

Purchase Justification

Staff,

This purchase order request is for an “open” purchase order for sludge handling and processing for the wastewater treatment plant. This is the continuation of agreement approved by council in June 2016

Jason Biemer

BIOSOLIDS
HAULING SERVICES AGREEMENT

This SLUDGE PRESSING AND CAKE HAULING SERVICE AGREEMENT (hereinafter called the AGREEMENT) made and entered into this 7th day of June, 2016 ("EFFECTIVE DATE") by and between **City of Kyle, TX**, a municipal corporation ("CUSTOMER"), and **Sheridan Environmental dba Sheridan Clearwater, LLC**, an independent contractor ("CONTRACTOR" which term shall include its successors and assigns).

WITNESSETH:

In consideration of the following covenants and AGREEMENTS, the CUSTOMER and the CONTRACTOR hereby mutually agree as follows:

1. SCOPE

- 1.1. The CONTRACTOR shall provide sludge pressing and cake hauling services that include pressing, loading, hauling, unloading and disposal according to the requirements and limits of CUSTOMER'S permit (TPDES Permit No. WQ0011041002, attached hereto as **ATTACHMENT A** and incorporated herein for all purposes, and as amended ("PERMIT")) and the terms of this AGREEMENT ("SERVICES") of the CUSTOMER'S biosolids which will constitute at least 15% solids content as achieved by the CONTRACTOR'S sludge pressing services, prior to transport ("BIOSOLIDS") as generated by the City of Kyle Wastewater Treatment Facility, SIC Code 4952, located at 941 New Bridge Drive, Kyle, approximately 2.7 miles northwest of the intersection of State Route 21 and Farm-to-Market Road 2720 in Hays County, Texas 78640 ("PLANT").
- 1.2. It is understood that the relationship of CUSTOMER and CONTRACTOR is that of independent contractor. CONTRACTOR assumes full responsibility for the safety of the work hereunder. CONTRACTOR shall not order materials or equipment as an agent of CUSTOMER or in any other manner present itself to be an agent of CUSTOMER.
- 1.3. All grounds, facilities and equipment owned by CUSTOMER or acquired by CUSTOMER shall remain the property of CUSTOMER.
- 1.4. All grounds, facilities and equipment owned by CONTRACTOR or acquired by CONTRACTOR shall remain the property of CONTRACTOR.

2. CONTRACTOR OBLIGATIONS

The CONTRACTOR shall:

- 2.1. Within twenty-one (21) calendar days after receipt of the Purchase Order from CUSTOMER, cause the commencement of sludge pressing, hauling and disposal

of CUSTOMER'S BIOSOLIDS to adequately meet the output needs of the PLANTS. The CONTRACTOR shall own, furnish and operate adequate pressing equipment to meet the output needs of the PLANT and be able to dewater the BIOSOLIDS to no less than 15% solids prior to hauling for disposal. BIOSOLIDS shall be loaded by CONTRACTOR and transported by CONTRACTOR in CONTRACTOR'S 20 cubic yard bins and vehicles. The dewatered BIOSOLIDS from the PLANTS shall be hauled and disposed of in accordance with the CUSTOMER'S PERMIT and any other applicable LEGAL REQUIREMENTS.

- 2.2. Notify the CUSTOMER of any notice of violation, action, suit, claim, or legal proceeding against CONTRACTOR relating to any aspect of the CUSTOMER'S BIOSOLIDS pressed, transported or disposed of pursuant to this AGREEMENT.
- 2.3. Provide proof of various liability insurances, as set forth in Section 4 of this AGREEMENT.
- 2.4. **INDEMNIFY, CITY OF KYLE AS CUSTOMER, AND HOLD HARMLESS CITY OF KYLE AND ANY OF ITS SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS AND ITS RESPECTIVE CITY COUNSEL PERSONS, OFFICERS, EMPLOYEES, AND REPRESENTATIVES (HEREINAFTER REFERRED TO COLLECTIVELY IN THIS SECTION AS INDEMNITEES), FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, LAWSUITS, FINES, PENALTIES, REGULATORY ACTIONS, AND CAUSES OF ACTION, TOGETHER WITH REASONABLE COSTS, EXPENSES, AND ATTORNEYS' FEES ASSOCIATED THEREWITH AND ALL AMOUNTS PAID IN DEFENSE OR SETTLEMENT OF THE FOREGOING, WHICH MAY BE IMPOSED UPON OR INCURRED BY INDEMNITEES OR ASSERTED AGAINST INDEMNITEES BY ANY OTHER PERSON OR PERSONS (INCLUDING GOVERNMENTAL REGULATORY AUTHORITIES), TO THE EXTENT CAUSED BY EITHER CONTRACTOR'S NEGLIGENT ACTS OR OMISSIONS, OR CONTRACTOR'S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT, OR VIOLATION OF APPLICABLE LEGAL REQUIREMENTS. CONTRACTOR SHALL NOT PROVIDE INDEMNIFICATION FOR THE SOLE NEGLIGENT ACTS OR OMISSIONS OF THE CITY, OR THEIR RESPECTIVE CITY COUNCIL PERSONS, OFFICERS, EMPLOYEES AND REPRESENTATIVES.**
- 2.5. Comply in all material respects with all LEGAL REQUIREMENTS applicable to CONTRACTOR'S provision of the SERVICES including, but not limited to maintain any separate CONTRACTOR regulatory permits required to perform such SERVICES through the term of this Agreement.
- 2.6. Be partially or completely relieved of its obligations to haul BIOSOLIDS during events or periods of Force Majeure, during which time the SERVICES shall be

