

AGREEMENT  
**CITY OF YAKIMA RFP 11913P**

Biosolids Hauling & Land Application Services for Wastewater Treatment Plant

**THIS AGREEMENT**, entered into on the date of last execution, between the City of Yakima, a Washington municipal corporation ("City"), and Natural Selection Farms, Inc., ("Contractor").

**WITNESSETH:** The parties, in consideration of the terms and conditions herein, do hereby covenant and agree as follows:

**1. Statement of Work**

The Contractor shall perform all work and service(s) and furnish all tools, materials, labor and equipment (collectively referred to as "Services") according to the procedure outlined in RFP #11913P Biosolids Hauling & Land Application Services Specifications which are attached as Exhibit A, and WAC 173-308, all of which are incorporated herein by this reference, and shall perform any alterations in or additions to the work provided under this Contract and every part thereof.

Work shall begin within seven (7) business days after each Notice to Proceed.

The Contractor shall provide and bear the expense of all equipment; work and labor of any sort whatsoever that may be required for the transfer of materials and completing the work provided for in this Contract and every part thereof, except such as are mentioned in the specifications to be furnished by the City of Yakima.

**2. Compensation**

The City agrees to pay the Contractor according to Exhibit B, attached hereto and incorporated herein, which Exhibit includes the specifications and payment schedule of itemized prices as listed in the Contractor's Proposal submittal at the time and in the manner and upon the conditions provided for the Contract.

Contractor is to submit properly completed invoice(s) to the address specified on the purchase order. To insure prompt payment each invoice should cite purchase order number, RFP number (11913P), quantities hauled to each site, the acreage to which biosolids were applied at each site, the unit fee for the service and the total charge for the month. The invoice should also include any discount terms and include the Contractor's name and return remittance address. Payment terms are net 30 days.

**3. Contract Term and Extension**

The period of this Contract shall be for a period of five (5) years from its effective date. The City may, at its option, extend the Contract on a year to year basis for up to five (5) additional years provided, however, that either party may at any time during the life of this Contract, or any extension thereof, terminate this Contract by giving ninety (90) days' notice in writing to the other party of its intention to cancel per Section 20 below. Contract extensions shall be automatic, and shall go into effect without written confirmation, unless the City provides advance notice of the intention to not renew. The City's option to extend the Contract for each additional one-year (1-year) term is at the sole discretion of the City.

**4. Changes**

Any proposed change in this Contract shall be submitted to the other party, for its prior written approval. If approved, change will be made by a contract modification that will become effective upon execution by the parties hereto. Any oral statement or representation changing any of these terms or conditions is specifically unauthorized and is not valid.

## 5. Expansion

Contract may be further expanded by the Purchasing Buyer in writing to include any other related service(s) normally offered by the Contractor, as long as the price of such additional service(s) is based on the same cost/profit formula as the listed item.

Any new services accepted by the City may be added to this contract and/or substituted for discontinued services. New services shall meet or exceed all proposal specifications of original award.

## 6. Price Adjustment for Change in Law

NSF may, subject to agreement of the parties, increase the minimum service fee by one hundred percent (100%) of NSF's reasonable actual increased costs of performing its obligations under this Contract due to a change in law. For purposes of this section, a "change in law" includes new laws, regulations, ordinances of general application and modifications of them; new decisions of tribunals, either judicial or administrative, and any modifications of them; or the imposition of any material conditions on the renewal of any permit, license or approval which makes the transportation, storage, land application or other management of biosolids more burdensome financially than under the requirements in effect at the Effective Date; a "change in law" shall include, without limitation, a determination that performance by NSF of the terms of this Contract requires that NSF pay prevailing wage rates, as may be required by law; it being a basis of the price terms in this Contract that NSF is and shall not be required to pay prevailing wage rates. Whether or not a change in law material to this Contract has occurred shall be determined by agreement of the parties, in writing. Such increase in service fees may occur only for reasonable costs that are actually incurred and shall not be allowed for any cost increases that are in any way attributable to activities caused by NSF or its subcontractors, employees, or agents, or are otherwise within NSF's control.

