



November 24, 2021

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of the Intergovernmental Agreement between
 Water Environment Services and City of Estacada for Hauling and Storage Services
No County General Funds are involved.

Purpose/Outcomes	Approval of the Intergovernmental Agreement between Water Environment Services and City of Estacada for Hauling and Storage Services. No County General Funds are involved.
Dollar Amount and Fiscal Impact	N/A
Funding Source	No general fund dollars.
Duration	The Agreement ends November 30, 2024, with options for extensions.
Previous Board Action/Review	This item was presented for a temporary emergency agreement in February, 2021.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This project supports the WES Strategic Plan to beneficially reuse biosolids produced at the Water Resource Recovery Facilities and to support regional disposal options and provide wastewater treatment services to members of the community. 2. This service supports the County Strategic Priority to ensure safe, healthy, and secure communities.
Counsel Review	Date of Counsel review: 10/21/2021 Name of County Counsel performing review: Amanda Keller
Procurement Review	Was the item processed through Procurement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If no, provide a brief explanation: Item is an Intergovernmental Agreement with the City of Estacada.
Contact Person	Terrance Romaine, 503-557-2821, tromaine@clackamas.us
Contract No.	N/A

BACKGROUND:

Due to capacity issues and limited land application in winter months, the City of Estacada desires immediate assistance with hauling and storage of approximately 70,000 gallons of Class B biosolids (“City Biosolids”) generated at the City’s treatment facility. The District is willing to accept at the Kellogg Creek Water Resource Recovery Facility (“Kellogg WRRF”) or Tri- City Water Resource Recovery Facility (“Tri-City WRRF”) on an as needed basis during the duration of this agreement.

RECOMMENDATION:

WES staff recommends the Board, acting as the governing body of Water Environment Services, approve the Intergovernmental Agreement between Water Environmental Services and the City of Estacada for Hauling and Storage Services.

Respectfully submitted,

A handwritten signature in blue ink that reads "Greg Geist". The signature is written in a cursive style with a long horizontal stroke at the end.

Greg Geist
Director, Water Environment Services

Attachment: Intergovernmental Agreement between Water Environmental Services and the City of Estacada



RECORDING MEMO

New Agreement/Contract

Amendment/Change/Extension

Other: _____

Originating County Department: _____

Purchasing for: _____

Other party to contract/agreement: _____

Title from Business Meeting Agenda:

After recording please return to:

Clerk to the Board please complete below this line after Board approval _____

Board Agenda Date: _____

Agenda Item Number: _____

**INTERGOVERNMENTAL AGREEMENT
BETWEEN WATER ENVIRONMENT SERVICES
AND THE CITY OF ESTACADA
FOR HAULING AND STORAGE SERVICES**

THIS AGREEMENT (this “Agreement”) is entered into and between Water Environment Services (“District”), an intergovernmental entity formed pursuant to ORS Chapter 190, and the City of Estacada (“City”), an Oregon municipal corporation, collectively referred to as the “Parties” and each a “Party.”

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

Due to capacity issues and limited land application in winter months, the City desires immediate assistance with hauling and storage of approximately 70,000 gallons of Class B biosolids (“City Biosolids”) generated at the City’s treatment facility. The District is willing to accept at the Kellogg Creek Water Resource Recovery Facility (“Kellogg WRRF”) or Tri- City Water Resource Recovery Facility (“Tri-City WRRF”) pursuant to the terms of this Agreement (collectively, the “District Facilities”).

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon execution, and shall expire November 31, 2024.
2. **Scope of Services.** The District and the City agree to the obligations and conditions identified in the Scope of Services, attached hereto as Exhibit A and incorporated herein (“Services”).
3. **Consideration.** The City agrees to pay the District the price of \$0.10 per gallon of City Biosolids delivered to District Facilities. This fee may be adjusted from time to time by the Parties, without need for further amendment of this Agreement. All fee adjustments shall be based on changes to the District’s rates and charges.
4. **Payment.** The District will submit monthly invoices to the City for Services rendered in accordance with the terms of this Agreement. The City agrees to pay invoices within thirty (30) days of receipt.
5. **Representations and Warranties.**
 - A. *City Representations and Warranties:*
 - i. City represents and warrants to District that City has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of City enforceable in accordance with its terms.

- ii. City represents and warrants that all City Biosolids delivered to District Facilities will be Class B biosolids as defined in Oregon Administrative Rules Chapter 340, Division 50 and 40 CFR Part 503.

B. *District Representations and Warranties:*

- i. District represents and warrants to City that District has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of District enforceable in accordance with its terms.
- ii. The District warrants that any services it furnishes under this Agreement will be in compliance with OAR Chapter 340, Division 50 and 40 CFR part 503 and other applicable federal, state and local laws.

C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. **Suspension; Termination.**

A. Suspension. The District may immediately suspend and refuse to furnish Services under this Agreement if the City Biosolids fail to meet the Class B standard defined in Section 5 above or are otherwise determined by the District, in its sole discretion, not to be suitable for discharge to District Facilities. The District will provide prompt notice to the City of any suspension in Services.