partially or wholly suspended. CONTRACTOR agrees to employ reasonable efforts to mitigate the impacts of a Force Majeure.

- 2.7. CONTRACTOR shall provide equipment capable of pressing, loading and transporting in their own 20 cubic yard roll off bins or trucks in addition to all labor, handling equipment, fuel, maintenance, insurance and other costs necessary for all BIOSOLIDS pressing, loading, hauling, unloading, disposal and distributing operations, except for electricity used for pressing which will be provided by CUSTOMER free of charge. In case of equipment breakdown, the CONTRACTOR also shall provide additional equipment and/or labor at no additional expense to avoid interruption for any cause in PLANT operations.
- 2.8. CONTRACTOR shall be solely responsible, at no additional cost to CUSTOMER, for the upkeep, repair and maintenance of the loading and pressing area, and the 20' immediately surrounding said area, and will keep the area in a reasonable and safe condition.
- 2.9. CONTRACTOR shall be solely responsible, at no additional cost to CUSTOMER, for any reasonable and necessary investigation, monitoring, clean-up, containment, removal, storage, remediation or restoration work associated with BIOSOLIDS intentionally or accidentally spilled by CONTRACTOR during pressing, loading, transportation, or BIOSOLIDS disposal as conducted by CONTRACTOR and/or its agents.

3. CUSTOMER

The CUSTOMER shall:

- 3.1. Provide to CONTRACTOR for pressing and hauling, 100% of the annual volume of BIOSOLIDS generated at the PLANT.
- 3.2. Provide CONTRACTOR with reasonable access to the CUSTOMER'S BIOSOLIDS delivery system, except as reasonably required for safety or emergency considerations, or planned shutdown of the PLANT. It is agreed that when safety, emergency or shutdown conditions prevent CONTRACTOR access, that both parties will attempt to mitigate such adverse conditions as expeditiously as safely possible.
- 3.3. Provide CONTRACTOR any information which CONTRACTOR reasonably may request to facilitate its compliance with applicable LEGAL REQUIREMENTS, as may be applicable to the SERVICES. CONTRACTOR shall have the undisputed right to rely upon any information or certification provided by CUSTOMER, and shall not have any independent duty to investigate or inquire regarding the subject matter of any CUSTOMER'S certification, or of the information which CUSTOMER provides to CONTRACTOR.

- 3.4. Not provide to CONTRACTOR any BIOSOLIDS which contain HAZARDOUS MATERIAL or are hazardous in accordance with 40 C.F.R. Part 261, other federal law, state law, or which contains a concentration of polychlorinated biphenyls equal to or greater than 50 milligrams per kilogram of total solids (on a dry weight basis).
- 3.5. Notify the CONTRACTOR of any significant CUSTOMER operating changes or any other conditions that would reasonably be expected to affect the BIOSOLIDS managed by CONTRACTOR under this AGREEMENT.
- 3.6. Notify the CONTRACTOR of any opportunity for CUSTOMER to engage in local application of BIOSOLIDS for beneficial use in the area in and around CUSTOMER location, and at such time, engage in NEGOTIATION of amendment to current contract to provide for hauling of BIOSOLIDS by CONTRACTOR to those site(s).

