



CITY MANAGER'S REPORT AGENDA ITEM REQUEST

FINANCE DEPARTMENT

TO: Ed Lavallee, City Manager

THROUGH: Jeff Snyder, Finance Director

FROM: Jon Mayes, Procurement Specialist

DATE: February 21, 2014

SUBJECT: Haul & dispose of Bio-solids from the Eastside WWTP (ITB # 2979-14)

Background:

At the request of the Utilities Department, Procurement solicited sealed bids to “Haul & Dispose of Bio-solids from the Eastside WWTP”. On February 6, 2014 Procurement received and subsequently opened the sealed bids.

Based on the attached bid tabulation, staff recommends award of the contract to Synagro (dba Charlotte County Bio-Recycling Center, LLC) of Punta Gorda, FL, considered a local firm, as the lowest responsive, responsible bidder in the amount of \$ 48.95 per wet ton [or \$198,981.75 for an average contract year.] **This is a savings of approximately \$20,000.00 a year. The last bid in 2009 there was a savings of \$80,000.00 per year. This is a recognized savings of \$100,000.00 per year, compared to what the City was paying in 2008.**

This request is made in concurrence with Len Bramble, P.E., Utilities Director and Tim Hochuli, P.E., Assistant Utilities Director.

Requested Action:

We request Council's approval of the attached contract with Synagro, the lowest responsive, responsible bidder for this contract in the amount of \$ 48.95 per wet ton [or \$198,981.75 for an average contract year.]

City Attorney Review:

The City Attorney has reviewed this document and finds no legal objections.

Risk Management Review:

The Risk Manager has reviewed this document and finds no risk management objections.

Funds Availability (account number):

Funds appropriated in department account for budget year 2013-2014



PROCUREMENT DEPARTMENT - CITY OF VENICE, FLORIDA
 BID TABULATION SHEET
 ITB # 2979-14: HAUL & DISPOSE OF BIO-SOLIDS
 FROM THE EASTSIDE WWTP
 DUE: FEBRUARY 6, 2014 @ 2:00 PM

Please print for all columns:

#	Firm Name	Total Bid	All Required Forms- y/n
1	Appalachian Material Service (AMS) Terra Ciega FL 34250	\$57.83/ per wet ton	Yes
2	Synagro (dba Charlotte County Bio- Recycling Center, LLC) Punta Gorda FL 33955	\$ 48.95/ per wet ton	Yes
3			
4	Delta Pioneer Inc.	No bid	N/A
5			
6			
7			
8			

BIOSOLIDS MANAGEMENT SERVICE AGREEMENT

This **SERVICE AGREEMENT** (hereinafter called the **AGREEMENT**) made and entered into this ____ day of _____, 2014, by and between the City of Venice, Florida, whose address is 401 West Venice Avenue, Venice, Florida 34285 (hereinafter called **CITY**), and Charlotte County Bio-Recycling Center, LLC, whose address is 29751 Zemel Road, Punta Gorda, Florida 33955 (hereinafter called **CONTRACTOR**, which term shall include its successors and assigns).

WITNESSETH

In consideration of the following covenants and **AGREEMENT**, the **CITY** and the **CONTRACTOR** hereby mutually agree as follows:

1. SCOPE:

The **CONTRACTOR** shall provide biosolids management services regarding the **CITY's** biosolids, which constitute primarily illiquid semi solid (15%-25% solids) residue generated during the treatment of domestic sewage in a treatment works (hereinafter called **BIOSOLIDS**) generated by the East Side Waste Water Treatment Facility physically located at 3510 East Laurel Road, Venice, Florida 34275 (the **PLANT**). The **CONTRACTOR's** services shall include removal of the **BIOSOLIDS** from a belt filter press, loading of the **BIOSOLIDS** on to trailers, and transportation and disposal of the **BIOSOLIDS**, in accordance with the terms of this **AGREEMENT**.

