

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: March 28, 2016

AGENDA ITEM: Supplemental Agreement No. 1 to the City's Biosolids Removal and Reuse Project	
PREPARED BY: Kari Chennault, Water Resources Manager	DIRECTOR APPROVAL: JL
DEPARTMENT: Public Works	
ATTACHMENTS: 3 signed original copies of Supplemental Agreement No. 1 and associated Part H, Contract for Biosolids Beneficial Use Services for the City of Marysville at the Boulder Park Project	
BUDGET CODE: 40250594.563000. S1504	AMOUNT: N/A

SUMMARY:

The City of Marysville entered into contract with American Process Group, Inc. (APG) on October 23, 2015 for the Biosolids Removal and Reuse Project. APG has elected to use the Boulder Park Project Beneficial Use Facility as one of their certified beneficial use facility disposal sites. King County is a partial owner of the Boulder Park Project Beneficial Use facility and is requesting the City of Marysville enter into contract with the County and Boulder Park for APG to utilize this disposal facility.

RECOMMENDED ACTION: Staff recommends that Council authorize the Mayor to sign and execute Supplemental Agreement No. 1 and the associated attachment, Part H.

**SUPPLEMENTAL AGREEMENT NO. 1 TO
PUBLIC WORKS CONTRACT BETWEEN
CITY OF MARYSVILLE
AND AMERICAN PROCESS GROUP, INC.**

THIS SUPPLEMENTAL AGREEMENT NO. 1 (“Supplemental Agreement”) is made and entered into this 21st day of March, 2016, by and between the City of Marysville, a Washington State municipal corporation (“City”) and American Process Group, Inc.

WHEREAS, the parties hereto have previously entered into a contract for biosolids removal and reuse (the “Original Contract”), said Original Contract being dated October 23, 2015; and

WHEREAS, American Process Group has elected to utilize the Boulder Park Project Beneficial Use Facility to fulfill its obligation in the Original Contract to provide for reuse of the biosolids at a certified beneficial use facility; and

WHEREAS, King County and the Boulder Park Project Beneficial Use Facility require the City to sign a contract prior to permitting American Process Group to deliver the City’s biosolid’s to Boulder Park; and

WHEREAS, this contract is known as the “Contract for Biosolids Beneficial Use Services for the City Of Marysville at the Boulder Park Project”; and

WHEREAS, the obligations and responsibilities of “Contractor” in the “Contract for Biosolids Beneficial Use Services for the City Of Marysville at the Boulder Park Project” are obligations and responsibilities that American Process Group undertook in the Original Contract with the City; and

WHEREAS, both parties desire to supplement the Original Contract, by incorporating the “Contract for Biosolids Beneficial Use Services for the City Of Marysville at the Boulder Park Project” into the Original Contract; and

WHEREAS, the parties agree that the “Contract for Biosolids Beneficial Use Services for the City Of Marysville at the Boulder Park” does not expand the Original Contract’s scope of work, but should be incorporated by reference in the Original Contract for clarity.

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein or attached and incorporated, and made a part hereof, the parties hereto agree as follows:

1. Section ~~VI~~^{IV} of the Original Contract, “AGREEMENT”, is amended to read as follows:

IV. AGREEMENT. The City of Marysville hereby promises and agrees with the Contractor to employ and does employ the Contractor to provide the materials and to do and cause to be done the above described work and to complete and finish the same

according to the attached plans and specifications and the terms and conditions herein contained and hereby contracts to pay for the same according to the attached plans and specifications and the terms and conditions herein contained and hereby contracts to pay for the same according to the attached specifications and the schedule of prices bid and hereto attached, at the time and in the manner and upon the conditions provided for in this contract.

The Contractor himself and for his heirs, executors, administrators, successors and assigns does hereby agree to the full performance of all covenants herein contained upon the part of the CONTRACTOR.

It is further provided that no liability shall attach to the City of Marysville by reason of entering into this contract, except as expressly provided herein.