## 7. Adjustment of Fees

The non-fuel-related service fee for this Contract shall be adjusted annually on the yearly anniversary date of this Contract, beginning one year after the date of execution. Said adjustment shall be 1% plus an additional factor dictated by, and directly proportional to, the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Size Class B/C (Series ID: CUURN000SA0, CUUSN000SA0) over the same period of time.

Calculation to be used for CPI adjustment, in addition to 1% annual adjustment: CPI for the most recent month available as of the anniversary date of the contract, less CPI for the same month of the previous year\*, equals index point change. Index point change, divided by previous year's CPI, with result multiplied by 100, equals percent change. *\*Note: the first yearly index point change calculation will reference the CPI for the most recent month available as of the anniversary date of the contract, less CPI from the RFP due date of August 30, 2019.*

The fuel-related service fee for this Contract shall be adjusted quarterly. This fuel-related fee will be adjusted on January 1, April 1, July 1 and October 1 using the most recent values available as of the date of the adjustment. The fuel portion rate adjustment shall be made for #2 diesel fuel (PPI Series ID: wpu057303).

Calculation to be used: PPI for the most recent month available as of the date of the adjustment ("current period"), less PPI for the month three months prior to the current period, equals index point change. Index point change, divided by prior PPI, with result multiplied by 100, equals percent change. *\*Note: the first quarterly index point change calculation will reference the PPI closest to the RFP due date of August 30, 2019.*

Example: As of October 1, the most recent PPI available is for August, which is 207.6. The month three months prior to August is May at 235.5. Calculation:  $207.6 - 235.5 = -27.9 \div 235.5 = -0.119 \times 100 = -11.9$ .

For the purpose of confirming the accuracy of any proposed fee adjustment, NSF shall submit proposed fee adjustments, including supporting CPI and PPI documentation, for the City's review and consent, which the City shall



not unreasonably withhold. Payment of an erroneous invoice does not constitute acceptance of the erroneous pricing, and the City would seek reimbursement of the overpayment or would withhold such overpayment from future invoices.

#### **8. Agency Relationship between City and Contractor**

Contractor shall, at all times, be an independent Contractor and not an agent or representative of City with regard to performance of the Services. Contractor shall not represent that it is, or hold itself out as, an agent or representative of City. In no event shall Contractor be authorized to enter into any agreement or undertaking for, or on, behalf of City.

#### **9. Successors and Assigns**

- a. Neither the City, nor the Contractor, shall assign, transfer, or encumber any rights, duties, or interests accruing from this Contract without the prior written consent of the other.
- b. The Contractor for himself, and for his heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

#### **10. Property Rights**

All records or papers of any sort relating to the City and to the project will at all times be the property of the City and shall be surrendered to the City upon demand. All information concerning the City and said project which is not otherwise a matter of public record or required by law to be made public, is confidential, and the Contractor will not, in whole or part, now or at any time disclose that information without the express written consent of the City.

#### **11. Inspection and Production of Records**

- a. The records relating to the Services shall, at all times, be subject to inspection by and with the approval of the City, but the making of (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Services in accordance with this Contract, notwithstanding the City's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery. Contractor shall provide the City sufficient, safe, and proper facilities, and/or send copies of the requested documents to the City. Contractor's records relating to the Services will be provided to the City upon the City's request.
- b. Contractor shall promptly furnish the City with such information and records which are related to the Services of this Contract as may be requested by the City. Until the expiration of six (6) years after final payment of the compensation payable under this Contract, or for a longer period if required by law or by the Washington Secretary of State's record retention schedule, Contractor shall retain and provide the City access to (and the City shall have the right to examine, audit and copy) all of Contractor's books, documents, papers and records which are related to the Services performed by Contractor under this Contract.
- c. All records relating to Contractor's services under this Contract must be made available to the City, and the records relating to the Services are City of Yakima records. They must be produced to third parties, if required pursuant to the Washington State Public Records Act, Chapter 42.56 RCW, or by law. All records relating to Contractor's services under this Contract must be retained by Contractor for the minimum period of time required pursuant to the Washington Secretary of State's records retention schedule.
- d. The terms of this section shall survive any expiration or termination of this Contract.