4. INSURANCE

The CONTRACTOR shall maintain and provide the CUSTOMER evidence of insurance as follows:

- A. Commercial General Liability
 1. Bodily Injury \$1,000,000 each occurrence
 2. Property Damage \$1,000,000 each occurrence
- B. Personal Injury Coverage \$1,000,000 each occurrence
- C. Workers' Compensation As required by Texas Law
Employer's Liability \$500,000.00 single limit
- D. Comprehensive Business Automobile Liability Insurance (applicable to owned, non-owned and hired vehicles)
 1. Bodily Injury \$50,000 each person, \$1,000,000 each occurrence
 2. Property Damage \$1,000,000 each occurrence
- E. Pollution Control Liability (Minimum Amount Available on Claims Made Basis)
- F. Umbrella Excess Liability \$3,000,000.00 each occurrence

All insurance in the above amounts except for Worker's Compensation, shall name the City of Kyle as an additional insured.

5. PAYMENT

The CONTRACTOR shall provide the CUSTOMER with an accounting of the tons and cubic yards of BIOSOLIDS removed from the CUSTOMER'S PLANTS. The CUSTOMER will be provided with manifests or other records for all BIOSOLID loads removed by the CONTRACTOR. CONTRACTOR and CUSTOMER agree that CUSTOMER, at CUSTOMER'S sole expense, has the right to periodically take weight measurements and percent solids tests of bins loaded with BIOSOLIDS, to confirm conformance with AGREEMENT. Results will be shared with CONTRACTOR. CONTRACTOR, at its own expense, may conduct similar weight and percent solids analysis and compare the results with CUSTOMER.

5.1. The CONTRACTOR shall submit invoices once each month for SERVICES provided by CONTRACTOR, using the rates and the volume amounts agreed to in Section 10 of this AGREEMENT. The CUSTOMER shall pay all uncontested invoices within thirty (30) days after receipt of the invoice.

5.2. It is agreed that in the event of any dispute concerning invoice amount, CUSTOMER will pay undisputed invoice amounts, or portions thereof, within thirty (30) days after receipt of the invoice.

6. RECORD KEEPING

The CONTRACTOR shall maintain volumetric records and submit summary reports to the CUSTOMER monthly and on an annual, cumulative basis. Reports shall include information regarding, but not be limited to:

6.1. Number of bin loads transported. Total number of cubic yards transported. Total tons transported. Percent solids of BIOSOLIDS hauled.

6.2. Such other information or certifications, including any weight samples and BIOSOLID disposal locations, as will reasonably allow CUSTOMER to fulfill its recordkeeping and reporting requirements under applicable PERMIT and LEGAL REQUIREMENTS.

7. NOTICES

Except as otherwise provided herein, any notice, demand or other communication shall be in writing and shall be personally served; sent by commercial courier service or prepaid registered or certified mail; or sent by telephonic facsimile delivery with confirmation thereof. Any such notice shall be deemed communicated upon receipt.

7.1. The following address is hereby designated as the legal address of the CONTRACTOR. Such address may be changed at any time by notice in writing delivered to CUSTOMER.

Contractor

Sheridan Environmental DBA Sheridan Clearwater
3600 North FM 973
Austin TX 78725
512-699-9192 927-1977

- 7.2. The following address is hereby designated as the legal address of the CUSTOMER. Such address may be changed at any time by notice in writing delivered to CONTRACTOR.

City of Kyle, Texas

City Manager
City of Kyle
P.O. Box 40
Kyle, TX 78640

8. FORCE MAJEURE

Wherever the word "Force Majeure" is used, it should be understood to mean:

- 8.1. Acts of God, landslides, lightning, earthquakes, hurricanes, tornadoes, blizzards, freezes and other severe and unusual adverse and inclement weather for the Kyle, Texas area, fires, explosions, floods, acts of a public enemy, wars, blockades, insurrections, riots or civil disturbances;
- 8.2. labor disputes, strikes, employee Work slowdowns, or Work stoppages;
- 8.3. orders or judgments of any Federal, State or local court, administrative regulatory agency or governmental body with proper jurisdiction, if not the result of willful or negligent action of the party relying thereon;
- 8.4. power failure and outages affecting the BIOSOLID production PLANT; and
- 8.5. any other similar cause or event, including a change in law, regulation, ordinance or permit, provided that the foregoing is beyond the reasonable control of the party claiming Force Majeure.