This agreement consists of the following documents, all of which are incorporated by reference as if set forth in full herein, and are component parts hereof:

- Part A - Legal, Procedural, and Contract Documents Including Addendum 1, 2 and 3.
- Part B - Washington State Requirements
- Part C - 2014 Standard Specifications for Road, Bridge and Municipal Construction (WSDOT /APWA)
- Part D - 2014 APWA Supplement General Special Provisions
- Part E - Special Provisions, Including Appendices
- Part F - Contract Drawings (Plans)
- Part G - Indemnification Addendum
- Part H – Contract for Biosolids Beneficial Use Services for the City Of Marysville at the Boulder Park Project

2. The “Contract for Biosolids Beneficial Use Services for the City Of Marysville at the Boulder Park Project” is attached as Exhibit A to this Supplemental Agreement and is incorporated into the Original Contract as Paragraph IV, Part H.

3. Each and every provision of the Original Agreement for Professional Services dated October 23, 2015, shall remain in full force and effect, except as modified herein.

DATED this 21st day of March, 2016.

CITY OF MARYSVILLE

American Process Group, Inc.

By _____
Jon Nehring, Mayor

By 
[Enter Name] Stephen Kersley
Its: [Enter Title] CFO

ATTEST/AUTHENTICATED:

April O'Brien, City Clerk

Approved as to form:

Jon Walker, City Attorney

EXHIBIT A

**BIOSOLIDS BENEFICIAL USE SERVICES
FOR THE CITY OF MARYSVILLE
AT THE BOULDER PARK PROJECT**

CONTRACT No. 16-0002



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DEFINITION OF WORDS AND TERMS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Beneficial Use Facility or BUF: means a receiving-only facility consisting of a site or sites where biosolids from other treatment works treating domestic sewage are applied to the land for beneficial use, which has been permitted as a treatment works treating domestic sewage in accordance with the provisions of WAC 173-308-310, and that has been designated as a beneficial use facility through the permitting process.

Boulder Park, Inc. or BPI: designates the farmer-owned company with headquarters in Mansfield, Washington, that manages biosolids land application operations.

Boulder Park Project or BPP: designates the name of the biosolids land application project in Douglas County, which has been operational since 1992. This project is jointly operated and managed as a Beneficial Use Facility by Boulder Park, Inc. and King County as outlined in Contract #471783. The Boulder Park Project (BPP) is permitted as a Beneficial Use Facility (BUF), so the term BPP will be interchangeable with the term BUF.

Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, that contracts with the City for the performance of services or Work.

Party or Parties: The City of Marysville (City), King County (KC) and Boulder Park, Inc. (BPI).

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Project: Same as Boulder Park Project Beneficial Use Facility or Boulder Park Project.

Project Participants: The general term to include the primary parties or people who are involved with the Boulder Park Project. This would include the local farmers, local government agencies, local residents and land owners, Washington State Department of Ecology, other public agencies, Washington State University extension service, etc.

Shall or Will: Whenever used to stipulate anything, *Shall* or *Will* means mandatory by either Boulder Park, Inc., King County, or the City of Marysville, as applicable, and means that Boulder Park, Inc., King County, or the City of Marysville, as applicable, has thereby entered into a covenant with the other party or parties to do or perform the same.

Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with Boulder Park, Inc. and/or King County to perform any portion of the Work covered by this Contract.

Subsection: For reference or citation purposes, Subsection shall refer to the paragraph, or paragraphs, called out by part, section and alphanumeric designator.

Work: Everything to be done and provided by Boulder Park, Inc. and King County for the fulfillment of the Contract.

This Contract is made and entered into effective as of the April 15, 2016 by and between the City of Marysville, (hereinafter referred to as "City"), Boulder Park, Inc. (hereinafter referred to as "BPI") and King County (hereinafter referred to as "KC"), witnesseth:

WHEREAS, the City produces dewatered lagoon solids (hereinafter referred to as "biosolids") as a by-product of its wastewater treatment process (aerated lagoon with filtration system) and desires to manage and beneficially use such biosolids; and

WHEREAS, the City has delegated all Work to its Contractor to include lagoon dredging, dewatering, sampling and testing, transportation, and land application operations; and

WHEREAS, the Boulder Park Project (BPP), located in Douglas County, Washington, is a Beneficial Use Facility (BUF) that has been permitted by the Washington State Department of Ecology (Ecology) for the application of biosolids; and

WHEREAS, BPI and KC have entered into a contract to jointly manage and operate the BPP in accordance with all applicable local, state and federal laws, regulations and best management practices regarding applying dewatered biosolids as a soil amendment to lands; and

WHEREAS, the City desires to enter into this Contract with BPI and KC for the application of the City's biosolids at the BPP in accordance with all applicable federal, state and local regulations and with BPP requirements; and

