolution of the disputed Claim(s). Facilitated dispute resolution will be informal and non-binding, with each party having an opportunity to present its position and supporting information. Recommendations resulting from facilitated dispute resolution are not admissible in court in any subsequent litigation. The City and Contractor will mutually agree on the scheduling of facilitated dispute resolution and the selection of a person to act as the facilitator. The City and Contractor agree to share equally the costs of facilitated dispute resolution.
- C. The Contractor waives its right to engage in the dispute resolution process if it fails to request such dispute resolution within fifteen (15) calendar days of the City's final response to the Claim(s) or of the City's automatic rejection of the Claim(s).

## **VI. Litigation/Government Code Claim**

- A. For purposes of this Section, the phrase "Claims Compliance Requirements" refers collectively to the requirements of Notice of Potential Claim, and Submission of Contract Claim.
- B. All unresolved disputes will be resolved by litigation as provided herein. There is no arbitration of disputes.
- C. Contractor's strict compliance with the Claims Compliance Requirements is a condition precedent to the Contractor's right to file a Government Code Claim under California Government Code Section 900, et seq. and to otherwise commence litigation against the City for disputes arising under this Agreement.
  1. Disputes not timely raised and properly documented in conformance with the Claims Compliance Requirements are deemed waived by the Contractor and may not be asserted in a Government Code Claim, subsequent litigation, or legal action.

2. By choosing to participate in the procurement of this Agreement and by executing this Agreement, Contractor waives all claims or defenses of waiver, estoppel, release, bar, or any other type of excuse of non-compliance with the Claims Compliance Requirements.
- D. An action at law against the City arising out of this Agreement accrues under whichever of the following times is applicable:
1. On the effective date of a termination for cause under Section 21.2 of **Exhibit A**,
  2. If the Contractor elects to participate in dispute resolution in accordance with this **Exhibit E**, at the conclusion of that process, or
  3. If the Contractor does not elect to participate in dispute resolution, upon the City's express or automatic rejection of the Claims in whole or in part.
- E. Contractor's compliance with the requirements of the Claims Compliance Requirements, and the Contractor's election to participate in dispute resolution in accordance with this **Exhibit E**, operates to toll the Contractor's compliance with the time requirement for submitting a Government Code Claim under California Government Code section 900, et seq.

### Exhibit F: Labor Compliance Addendum

<b>AGREEMENT TITLE:</b>	Dewatered Biosolids Transportation and Beneficial Use Services Agreement
<b>CONTRACTOR Name and Address:</b>	Lystek International Limited 1014 Chadbourne Road Fairfield, CA 94534

By executing this Addendum, Contractor acknowledges and agrees that the work performed pursuant to the above referenced Agreement, including all renewals and extensions, is subject to all applicable provisions.

**Payment of Minimum Compensation to Employees.** Contractor shall be obligated to pay not less than the General Prevailing Wage Rate and/or Living Wage Rate as indicated in **Exhibit F-1** titled “**City of San José Classification Determination.**”

**A. Prevailing Wage Requirements.** California Labor Code and/ or Resolutions of the San José City Council require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, Contractor shall not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.

**B. Living Wage Requirements.** Any person employed by Contractor or subcontractor or City financial recipient or any sub recipient whose compensation is attributable to the City’s financial assistance, who meets the following requirements is considered a covered employee. The employee: 1) is not a person who provides volunteer services, that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; 2) spends at least half of his or her time on work for the City; 3) is at least eighteen (18) years of age; and 4) is not in training for the period of training specified under training standards approved by the City.

**C. Reports.** Contractor shall file a completed and executed copy of this Addendum with the Department of Finance/Purchasing Division. Upon award the Department of Finance/Purchasing Division shall provide the Contractor with compliance documents to be completed and returned (with supporting documentation) to the Office of Equality Assurance. **These documents must be returned within 10 calendar days of receipt.** Contractor shall not perform on site work on this contract until labor compliance documents are filed. Contractor shall also report additional information, including certified payrolls, as requested by Director of Equality Assurance to assure adherence to the Policy.