2. CONTRACTOR OBLIGATIONS:

The **CONTRACTOR** shall:

- (a) Within six (6) weeks after receipt of notice from **CITY**, install a conveyance system (which ownership remains with **CONTRACTOR** and shall be removed at the end of the Initial Term and extensions thereof) and thereafter cause the removal, transportation, and disposal of **CITY's BIOSOLIDS** and, in connection with such activities, maintain **AUTHORIZATIONS** and landfill **AGREEMENTS** required of **CONTRACTOR**.
- (b) At the written request of the **CITY**, and as applicable, provide any **AUTHORIZATIONS** which are issued by applicable **GOVERNMENTAL AUTHORITIES**.
- (c) Notify the **CITY** of any notice of violation, action, suit, claim, or legal proceeding against **CONTRACTOR** relating to any aspect of the **CITY's BIOSOLIDS** managed pursuant to this **AGREEMENT**.

- (d) Develop and implement monitoring, record keeping, and reporting programs as required by applicable **LEGAL REQUIREMENTS**, and as set forth in Section 6 of this **AGREEMENT**.
- (e) Provide proof of liability insurance, as set forth in Section 4 of this **AGREEMENT**.
- (f) Indemnify, **CITY**, and hold harmless **CITY**, its subsidiaries, affiliates, successors and assigns and their respective directors, officers, employees, shareholders, representatives and agents (hereinafter referred to collectively in this section as **CITY INDEMNITEES**) from and against of any and all claims, liabilities, lawsuits, causes of action, together with reasonable costs, expenses, and attorneys' fees associated therewith and all amounts paid in defense or settlement of the forgoing, which may be imposed upon or incurred by **CITY INDEMNITEES** or asserted against **CITY INDEMNITEES** by any other person or persons (including **GOVERNMENTAL AUTHORITIES**), to the extent caused by **CONTRACTOR's** breach of its obligations under this **AGREEMENT** or violation of applicable **LEGAL REQUIREMENTS**.
- (g) **CONTRACTOR's** obligations to take, receive, or beneficially reuse **BIOSOLIDS** shall be suspended during a Force Majeure as described herein.

3. **CITY:**

The **CITY** shall:

- (a) Provide to **CONTRACTOR** for disposal 100% of the annual volume of **BIOSOLIDS** generated at the **PLANT** which shall meet the paint filter test.
- (b) Provide **CONTRACTOR** with reasonable access to the **CITY'S** 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 access, that both parties will attempt to resolve such conditions as expeditiously as possible.
- (c) Provide **CONTRACTOR** with a certification regarding concentrations of **HAZARDOUS MATERIALS**, pathogen reduction, and vector attraction reduction, as well as certification that all methods and procedures used by customer for the sampling and analysis of **BIOSOLIDS** comply with requirements of any applicable **LEGAL REQUIREMENTS**. The form of certification and the type of information which the **CONTRACTOR** may request from **CITY** may include the form of certification or the type of information which **CITY** must maintain under applicable **LEGAL REQUIREMENTS**. **CONTRACTOR** shall have the undisputed right to rely upon any information or certification provided by **CITY**, and shall not have any independent duty to investigate or inquire regarding the subject

matter of the **CITY'S** certification or of the information which **CITY** provides to **CONTRACTOR**.

- (d) Not provide to **CONTRACTOR** any **BIOSOLIDS** which contain **HAZARDOUS MATERIAL** or are hazardous in accordance with 40 C.F.R. Part 261, or other federal and state laws.
- (e) Provide **CONTRACTOR** with at least one (1) week advance notice of when **CITY** desires for **CONTRACTOR** to remove **BIOSOLIDS** from **PLANT**.
- (f) Notify the **CONTRACTOR** of operating changes or any other conditions that would reasonably be expected to affect the **BIOSOLIDS** handled by **CONTRACTOR** under this **AGREEMENT**.

4. **INSURANCE:**

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

A. **Workers Compensation:** **CONTRACTOR** will provide Workers Compensation Insurance on behalf of all employees, including sub-contractors who are to provide a service under this **AGREEMENT**, as required under Florida Law, Chapter 440, and Employers Liability with limits of not less than \$100,000 per employee per accident; \$500,000 disease aggregate; and \$100,000 per employee per disease.

B. **Commercial General Liability** including but not limited to bodily injury, property damage, contractual, products and completed operations, and personal injury with limits of not less than \$1,000,000 per occurrence, \$1,000,000 aggregate covering all work performed under this **AGREEMENT**, to include broad form property damage.

C. **Commercial General Liability and Automobile Liability:** Insurance to include premises operations and subcontractors. Completed Operations and Contractual Liability are to be included under the Commercial General Liability Coverage. The insurance policies will have limits of no less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.