WHEREAS, the City or its Contractor currently possesses and agrees to maintain all necessary regulatory permits and approvals and to comply with all laws, rules and regulations applicable to the transport of biosolids material pursuant to this Contract; and

WHEREAS, it is in the best interests of the environment, the City and the public health, safety and welfare of the citizens served by City that this Contract be entered into; and

WHEREAS, all Parties agree to support and work towards excellence in biosolids management practices and provide meaningful opportunities for public participation.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and for other good and valuable consideration, it is hereby agreed as follows:

SECTION 1 PURPOSE

1.1 The purpose of this Contract is (a) to allow the City or its Contractor to deliver biosolids to the BPP for land application.

1.2 The further purpose of this Contract is to provide the City or its Contractor with a biosolids management and utilization option with oversight and sound operational practices.

1.3 The City or its Contractor may provide BPI with biosolids during the months of January through December.

1.4 The City or its Contractor will provide BPI with an estimated schedule of deliveries. The City or its Contractor, in its sole discretion, may adjust its estimated schedule of deliveries upon reasonable notice to BPI. Such schedule shall include estimated quantities and estimated timing of deliveries consistent with the operating plan and distribution needs.

1.5 During the term of the Contract, BPI agrees to accept up to one hundred (100) percent of the City's biosolids that have a total solids content of no less than ten (10) percent. Biosolids having a total solids content of less than ten (10) percent may be accepted at BPI's sole discretion, and may be subject to the additional charges to be agreed upon by the City or its Contractor.

1.6 All biosolids provided to the BPP by the City or its Contractor shall meet Table 1 – Ceiling Concentration Limits and Table 3 – Pollutant Concentration Limits contained in Chapter 173-308-160 WAC, Biosolids Pollutant Limits; the pathogen reduction requirements of Chapter 173-308-170 WAC, Pathogen Reduction; and, the vector attraction requirements of Chapter 173-308-180 WAC, Vector Attraction Reduction (VAR). The City or its Contractor shall notify BPI and KC immediately if the City’s biosolids do not meet any of the requirements above.

SECTION 2 BPI’S RESPONSIBILITIES

2.1 BPI shall be solely responsible for biosolids management as defined below, including land application after acceptance of biosolids from the City or its Contractor. These biosolids management responsibilities shall include, but are not limited to, the following:

1. the City or its Contractor agrees BPI shall have no responsibility for any transportation activities related to hauling of the City’s biosolids to the BPP. Biosolids shall be considered in possession of the BPP upon delivery to the designated location of ultimate disposition;
2. tracking reported wet tonnage of the City’s biosolids delivered to the location of ultimate disposition at the BPP. The City or its Contractor shall provide an accurate record of wet tons of biosolids delivered to BPI;
3. submit a periodic statement to KC that clearly shows the City’s tons applied and the date of application
4. ultimate disposition of biosolids including management, application, monitoring, permitting, record keeping and reporting;
5. compliance with all local, state, and federal laws and regulations applicable to said operations including best management practices;
6. payment of employees, subcontractors, lenders and suppliers associated with BPI’s management and beneficial use of biosolids, and all related taxes, fees, charges and all other costs; and
7. maintenance and operation of all KC-owned equipment per the contractual agreement between KC and BPI (per KC-BPI Contract #471783);

2.2 BPI warrants and represents that it has the business, professional and technical expertise necessary to manage, handle and utilize the City’s biosolids in a safe, prudent, workmanlike and legal manner. Furthermore, BPI warrants and represents that it has the equipment and employee resources required to perform this Contract, and that such equipment shall at all times relevant to the performance of services hereunder be maintained in a good and safe condition and fit for the use as required.

2.3 BPI shall keep all equipment and any application sites clean and orderly. No unsightly debris, broken down equipment, trash, garbage or deleterious materials not necessary for the operation shall be allowed to accumulate. BPI shall cooperate fully with the City or its Contractor to maintain the highest reasonable image for such services. The City or its Contractor shall have no responsibility for the selection or use of an application site by BPI and assumes no responsibility or liability for the adequacy or legality of such site for the beneficial use of biosolids.

2.4 BPI shall be responsible for maintaining necessary security at application sites to protect the public health and safety, and to avoid unauthorized uses of the biosolids material. BPI shall not cause a nuisance, as defined in RCW 7.48.120, at any application site. It is BPI’s responsibility to adequately inform its personnel or any subcontractors that wastewater treatment plants process sanitary and industrial waste; that any workers involved in biosolids beneficial use may be exposed to pathogens; and what are the proper hygienic precautions in the handling of biosolids.