**D. Coexistence with Any Other Employee Rights.** These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.

**E. Audit Rights.** All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

**F. Enforcement.**

**1. General.** Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to comply with the Wage Requirement and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Requirement promotes each of the following (collectively "Goals"):

- a. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
- b. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
- c. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San José because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San José.
- d. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

**2. Remedies for Contractor's Breach of Prevailing Wage/Living Wage Provisions.**

- a. **WITHHOLDING OF PAYMENT:** Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance

with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Requirement, is an express condition of City's obligation to make each payment due to the Contractor pursuant to this Agreement. **THE CITY IS NOT OBLIGATED TO MAKE ANY PAYMENT DUE THE CONTRACTOR UNTIL CONTRACTOR HAS PERFORMED ALL OF ITS OBLIGATIONS UNDER THESE PROVISIONS. THIS PROVISION MEANS THAT CITY CAN WITHHOLD ALL OR PART OF A PAYMENT TO CONTRACTOR UNTIL ALL REQUIRED DOCUMENTATION IS SUBMITTED.** Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Requirement or the Documentation Provision.

- b. **RESTITUTION:** Require the employer to pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.
- c. **SUSPENSION OR TERMINATION:** Suspend and/or terminate Agreement for cause.
- d. **DEBARMENT:** Debar Contractor or subcontractor from future City contracts and/or deem the recipient ineligible for future financial assistance.
- e. **LIQUIDATED DAMAGES FOR BREACH OF WAGE PROVISION:**  
Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Requirement would be impracticable and/or extremely difficult. **THEREFORE, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH A BREACH, CONTRACTOR SHALL PAY TO THE CITY AS LIQUIDATED DAMAGES THE SUM OF THREE (3) TIMES THE DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES PAID AND THE AMOUNT OF WAGES THAT SHOULD HAVE BEEN PAID.**

**City**

**Contractor**

By \_\_\_\_\_

By \_\_\_\_\_

Name:

Name: James Dunbar

Title:

Title: General Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## Exhibit F-1: City of San José Classification Determination



Exhibit F-1

### City of San Jose Classification Determination

**CONTRACT SCOPE:** Transportation & Beneficial Use Services for Dewatered Biosolids  
**ISSUE DATE:** August 9, 2022

Contracts governed by both the City of San José’s Living Wage Policy (Council Policy 3-3) and its Prevailing Wage Policy (Resolution No. 61144) are subject to the Policy with the higher wage requirements. The prevailing wage rates for this contract are contained in the General Prevailing Wage Determination 2022 – 1 and Predetermined Increases issued by the Director of Industrial Relations. A copy of the Wage Determination can be obtained from the Office of Equality Assurance at 200 East Santa Clara Street, 5<sup>th</sup> Floor, San Jose CA 95113.

Prevailing Wages Apply                       Living Wages Apply

Prevailing Wage Classifications\*

- |  |  |   |  |
|--|--|---|--|
| <input type="checkbox"/> Asbestos        | <input type="checkbox"/> Boilermaker       | <input type="checkbox"/> Bricklayers      | <input type="checkbox"/> Carpenters      |
| <input type="checkbox"/> Carpet/Linoleum | <input type="checkbox"/> Cement Mason      | <input type="checkbox"/> Drywall Finisher | <input type="checkbox"/> Drywall/Lathers |
| <input type="checkbox"/> Electricians    | <input type="checkbox"/> Elevator Mechanic | <input type="checkbox"/> Glaziers         | <input type="checkbox"/> Iron Workers    |
| <input type="checkbox"/> Laborers        | <input type="checkbox"/> Millwrights       | <input type="checkbox"/> Operating Eng.   | <input type="checkbox"/> Painters        |
| <input type="checkbox"/> Pile Drivers    | <input type="checkbox"/> Pipe Trades       | <input type="checkbox"/> Plasterers       | <input type="checkbox"/> Roofers         |
| <input type="checkbox"/> Sheet Metal     | <input type="checkbox"/> Sound/Comm        | <input type="checkbox"/> Surveyors        | <input type="checkbox"/> Teamsters       |
| <input type="checkbox"/> Tile Workers    |  |   |  |

\*Note: Subclassifications and scopes of work are provided by the Department of Industrial Relations. Contractor/Vendor is responsible to verify correct subclassification based on actual work performed on this agreement.

Living Wage Rate (if applicable)

Living Wage <i>with</i> Medical Provided	Living Wage <i>without</i> Medical provided
\$25.71	\$26.96

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Office of Equality Assurance, 200 East Santa Clara Street, Fifth Floor, San Jose CA 95113-1905 tel 408-535-8430

## **Exhibit G: Insurance Requirements**

Contractor agrees to procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors. The cost of such insurance must be included in the Contractor's proposal.

### **I. Minimum Scope of Insurance**

Coverage must be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001) including products and completed operations; and
2. The coverage provided by Insurance Services Office form number CA 0001 covering Automobile Liability. Coverage must be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance; and
4. Contractor's Pollution Liability Insurance, including coverage for all operations and completed operations.