D. **Pollution and Remediation Legal Liability:** with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate covering all work under this contract.

The **City** shall be named as an Additional Insured on all policies.

5. **PAYMENT:**

The **CONTRACTOR** shall provide the **CITY** with an accounting of tons of **BIOSOLIDS** removed from **CITY'S PLANT**.

- 5.1 The **CONTRACTOR** shall submit invoices each month for services provided by **CONTRACTOR**, using the rates and amounts agreed in Section 10 of this **AGREEMENT**. The **CITY** shall pay all invoices within 30 days after receipt of the invoice.
- 5.2 It is agreed that in the event of any dispute concerning invoice amount, **CITY** will pay undisputed invoice amounts within 30 days after receipt of the invoice.

6. **RECORDS KEEPING:**

The **CONTRACTOR** shall maintain records and submit summary reports to the **CITY**. **CONTRACTOR** agrees to comply with Florida's public records laws, Florida Statutes 119.01, *et seq*, as amended from time to time, by keeping and maintaining public records that ordinarily and necessarily would be required by a public agency in order to perform the service; by providing the public with access to public records on the same terms and conditions that **CITY** would provide the records and at a cost that does not exceed the cost provided by Florida law; by ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed excepts as authorized by law; and by meeting all requirements for retaining public records and transferring, at no cost, to City all public records in possession of **CONTRACTOR** upon termination of this contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

7. **NOTICES:**

Except as otherwise provided herein, any notice, demand or other communication shall be in writing and shall be personally served, sent 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 change at any time by notice in writing delivered to **CITY**.

Charlotte County Bio-Recycling Center, LLC

29751 Zemel Road
Punta Gorda, FL 33955
Phone: (443) 489-9000
Fax: (443) 489-9042
Attention: Michael Wolfe

With a copy to:
435 Williams Court, Suite 100
Baltimore, MD 21220
Attention: General Counsel

Remit to address:

c/o Synargo Technologies, Inc., 7773 Solution Center, Chicago, IL 60677-7007

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

City of Venice, Florida
401 W. Venice Ave.
Venice, Florida 34285

8 **FORCE MAJEURE:**

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

- 8.1 acts of God, landslides, lightning, earthquakes, hurricanes, tornadoes, blizzards and other adverse and inclement weather, fires, explosions, floods, acts of a public enemy, wars, blockades insurrections, riots or civil disturbances.
- 8.2 Labor disputes, strikes, Work slowdowns or Work stoppages;
- 8.3 Orders or judgments of any Federal, State or local court, administrative agency or governmental body, if not the result of willful or negligent action of the party relying thereon;
- 8.4 Power failure and outages affecting the Premises; 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 **AGREEMENT**, 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 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 his 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 **CONTRACTOR's** cost is increased then **CITY** agrees to 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 **CITY** may suspend performance for the duration of the Force Majeure.

9 **TERM:**

- 9.1 This **AGREEMENT** shall be effective from the **EFFECTIVE DATE** until _____, 2017 (the **INITIAL TERM**). At the end of this term, this

AGREEMENT may be extended for one (1) two year-term mutually agreed in writing by both parties. Either party may terminate this **AGREEMENT** and shall have no further obligations to each other under this **AGREEMENT** if (i) the other party fails to observe or perform any material covenant or agreement contained in this agreement for ten (10) business days after written notice thereof has been given 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.

9.2 **CONTRACTOR** may terminate this **AGREEMENT** at any time upon written notice to **CITY** and have no further obligation to **CITY** if:

9.2.1 The **CONTRACTOR** is unable to utilize the **BIOSOLIDS** due to a change in any Legal Requirements that renders the Services illegal, or place such restrictions or requirements thereon so as to make the provision of the **SERVICES** cost prohibitive or to otherwise frustrate the commercial intent of this **AGREEMENT**.

9.2.2 The condition of the **BIOSOLIDS** is materially inconsistent with the description and analysis, certifications or other information the **CITY** has provided to the **CONTRACTOR** regarding the **BIOSOLIDS**, including analytical results.