#### **12. Work Made for Hire**

All work the Contractor performs under this Contract shall be considered work made for hire, and shall be the property of the City. The City shall own any and all data, documents, plans, copyrights, specifications, working papers, and any

other materials the Contractor produces in connection with this Contract. On completion or termination of the Contract, the Contractor shall deliver these materials to the City.

### **13. Guarantee**

Contractor warrants the Services will be free from defects in material and workmanship for a period of one year following the date of completion and acceptance of the Services.

### **14. Compliance with Law**

Contractor agrees to perform all Services under and pursuant to this Contract in full compliance with any and all applicable laws, rules, and regulations adopted or promulgated by any governmental agency or regulatory body, whether federal, state, local, or otherwise. Contractor shall procure and have all applicable and necessary permits, licenses and approvals of any federal, state, and local government or governmental authority or this project, pay all charges and fees, and give all notices necessary and incidental to the due and lawful execution of the work.

- a. Procurement of a City Business License. Contractor must procure a City of Yakima Business License and pay all charges, fees, and taxes associated with said license.
- b. Contractor must provide proof of a valid Washington department of Revenue state excise tax registration number, as required in Title 85 RCW.
- c. Contractor must provide proof of a valid Washington Unified Business Identification (UBI) number. Contractor must have a current UBI number and not be disqualified from bidding on any public works contract under RCW 39.06.101 or 36.12.065(3).
- d. Contractor must provide proof of a valid Washington Employment Security Department number as required by Title 50 RCW.
- e. Foreign (Non-Washington) Corporations: Although the City does not require foreign corporate proposers to qualify in the City, County or State prior to submitting a proposal, it is specifically understood and agreed that any such corporation will promptly take all necessary measures to become authorized to conduct business in the City of Yakima at their own expense, without regard to whether such corporation is actually awarded the contract, and in the event that the award is made, prior to conducting any business in the City.

### **15. Nondiscrimination:**

During the performance of this Contract, the Contractor agrees as follows:

The Contractor shall not discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, age, marital status, sexual orientation, pregnancy, veteran's status, political affiliation or belief, or the presence of any sensory, mental or physical handicap in violation of the Washington State Law Against Discrimination (RCW chapter 49.60) or the Americans with Disabilities Act (42 USC 12101 et seq.).

This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of Services under this Agreement.

In the event of the Contractor's noncompliance with the non-discrimination clause of this contract or with any such rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for any future City contracts.



## **16. Indemnification and Hold Harmless**

- a. Contractor shall take all necessary precautions in performing the Services to prevent injury to persons or property. Contractor agrees to defend, indemnify and hold harmless the City, its elected and appointed officials, officers, employees, attorneys, agents, and volunteers from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including reasonable costs and attorney fees) which result or arise out of the sole negligent acts or omissions of Contractor, its officials, officers, employees or agents.
- b. If any suit, judgment, action, claim or demand arises out of, or occurs in conjunction with, the negligent acts and/or omissions of both the Contractor and the City, or their elected or appointed officials, officers, employees, agents, attorneys or volunteers, pursuant to this Contract, each party shall be liable for its proportionate share of negligence for any resulting suit, judgment, action, claim, demand, damages or costs and expenses, including reasonable attorneys' fees.
- c. Contractor's Waiver of Employer's Immunity under Title 51 RCW. If any design or engineering work is done pursuant to this Contract, Contractor intends that its indemnification, defense, and hold harmless obligations set forth above in Section A shall operate with full effect regardless of any provision to the contrary in Title 51 RCW, Washington's Industrial Insurance Act. Accordingly, to the extent necessary to fully satisfy the Contractor's indemnification, defense, and hold harmless obligations set forth above in Section A, Contractor specifically waives any immunity granted under Title 51 RCW, and specifically assumes all potential liability for actions brought by employees of the Contractor against the City and its elected and appointed officials, officers, employees, attorneys, agents, and volunteers. The parties have mutually negotiated this waiver. Contractor shall similarly require that its subcontractors, and anyone directly or indirectly employed or hired by Contractor, and anyone for whose acts Contractor may be liable in connection with its performance of this Agreement, shall comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all potential liability for actions brought by their respective employees. The provisions of this section shall survive the expiration or termination of this Agreement.
- d. Nothing contained in this Section or this Contract shall be construed to create a liability or a right of indemnification in any third party.
- e. The terms of this Section shall survive any expiration or termination of this Contract.