There may be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

### **II. Minimum Limits of Insurance**

Contractor must maintain limits no less than:

1. Commercial General Liability: \$5,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit applies separately to this project/location or the general aggregate limit will be twice the required occurrence limit. The policy may not contain exclusions for property damage from explosion, collapse or underground hazard, or inadvertent construction defects.
2. Automobile Liability: \$5,000,000 combined single limit per accident for bodily injury and property damage.

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
4. Contractor's Pollution Liability: \$2,000,000 each occurrence/aggregate limit.

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.

### **III. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by, the City.

### **IV. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability, Automobile Liability, and Contractor's Pollution Liability Coverages
  - a. The City, its officials, employees, agents, and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the Contractor; products and completed operations of the Contractor; premises owned, leased, or used by the Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor. The coverage may not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents, and contractors.
  - b. The Contractor's insurance coverage is the primary insurance as respects the City, its officials, employees, agents, and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents, or contractors must be excess of the Contractor's insurance and may not contribute with it.
  - c. Any failure to comply with reporting provisions of the policies may not affect coverage provided to the City, its officials, employees, agents, or contractors.
  - d. Coverage must state that the Contractor's insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- e. Coverage must contain a waiver of subrogation in favor of the City, its officials, employees, agents, and contractors.

2. **Workers' Compensation and Employers' Liability**

Coverage must contain a waiver of subrogation in favor of the City, its officials, employees, agents, and contractors.

3. **All Coverages**

Each insurance policy required by this clause must be endorsed to state that coverage may not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City; except that ten (10) calendar days prior written notice will apply in the event of cancellation for non-payment of premium.

**V. Acceptability of Insurance**

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

**VI. Verification of Coverage**

Contractor must furnish the City with certificates of insurance and endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS must be attached to the CERTIFICATE OF INSURANCE to be provided by the Contractor's insurance company as evidence of the stipulated coverages.

Proof of insurance must be emailed in pdf format to [Riskmgmt@sanjoseca.gov](mailto:Riskmgmt@sanjoseca.gov).

City of San José – Finance Department  
Risk & Insurance  
200 East Santa Clara St., 14th Floor  
San José, CA 95113-1905

**VII. Subcontractors**

Contractor must include all subcontractors as insureds under its policies or obtain separate certificates and endorsements for each subcontractor.

## Exhibit H: Form of Payment and Performance Bonds

Bond Number: \_\_\_\_\_

### **CONTRACTOR'S PAYMENT BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California, (hereinafter designated as "Public Entity"), is about to enter into a certain contract with \_\_\_\_\_, a \_\_\_\_\_, as Principal, namely, "Contract for: \_\_\_\_\_", for the work hereinafter briefly described, to wit: Specifications for \_\_\_\_\_ and more fully described in and required by said contract, the award of which said Contract was made to said Principal by the City of San José on \_\_\_\_\_.

WHEREAS, said Principal is required by Chapter 5 (commencing at Section 3225) and Chapter 7 (commencing at Section 3247), Title 15, Part 4, Division 3 of the California Civil Code to furnish a bond in connection with said contract.

NOW, THEREFORE, we, the Principal and \_\_\_\_\_ incorporated under the laws of the State of \_\_\_\_\_, and authorized to execute bonds and undertakings as sole surety, as Surety, are held and firmly bound unto the Public Entity in the penal sum of \_\_\_\_\_ and \_\_\_\_\_/100 DOLLARS (\$ \_\_\_\_\_), lawful money of the United States of America for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named in Section 3181 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to any work or labor performed or materials supplied by any such claimant, which said work, labor or materials are covered by the said contract and any amendments, changes, change orders, additions, alterations, or modifications thereof, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and their Subcontractors, pursuant to Section 18806 of the Revenue and Taxation Code, with respect to such work and labor, the Surety will pay for the same, in an amount not exceeding the sum hereinabove specified, and also, in case suit is brought upon this bond, a reasonable attorney's fee to be fixed by the court.

This bond shall insure to the benefit of any of the persons named in Section 3181 of the California Civil Code, so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement hereinabove described or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement hereinabove described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or Public Entity and original Contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110 or 3112 of the California Civil Code, and has not been paid the full amount of their claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration, modification, rescission or attempted rescission, herein mentioned.

It is further stipulated and agreed that no final settlement between the Public Entity and the Contractor with reference to the work, shall abridge the right of any beneficiary hereunder whose claims may be unsatisfied.