9.3 In the even of any change in federal, state or local law or regulation, or any change in any one of **CONTRACTOR'S** permits or landfill tipping fees, which is implemented during the Term of this **AGREEMENT** and which results in a significant increase or decrease in the cost of performing the **SERVICES**, the **CITY** and **CONTRACTOR** agree to negotiate a mutually agreeable adjustment to the payment terms specified in this **AGREEMENT**. Should agreement not be reached, either party may terminate this **AGREEMENT** as specified in Article 9.

10 **PRICE:**

10.1 Except as otherwise provided in this **AGREEMENT**, **CITY** will pay the following fixed prices for **CONTRACTOR'S** Services hereunder for the duration of the **INTIAL TERM** of this Agreement:

Forty-Eight Dollars and 95/100 (\$48.95) per wet ton

Should the tipping fees increase or another landfill is required other than Myakka City Facility, the parties will negotiate in good faith to reach agreement on a modified price per wet ton.

10.2 Upon increases in **CONTRACTOR'S** costs due to changes in **LEGAL REQUIREMENTS**, **CONTRACTOR** may no more than once each anniversary year, request an increase in the fixed prices set forth hereunder, which shall be negotiated by the parties in good faith and be effective at the beginning of the next anniversary of the **EFFECTIVE DATE**. In addition, the **CONTRACTOR'S** stated prices shall be

increased annually consistent with the Consumer Price Index (CPI) for the closest metropolitan area to the **PLANT**. CPI adjustments shall automatically become effective the anniversary date of the **EFFECTIVE DATE**.

11 MISCELLANEOUS PROVISIONS:

- 11.1 Assignment. The **CITY** 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 unreasonably withheld. However, **CONTRACTOR** may assign its rights and duties to an affiliate or related party of **CONTRACTOR**.
- 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 transaction contemplated by it, shall be governed by, construed, and enforced in accordance with the laws of the State of Florida.
- 11.3 Venue. Venue for and dispute between the Parties regarding this **AGREEMENT** shall be in Sarasota County, Florida.
- 11.4 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.
- 11.5 Waiver. No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent is 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 consent to, waiver of, or excuse of any other different or subsequent breach.
- 11.6 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 underlying the invalid term or provision.
- 11.7 Entire Agreement. This **AGREEMENT** hereto constitutes the complete and exclusive statement of the agreement between the Parties with regard to the matters set forth herein, and it supersedes all other agreements, proposals, and representations, oral or written, express or implied, with regard thereto.
- 11.8 Amendments. This **AGREEMENT** may be amended from time to time only by an instrument in writing signed by the parties to this **AGREEMENT**.

- 11.9 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 permits, applications, notices of intent, registrations, variances, and exemptions, required for the removal, transportation and disposal of **BIOSOLIDS** in compliance with all applicable **LEGAL REQUIREMENTS**
- 12.2 “**BIOSOLIDS**” means anaerobically digested sewage sludge meeting federal, state and local requirements for landfill disposal that (i) has been dewatered at **CITY’S** expense and meets the paint filter test or other requirements of the land fill. **BIOSOLIDS** do not include any hazardous materials or substances and must be suitable for land application under the applicable law.
- 12.3 “**ENVIROMENTAL LAWS**” means the conditions of 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**, **BIOSOLDS**, 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, Safe Drinking Act, the Clean Water Act, the Clean Air Act, the Emergency Planning and Community Right to Know Act, the Hazardous Material Transportation Act, the Occupational Safety and Health Act, and any analogous state or local law.
- 12.4 “**GOVERNMENTAL AUTHORITY**” means any foreign governmental authority, the United States of America, any State of 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**, 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 **ENVIROMENTAL LAWS**, or as they become defined, listed or regulated under **ENVIROMENTAL 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 hereinafter in effect, including without limitation, **ENVIROMENTAL LAWS**.

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

(SEAL)

ATTEST:

CITY OF VENICE
IN SARASOTA COUNTY, FLORIDA

CITY CLERK

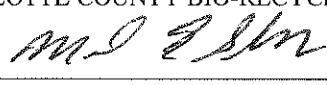
BY: _____

ATTEST:

CONTRACTOR
CHARLOTTE COUNTY BIO-RECYCLING CENTER, LLC



Matt DeWitt
Signed by (typed or printed)

BY: 

MICHAEL E. SCHWARTZ
Signed by (typed or printed)

Approved as to Form and Correctness

David Persson, City Attorney