If, because of Force Majeure any party's cost is increased by more than 15%, or any party hereto is rendered unable, wholly or in part, to carry out its obligations under this Contract, then such party shall give to the other party prompt written notice of the Force Majeure with reasonable full details concerning it; thereupon the obligation of the party giving the notice, so far as they are affected by the Force Majeure, shall be partially or completely suspended during, but no longer than, the continuance of the Force Majeure. The affected party shall use all possible diligence to remove the Force Majeure as quickly as possible, but this obligation shall not be deemed to require the settlement of any strike,

lockout, or other labor difficulty contrary to the wishes of the party involved. If, because of Force Majeure the CONTRACTOR'S cost is increased, then CUSTOMER agrees to negotiate an increase in the price paid to CONTRACTOR to cover those increased costs for the duration of the Force Majeure. However, if because of Force Majeure CONTRACTOR'S cost is increased by more than 15%, then CUSTOMER may suspend Contract performance for the duration of the Force Majeure, and may exercise CUSTOMER'S right to terminate the Agreement. It is acknowledged by CONTRACTOR that an increase in diesel fuel and/or gasoline prices will specifically not be considered a FORCE MAJEURE.

9. TERM

9.1. The term of this AGREEMENT shall commence on the EFFECTIVE DATE and shall terminate twelve (12) months later (the "INITIAL TERM"). At the end of this INITIAL TERM, this AGREEMENT may be extended for an additional twelve (12) months option as may be mutually agreed in writing by both parties. Either party may terminate this AGREEMENT and shall have no further obligations to the other under this AGREEMENT: if (i) the other party fails to observe or perform any material covenant or agreement contained in this AGREEMENT, without cure, for fifteen (15) calendar days after written notice thereof has been given to such other party, or (ii) at any time upon the insolvency of the other party, or the institution by or against the other party of any proceeding in bankruptcy or insolvency; or for the appointment of a receiver or trustee or for an assignment for the benefit of creditors. **IT IS EXPRESSLY HEREBY ACKNOWLEDGED BY THE PARTIES THAT THE AGREEMENT MAY ALSO BE CANCELLED FOR THE CONVENIENCE OF EITHER PARTY, WITHOUT RECOURSE DAMAGE CLAIMS, BY GIVING AT LEAST NINETY (90) CALENDAR DAYS ADVANCE WRITTEN NOTICE TO THE OTHER PARTY.**

9.2. CONTRACTOR may terminate this AGREEMENT for cause at any time upon twenty (20) calendar days advanced written notice to CUSTOMER, and have no further obligation to CUSTOMER if:

9.2.1. The CONTRACTOR is unable to press, haul and dispose of the BIOSOLIDS due to an unexpected and substantial change in any LEGAL REQUIREMENTS that renders the SERVICES (or any part thereof) illegal.

9.2.2. CUSTOMER breaches its obligations under this AGREEMENT.

10. PRICE

10.1. Except as otherwise provided in this AGREEMENT, CUSTOMER will pay the following fixed prices for CONTRACTOR'S SERVICES hereunder for the duration of the INITIAL TERM of this Agreement:

PLANT	<u>\$76.00</u> /per wet ton of BIOSOLIDS (minimum 15% solids content)
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10.2. **Billing.** CONTRACTOR shall submit its monthly invoices to the following address:

City of Kyle
City of Kyle
Public Works Dept.
P.O. Box 40
Kyle, TX 78640

11. MISCELLANEOUS COMMERCIAL PROVISIONS.

11.1. **Assignment.** The CUSTOMER and/or CONTRACTOR shall have the right to assign this AGREEMENT in writing to any successor in interest, subject to the written approval of the other party, which approval shall not be unreasonably withheld.

11.2. **Governing Law.** THIS AGREEMENT AND ALL THE RIGHTS AND DUTIES OF THE PARTIES ARISING FROM OR RELATING IN ANY WAY TO THE SUBJECT MATTER OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY IT, SHALL BE GOVERNED BY, CONSTRUED, AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, IN HAYS COUNTY, TEXAS.

11.3. **Costs and Fees.** The prevailing party in any legal proceeding brought by or against the other party to enforce any provision or term of this AGREEMENT shall be entitled to recover against the non-prevailing party the reasonable attorneys' fees, court costs and other expenses incurred by the prevailing party.

11.4. **Consent to Breach Not Waiver.** No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent is placed in writing and signed by the party claimed to have waived or consented. No consent by any party to, or waiver of, a breach by the other party shall constitute a consent to, waiver of, or excuse of any other different or subsequent breach.