SECTION 3 KING COUNTY'S RESPONSIBILITIES

KC shall:

1. have first-right of usage as it relates to KC-owned equipment;
2. provide access and use by BPI to project-specific, KC-owned equipment so that BPI may use such equipment to apply the City's biosolids as part of the BPP;
3. replace and/or refurbish KC-owned equipment per an equipment replacement schedule, which is incorporated by reference as if fully stated herein;
4. regularly communicate with BPI regarding daily project activities and perform routine site inspections, which are filed at KC's office;
5. calculate biosolids application rates based on the City's current biosolids quality data (these calculations are reviewed by Washington State University research scientists and sent to Ecology for approval);
6. maintain and update the BPP Site-Specific Land Application Plan (SSLAP), and promptly provide any revisions to the City or its Contractor when periodic changes are made; and
7. secure and maintain all necessary state and local permits and/or approvals for biosolids to be applied at the BPP, and comply with all applicable federal, state and local regulations.

SECTION 4 JOINT BPI/KC'S RESPONSIBILITIES

4.1 BPI and KC shall be responsible for obtaining and maintaining all permits and registrations necessary for the management of biosolids land application. Costs for required permits and registrations shall be included in the unit price for biosolids management. BPI and KC shall provide the City or its Contractor with current copies of all permit applications, permits, registrations, records and reports required by local, state and federal laws and regulations throughout the life of the Contract. Costs for documentation shall be included in the unit price for biosolids management. Review of such materials is for the City or its Contractor's information only, implies no approval of BPI's or KC's compliance with applicable requirements, and in no way relieves BPI or KC of its obligations under this Contract.

4.2 BPI and KC shall be responsible for any public involvement or public information efforts associated with biosolids management outside of the City's service area. The City may, at its discretion, handle public involvement or information for a particular situation solely, or in conjunction with BPI or KC. BPI and KC shall record and respond to all complaints within a reasonable time. Written copies of the complaints and the response shall be provided to the City. The City shall assist BPI and KC in similar efforts within the City's service area as may be necessary for developing a public involvement program to implement and maintain its biosolids management program.

SECTION 5 CITY'S OR ITS CONTRACTOR'S RESPONSIBILITIES

City or its Contractor shall:

1. be responsible for assuring that all transportation activities are performed in compliance with any applicable federal, state or local environmental or public health laws, codes or regulations. The City or its Contractor is solely responsible for obtaining and maintaining all permits and registrations necessary for the transportation of the City's biosolids. The City or its Contractor agrees BPI and KC shall have no responsibility for any transportation activities related to the hauling of the City's biosolids to the BPP. Biosolids shall be considered in possession of the BPP upon delivery to the designated location of ultimate disposition;
2. provide timely communication of any significant variation in biosolids quantities to be delivered;

3. maintain record of the delivered wet tons that has been reconciled with BPI on a monthly basis or sooner;
4. secure and maintain all necessary state and local permits and comply with all applicable federal, state and local regulations;
5. provide an Spill Prevention/Response Plan that meets requirements in WAC 173-308-100 and confirm that the truck hauler has the most current copy of the Spill Prevention/Response Plan and is familiar with who to contact in case of accident or emergency;
6. verify the credentials of the truck hauler and agrees to provide quality and professional personnel. Truck haulers deemed to be unsatisfactory by BPI or KC will be subject to termination upon agreement by all parties;
7. conduct representative sampling and testing of the City's biosolids in accordance with applicable law; review the reported analytical data for accuracy and completeness; provide BPI and KC the biosolids quality data necessary for BPI and KC to use or otherwise manage the biosolids; and, immediately notify BPI and KC if the City's biosolids do not meet any of the requirements in sections 1.5 or 1.6;
8. pay BPI the agreed upon service and lease fees as provided in reconciled invoices; and
9. not operate or maintain KC-owned equipment.

SECTION 6 TERMS OF CONTRACT

6.1 The term of this Contract is from the effective date specified above through December 31, 2016. Any extension of the term of this Contract shall be in writing, mutually agreeable by BPI, KC and the City.

6.2 BPI's, KC's, and the City's obligations and responsibilities shall commence upon the signing of this Contract by all parties.