This bond is executed and delivered to comply with requirements of the City of San José, and to comply with the provisions of Title 15, Chapters 5 and 7 of Part 4, Division 3 of the Civil Code of the State of California.

Whereas, the Obligee has agreed to accept this Bond, this Bond shall be effective for the definite period of \_\_\_\_\_ to \_\_\_\_\_. The Bond may be extended, at the sole option of the Surety, by continuation certificate for additional periods from the expiry date hereof. However, neither: (a) the Surety's decision not to issue a continuation certificate, nor (b) the failure or inability of the Principal to file a replacement bond or other security in the event the Surety exercises its right to not renew shall itself constitute a loss to the Obligee recoverable under this Bond or any extension thereof. Regardless of the number of years this Bond is in force or the number of continuation certificates issued, the liability of the Surety shall not be cumulative in amounts from period to period and shall in no event exceed the amount set forth above, or as amended by rider.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PRINCIPAL

SURETY



\_\_\_\_\_  
Legal Company Name

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone \_\_\_\_\_

(Affix Corporate Seals)

(Attach Acknowledgments of both Principal and Surety signatures)

Approved by the City Attorney of the City of San José on the \_\_\_\_\_ day of

\_\_\_\_\_20\_\_.

By: \_\_\_\_\_

Deputy

Bond Number: \_\_\_\_\_

## **CONTRACTOR'S BOND FOR FAITHFUL PERFORMANCE**

KNOW ALL PERSONS BY THESE PRESENTS:

That \_\_\_\_\_, a \_\_\_\_\_, as Principal, and \_\_\_\_\_ incorporated under the laws of the State of \_\_\_\_\_, and authorized to execute bonds and undertakings as sole surety, are held and firmly bound unto the CITY OF SAN JOSE, a municipal corporation of the State of California, in the sum of \_\_\_\_\_ and \_\_\_\_\_/100 DOLLARS (\$ \_\_\_\_\_), for the payment thereof, well and truly to be made, said Principal and Surety bind themselves, their administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that:  
WHEREAS, the above bounden Principal is about to enter into a certain contract with the City of San Jose for the following:

\_\_\_\_\_

the award of which said contract was made to said Principal by the City of San Jose on \_\_\_\_\_.


NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if he/she shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

Whereas, the Obligee has agreed to accept this Bond, this Bond shall be effective for the definite period of \_\_\_\_\_ to \_\_\_\_\_. The Bond may be extended, at the sole option of the Surety, by continuation certificate for additional periods from the expiry date hereof. However, neither: (a) the Surety's decision not to issue a continuation certificate, nor (b) the failure or inability of the Principal to file a replacement bond or other security in the event the Surety exercises its right to not renew shall itself constitute a loss to the Obligee recoverable under this Bond or any extension thereof. Regardless of the number of years this Bond is in force or the number of continuation certificates issued, the liability of the Surety shall not be cumulative in amounts from period to period and shall in no event exceed the amount set forth above, or as amended by rider.



IN WITNESS WHEREOF, we have hereunto set our hands and seals on this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_.

<p>PRINCIPAL</p> <p></p> <p>By: _____</p> <p>Title: _____</p> <p>By: _____</p> <p>Title: _____</p>	<p>SURETY</p> <p>_____</p> <p>Legal Company Name</p> <p>By: _____</p> <p>Title: _____</p> <p>Address _____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Telephone _____</p> <p>_____</p>
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(Affix Corporate Seals)

(Attach Acknowledgments of both Principal and Surety signatures)

Approved by the City Attorney of the City of San Jose on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Deputy

### Exhibit I: Notice of Exercise of Option

<b>AGREEMENT TITLE and DATE:</b>	
<b>CONTRACTOR Name and Address:</b>	
<b>DATE OF OPTION:</b>	

*(date the notice is sent must be consistent with the time for exercise set forth in Agreement)*

Pursuant to Section 3 of the Agreement referenced above, the City of San José hereby exercises its option to extend the term under the following provisions.

<b>OPTION NO.</b>	
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#### NEW OPTION TERM

Begin date:	
End date:	

<b>MAXIMUM COMPENSATION for New Option Term:</b>	
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For the option term exercised by this Notice, City may not pay Contractor an amount that exceeds the amount set forth above for Contractor's Services and reimbursable expenses, if any. The undersigned signing on behalf of the City of San José hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF SAN JOSE a municipal corporation  By _____ Name: Title:
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