11.5. **Severability.** If any term or provision of this AGREEMENT should be declared invalid by a court of competent jurisdiction: (i) the remaining terms and provisions

of this AGREEMENT shall be unimpaired; and (ii) the invalid term or provision shall be replaced by such valid term or provision as comes closest to the intention of both parties underlying the invalid term or provision.

11.6. **ENTIRE AGREEMENT.** THIS AGREEMENT, THE CUSTOMER'S ADVERTISEMENT FOR BIDS AND THE CONTRACTOR'S UNQUALIFIED BID CONSTITUTE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES WITH REGARD TO THE MATTERS SET FORTH HEREIN, AND IT SUPERSEDES ALL OTHER INFORMAL DISCUSSIONS, AGREEMENTS, PROPOSALS, AND REPRESENTATIONS, ORAL OR WRITTEN, EXPRESS OR IMPLIED, WITH REGARD THERETO.

11.7. **Amendments.** This AGREEMENT may be amended from time to time only by an instrument in writing signed by the legally authorized parties to this AGREEMENT.

11.8. **Counterparts.** This AGREEMENT may be executed in counterparts, which together shall constitute one and the same Contract. The parties may execute more than one copy of this AGREEMENT, each of which shall constitute an original.

12. DEFINITIONS

12.1. "AUTHORIZATIONS" means all authorizations, permits, applications, notices of intent, registrations, variances, and exemptions, required for the lawful hauling and disposal of BIOSOLIDS in compliance with all applicable LEGAL REQUIREMENTS.

12.2. "BIOSOLIDS" means municipal wastewater treatment plant sewage sludge that has been dewatered by CONTRACTOR, to a minimum of 15% solids concentration at CONTRACTOR'S expense. BIOSOLIDS do not include any hazardous materials or other substances prohibited under the applicable laws and regulations for the desired method of disposal.

12.3. "ENVIRONMENTAL LAWS" means any AUTHORIZATION and any applicable federal, state, or local law, rule, regulation, ordinance, order, decision, principle of common law, consent decree or order, of any GOVERNMENTAL AUTHORITY, now or hereafter in effect relating to HAZARDOUS MATERIALS, BIOSOLIDS, or the protection of the environment, health and safety, or a community's right to know, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, the Resource Conservation and Recovery Act, the Safe Drinking Water Act, the Clean Water Act, the Clean Air Act, the Emergency Planning and Community Right to Know Act, the Hazardous Materials Transportation Act, the Occupational Safety and Health Act, and any analogous state or local law, as may be periodically amended.

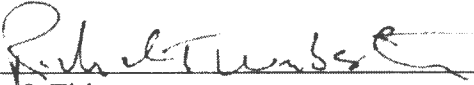
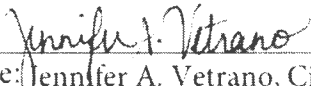
12.4. "GOVERNMENTAL AUTHORITY" means any foreign governmental authority, the United States of America, any State within the United States of America, any local authority, and any political subdivision of any of the foregoing, and any agency, department, commission, board, bureau, court, tribunal or any other governmental authority having jurisdiction over this AGREEMENT, BIOSOLIDS regulation, CUSTOMER or CONTRACTOR, or any of their respective assets, properties, sites, facilities or operations.

12.5. "HAZARDOUS MATERIALS" means any "petroleum," "oil," "hazardous waste," "hazardous substance," "toxic substance," and "extremely hazardous substance" as such terms are defined, listed, or regulated under ENVIRONMENTAL LAWS, or as they become defined, listed, or regulated under ENVIRONMENTAL LAWS.

12.6. "LEGAL REQUIREMENT" means any AUTHORIZATION and any applicable federal, state, or local law, rule, regulation, ordinance, order, decision, principle of common law, consent decree or order, of any GOVERNMENTAL AUTHORITY, now or hereafter in effect, including without limitation, ENVIRONMENTAL LAWS.

IN WITNESS WHEREOF, the parties to this AGREEMENT have hereunto set their lawfully and authorized hands and seals, dated as of the day and year first herein written.

City of Kyle, Texas ("CUSTOMER")

By:  ATTEST: 
Name & Title: R. Todd Webster, Mayor Name & Title: Jennifer A. Vetrano, City Secretary
Date: 6/13/2016

("CONTRACTOR")

By:  ATTEST: 
Name & Title: Philip S. Macammon - P.E. Name & Title: Jason Biemer - Division Mgr Treatment
Date: 6/14/16