## **17. Contractor's Liability Insurance**

At all times during performance of the Services and this Contract, Contractor shall secure and maintain in effect insurance to protect the City and Contractor from and against any and all claims, damages, losses, and expenses arising out of or resulting from the performance of this Contract. Contractor shall provide and maintain in force insurance in limits no less than that stated below, as applicable. The City reserves the right to require higher limits should it deem it necessary in the best interest of the public.

Contractor will provide a Certificate of Insurance to the City as evidence of coverage for each of the policies and outlined herein. A copy of the additional insured endorsement attached to the policy will be included with the certificate. This Certificate of insurance shall be provided to the City, prior to commencement of work.

Failure of City to demand such verification of coverage with these insurance requirements or failure of City to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.



The following insurance is required:

- a. **Commercial Liability Insurance.** Before this Contract is fully executed by the parties, Contractor shall provide the City with a certificate of insurance as proof of commercial liability insurance with a minimum liability limit of Two Million Dollars (\$2,000,000.00) per occurrence, combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000.00) general aggregate. This insurance requirement can be satisfied with a combination of commercial general liability insurance and excess or umbrella liability insurance coverage. If Contractor carries higher coverage limits, such limits shall be shown on the Certificate of Insurance and Endorsements and the City, its elected and appointed officials, employees, agents, attorneys and volunteers shall be named as additional insureds for such higher limits. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Contract. The policy shall name the City of Yakima, its elected and appointed officials, employees, agents, attorneys and volunteers as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the City prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington. The requirements contained herein, as well as City of Yakima's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this contract.
- b. **Automobile Liability Insurance.**  
Before this Contract is fully executed by the parties, Contractor shall provide the City with a certificate of insurance as proof of automobile liability insurance with a minimum liability limit of Two Million Dollars (\$2,000,000.00) per occurrence. If Contractor carries higher coverage limits, such limits shall be shown on the Certificate of Insurance and Endorsements and the City, its elected and appointed officials, employees, agents, attorneys and volunteers shall be named as additional insureds for such higher limits. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Contract. The policy shall name the City of Yakima, its elected and appointed officials, employees, agents, attorneys and volunteers as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the City prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington. The requirements contained herein, as well as City of Yakima's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this contract. The business auto liability shall include Hired and Non-Owned coverage if necessary.
- c. **Employer's Liability (Stop Gap):**  
Contractor and all subcontractor(s) shall at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable, and shall maintain Employer's Liability insurance with a limit of no less than \$1,000,000.00. The City shall not be held responsible in any way for claims filed by Contractor or its employees for services performed under the terms of this Contract. Contractor agrees to assume full liability for all claims arising from this Contract including claims resulting from negligent acts of all subcontractor(s). Contractor is responsible to ensure subcontractor(s) have insurance as needed. Failure of subcontractors(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

Contractor's insurance coverage shall be primary insurance with respect to those who are Additional Insureds under this Contract. Any insurance, self-insurance or insurance pool coverage maintained by the City shall be in excess of the Contractor's insurance and shall not contribute to it.

If at any time during the life of the Contract, or any extension, Contractor fails to maintain the required insurance in full force and effect, all work under the contract shall be discontinued immediately. Any failure to maintain the required insurance may be sufficient cause for the City to terminate the Contract.

Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Contractor and the City, its officers, elected and appointed officials, employees, agents, attorneys and volunteers, Contractor's liability hereunder shall be limited to the extent of the Contractor's negligence.

#### **18. Severability**

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Contract are declared severable.