SECTION 7 BASIS FOR PAYMENT

7.1 The City or its Contractor shall transport the City's biosolids using their equipment to the BPP. Transportation of the City's biosolids to the BPP is not part of this Contract.

7.2 BPI shall submit invoices for payment in an approved format that has been reconciled with the City's or its Contractor's records. Payment shall be made based on a cost per delivered wet ton of biosolids transported and delivered to the BPP. Within thirty (30) days after receipt of an invoice, the City or its Contractor shall pay BPI for authorized materials accepted and/or services, satisfactorily performed, including the leasing of KC equipment, at the rate of \$11.00 (\$2.83 KC, \$0.22 Tax at Mansfield rate of 7.7%, and \$7.95 BPI) per wet ton (BPI base unit price). Acceptance of such payment by BPI shall constitute full compensation for all tasks completed by BPI and KC, including but not limited to supervision, management, labor, supplies, materials, work, equipment and the use thereof, and for all other necessary expenses incurred by BPI and KC in performing the land application services. Adjustments shall be made in billing for errors in measurement discovered within twelve (12) months of the error.

7.3 BPI will submit a periodic statement to KC that clearly shows the City's tons applied and the date of application. The County after receipt and verification of the statement will submit an invoice to BPI for payment of the KC equipment lease fee. BPI shall pay the invoice and will remit payment to:

Accounts Receivable
King County Department of Finance
500 Fourth Avenue, Room 620
Seattle, WA 98104-2387

7.4 The base unit price shall include everything necessary for the prosecution and completion of the Contract including but not limited to furnishing all materials, application equipment lease fee, tools, and all BPI and KC management, superintendence, labor and service, except as may be provided otherwise in the Contract, provided, Washington State sales tax is not included in the price.

7.5 The base unit price shall remain firm throughout the term of the contract, except for price adjustments allowed in Section 8. Rate changes may also be made at the time this Contract is extended providing BPI and KC supply adequate documentation of the change in its costs acceptable to the City or its Contractor. Requests for any such change are to be made in writing to the City or its Contractor. Any agreed-to change shall take effect at the time of the Contract extension and shall remain in effect throughout the extension period.

SECTION 8 PRICE ADJUSTMENTS

8.1 No scheduled price adjustments per this Contract.

SECTION 9 ADDITIONAL WORK

9.1 Additional work means the furnishing of materials or equipment and/or the doing of work or service not presently contemplated by the Contract. If the City or its Contractor requires additional work, it may direct BPI in writing to do the additional work at the base unit price (see Subsection 7.2), or it may direct BPI to do the additional work at a mutually agreed upon lump sum or mutually agreed upon unit prices. Performance of additional work without the prior express written consent of the City or its Contractor shall be at BPI's sole expense. Additional work will be authorized either with a purchase order number or according to the requirements in Subsection 8.2 and 9.2.

9.2 Change orders for material or services will be without effect unless issued and authorized in writing by the City or its Contractor.

SECTION 10 LIABILITY OF BPI AND KC

10.1 BPI and KC accept the risks and resulting liabilities of managing conforming biosolids when biosolids arrive at the BPP designated application sites. For the purposes of this agreement, conforming biosolids shall mean that all of the City's biosolids shall meet Ecology standards for regulated parameters as specified in Subsection 12.6. These risks potentially include, but are not limited to, the following:

- Contamination of groundwater
- Contamination of surface water
- Contamination of air
- Odor issues at the site and how to mitigate them for surrounding neighbors
- Human health impacts
- Impacts to soil
- Impacts to crops, vegetation or livestock
- Impacts to future uses of sites to which biosolids have been applied.

10.2 BPI shall be completely responsible for securing conforming biosolids in its possession and loaded into the means of transport selected by BPI for transfer between sites against spillage, leakage or public exposure, and for providing properly designed locations for the safe and secure unloading of biosolids at BPI's designated application sites.

SECTION 11 TRANSFER OF MANAGEMENT RESPONSIBILITIES

All biosolids accepted by BPI shall become BPI's responsibility to manage under the terms of this contract. Acceptance of biosolids is considered to occur upon delivery to the designated location of ultimate disposition at the BPP. BPI shall accept all biosolids that are within the range of "Biosolids Quantities and Characteristics" as specified in Section 13 of the Contract. BPI is solely responsible for the handling and ultimate disposition of all biosolids delivered to designated BPP sites.