B. Termination.

- i. Either the District or the City may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- ii. Either the District or the City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- iii. The District or the City shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- iv. The District may terminate this Agreement in the event the District fails to receive expenditure authority sufficient to allow the District, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or

interpreted in such a way that either the Project under this Agreement is prohibited or the District is prohibited from paying for such work from the planned funding source.

- v. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the District agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the District or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the District has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the District, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

- 8. **Insurance.** The City agrees to furnish the District with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of Clackamas District, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Agreement. If self-insured, City shall provide documentation to the District of City's self-insured status by completing the Self-Insurance Certification form provided by the District.
- 9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

- A. Terrance Romaine or their designee will act as liaison for the District.

Contact Information:

Water Environment Services
15941 S. Agnes Ave.
Oregon City, OR 97045
Phone: 503-557-2821
Email: tromaine@clackamas.us

Chris Lewis or their designee will act as liaison for the City.

Contact Information:

City of Estacada, Plant Operations Manager
800 NW Evergreen Way
Estacada, OR 97023
Phone: 503.630.8270 x219
Email: lewis@cityofestacada.org

10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of the District and Clackamas County, without giving effect to the conflict of law provisions thereof. Any claim between District and City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the District of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. The City, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** City shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required

by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. City shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, City shall permit the District's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.

E. **Work Product.** Reserved.

F. **Hazard Communication.** Reserved.

G. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

H. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.

I. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.

J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

K. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- L. **No Third-Party Beneficiary.** City and District are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. **Subcontract and Assignment.** City shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the District, which shall be granted or denied in the District's sole discretion. District's consent to any subcontract shall not relieve City of any of its duties or obligations under this Agreement.
- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. **Time is of the Essence.** The Parties agree that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. **Force Majeure.** Neither City nor District shall be held responsible for delay or default caused by events outside of the City or District's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, City shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. **Confidentiality.** Reserved.
- U. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

[Signature Page Follows]

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Water Environment Services

Chair

Date

City of Estacada



Authorized Signatory

Plant operations manager

Title

11-17-2021

Date

EXHIBIT A – SCOPE OF SERVICES

City of Estacada and Water Environment Services IGA

A. CITY OBLIGATIONS AND DISPOSAL CONDITIONS

1. Class B Biosolids. At or prior to delivery, the City will provide District with characteristics data that demonstrates that the City Biosolids meet the requirements of Class B Biosolids defined in Oregon Administrative Rules Chapter 340, Division 50 and 40 CFR Part 503 (“Class B Requirements”). If the City Biosolids do not meet the Class B Requirements, then the District may refuse acceptance of the City Biosolids.

2. Measurement of Discharge Volume. The City will determine the volume of Biosolids discharged by using one of two methods:

- a) Subtracting the empty truck weight from the full weight and converting the weight of the material discharged to gallons. Truck weights can be determined by use of scales at available at Tri-City WRRF.
- b) If the actual capacity of the truck tank is known, using the known volume and assuming the a full tank was discharged

3. Interference. If District determines, in its sole discretion, that the City Biosolids are: a) causing, or could cause interference with District facility operations, including, but not limited to, any interference or pass-through that might cause District Facility to exceed any condition of its NPDES permit; b) contains contamination that could make District’s biosolids or recycled water unsuitable for their intended uses; or c) otherwise not suitable for discharge to District facilities, District may suspend Services in accordance with Section 6(A) of the Agreement.

4. Spills/Cleanup. The City must prevent spills or tracking of City Biosolids at District Facilities. The City shall be responsible for the clean up and removal from District’s premises of all spills, contaminated matter, and contaminated clean up material, in addition to all costs of any nature (including fines, etc.) related to spills or tracking.

5. District Hours and Location of Operation. The City may unload the City Biosolids at times approved by District at the Kellogg Creek Water Resource Recovery Facility located at 11525 SE McLoughlin Blvd Milwaukie, OR 97222, or at the Tri-City Water Resource Recovery Facility at 15941 S. Agnes Ave. Oregon City, OR 97045.

6. Hauling Tickets. The City shall be responsible for providing a hauling ticket for each load of City Biosolids that are hauled to District facilities in order to document the number of gallons discharged.

7. Sampling Procedure. The City shall collect a representative sample of the City Biosolids and deliver it to District on the discharge date.

8. Off-loading Biosolids. The City shall off-load at the disposal point designated by District. The City shall notify District personnel prior to discharge, in order to allow District staff to monitor the discharge. Contact information for District personnel will provided by District.

9. Compliance with Terms. The City shall ensure that all City employees and representatives have read, understood and agreed to the terms and conditions contained herein regarding hauling, delivery, off-loading and cleanup.

10. Obligation of Disposal. This Agreement does not obligate City to dispose of City Biosolids at any District Facility.

B. DISTRICT OBLIGATIONS AND DISPOSAL CONDITIONS

1. Acceptance/Amount. The District, in its sole discretion, will determine the amount, if any, and rate of City Biosolids it will accept and beneficially use.