#### **19. Contract Documents**

This Contract, the Request for Proposals #11913P, Scope of Work, conditions, addenda, and modifications and Contractor's proposal (to the extent consistent with City of Yakima documents) constitute the Contract Documents and are complementary. Specific Federal and State laws and the terms of this Contract, in that order respectively, supersede other inconsistent provisions. These Contract Documents are on file in the Office of the Purchasing Manager, 129 No. 2<sup>nd</sup> St., Yakima, WA, 98901, and are hereby incorporated by reference into this Contract.

#### **20. Termination - Convenience**

This Contract may be terminated by either party by giving ninety (90) days written notice of such intent and will become effective ninety (90) days from the date such written notice is delivered to the applicable party to the Contract.

#### **21. Termination - Cause**

The City reserves the right to terminate this Contract at any time, upon written notice, in the event that the Services of Contractor are deemed by the City to be unsatisfactory, or upon failure to perform any of the terms and conditions contained in this Contract. The effective date for such termination shall be upon receipt of the notice, or three days after the notice is mailed first class mail, certified with return receipt requested.

#### **22. Force Majeure**

Contractor will not be responsible for delays in delivery due to acts of God, fire, strikes, epidemics, war, riot, delay in transportation or railcar transport shortages, provided Contractor notifies the City immediately in writing of such pending or actual delay. Normally, in the event of any such delays (acts of God, etc.) the date of delivery will be extended for a period equal to the time lost due to the reason for delay.

#### **23. Governing Law**

This Contract shall be governed by and construed in accordance with the laws of the State of Washington.

#### **24. Venue**

The venue for any judicial action to enforce or interpret this Contract shall lie in a court of competent jurisdiction in Yakima County, Washington.

#### **25. Authority**

The person executing this Contract, on behalf of Contractor, represents and warrants that he/she has been fully authorized by Contractor to execute this Contract on its behalf and to legally bind Contractor to all the terms, performances and provisions of this Contract.



**26. Notice**

Any notice required or permitted to be given under this Contract shall be in writing and deemed effective if either delivered in person or by overnight courier, facsimile or first class mail, certified with return receipt requested. Notices to the parties shall be delivered to:

TO CITY: City Manager  
City of Yakima  
City Hall—First Floor  
129 North Second Street  
Yakima, WA 98901

TO CONTRACTOR: Ted & Pam Durfey  
CC: Brian Campbell  
Natural Selection Farms  
PO Box 419  
Sunnyside, WA 98944

COPY TO: City of Yakima Purchasing  
City Hall—First Floor  
129 North Second Street  
Yakima, WA 98901

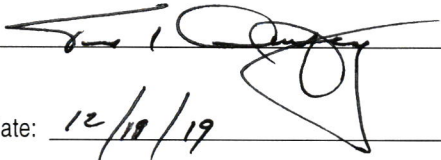
**27. Survival**

The foregoing sections of this Contract, 2-26 inclusive, shall survive the expiration or termination of this Contract in accordance with their terms.

**IN WITNESS WHEREOF**, the parties hereto execute this Contract as of the day and year first above written.

**CITY OF YAKIMA****NATURAL SELECTION FARMS, INC.**\_\_\_\_\_  
City Manager

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

  
Date: 12/10/19**Attest:**TED R. DURFEY, PRES  
(Print name, title)\_\_\_\_\_  
City ClerkSTATE OF \_\_\_\_\_ )  
 ) ss.

COUNTY OF \_\_\_\_\_

**DONE** this \_\_\_\_ day of \_\_\_\_\_ 2020



## **EXHIBIT A**

### **TO AGREEMENT**

The Contractor shall perform all work and service(s) and furnish all tools, materials, labor and equipment (collectively referred to as "Services") according to the procedure outlined in RFP #11913P Biosolids Hauling & Land Application Services Specifications which are attached as Exhibit A, and WAC 173-308 all of which are incorporated herein by this reference, and shall perform any alterations in or additions to the work provided under this Contract and every part thereof.

Separate Attachment

## **EXHIBIT B**

### **TO AGREEMENT**

The City agrees to pay the Contractor according to Exhibit B, attached hereto and incorporated herein, which Exhibit includes the specifications and payment schedule of itemized prices as listed in the Contractor's RFP submittal at the time and in the manner and upon the conditions provided for the Contract.

Separate Attachment