SECTION 12 COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS AND REGULATIONS AND BEST MANAGEMENT PRACTICES

12.1 BPI and KC agree to comply with all applicable local, state and federal laws and regulations at all times and obtain and maintain all required permits and registrations necessary for the management of biosolids land application by BPI and KC. Specific laws and regulations specifically applicable to biosolids management include but are not limited to the following:

- 40 CFR 503 Standards for the Use or Disposal of Sewage Sludge
- Chapter 173-308 WAC Biosolids Management
- Chapter 173-200 WAC Water Quality Standards for Groundwaters of the State of Washington
- Chapter 173-201A WAC Water Quality Standards for Surface Waters of the State of Washington

12.2 Biosolids are defined as municipal sewage sludge that is primarily organic, semisolid product resulting from the wastewater treatment process that can be beneficially utilized and meets all applicable requirements under Washington State Chapter 173-308 and conforms to all applicable federal rules adopted under the Federal Clean Water Act. Biosolids rules are enforced by Ecology. BPI and KC shall be responsible for contacting all agencies and jurisdictions necessary to obtain any permits necessary for its performance under this Contract. BPI and KC shall contact Ecology for regulations and permits in effect when this Contract is in effect, including, without limitation, permits and regulations regarding the specific management methods proposed for use by BPI and KC with respect to the City's biosolids.

12.3 BPI and KC shall manage biosolids using applicable best management practices. Best management practices are included in Biosolids Management Guidelines for Washington State published by Ecology. The most recent publication available shall be used as best management practices for the Contract. Updated versions of best management practices shall be incorporated into this Contract as they become available.

12.4 Other permits and registrations, if any, shall be obtained and maintained by BPI and KC as required for the specific location of biosolids handling, application and disposition sites and specific biosolids management approaches at the project sites. BPI and KC shall be solely responsible for knowledge of and compliance with all laws, regulations and permits required for operation and maintenance of biosolids management application sites and functions.

12.5 BPI and KC shall be responsible for all environmental compliance and monitoring required for the management of biosolids land application. The costs of this environmental compliance and monitoring shall be included in the base unit price herein before agreed to.

12.6 The City or its Contractor will make available to BPI and KC all biosolids monitoring and environmental compliance required by its National Pollution Discharge Elimination System (NPDES) permit and its Washington State General Permit for Biosolids Management, sections WAC 173-308-160 (Biosolids Pollutant Limits), WAC 173-308-170 (Pathogen Reduction) and WAC 173-308-180 (Vector Attraction Reduction) (also see Sections 1.5 and 1.6). Results of additional testing performed by the City or its Contractor will be made available to BPI and KC at no cost when necessary for BPI and KC to perform under this Contract.

SECTION 13 BIOSOLIDS QUANTITIES AND CHARACTERISTICS

13.1 The City or its Contractor will provide biosolids on as uniform a basis as possible given treatment process conditions and solids handling operations. The City or its Contractor is responsible for reviewing dredging and dewatering work to determine, estimate, and plan for biosolids quality variability and informing BPI and KC of any substantial changes.

13.2 The City and its Contractor affirms that the City's biosolids are produced from domestic, commercial and industrial wastewaters generated in the City wastewater service area.

13.3 The City and its Contractor affirms that the City's biosolids meet all regulatory requirements for land application and sections 1.5 and 1.6 of this Contract.

SECTION 14 INSURANCE

14.1 The Parties shall obtain and maintain the minimum insurance as set forth below covering the operations and activities required by the Contract. By requiring such minimum insurance, the Parties shall not be deemed to have assessed the risks that may be applicable to each Party under this Contract. Each Party shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Each Party shall also require its contractors and subcontractors to maintain the minimum insurance set forth below or such other minimum insurance as is appropriate in respect to the work to be performed. Each party shall obtain certificates of insurance for all of its contractors and subcontractors and make them available for inspection by the any other Party on request.

14.1.1 **Commercial General Liability.** \$1,000,000 combined single limit per occurrence and for those policies with aggregate limits, a \$2,000,000 aggregate limit.

14.1.2 **Automobile Liability.** \$1,000,000 combined single limit per accident. If the potential exists to release pollutants either as cargo or from the automobile (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent).

14.1.3 **Workers' Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

14.1.4 **Employer's Liability or "Stop Gap". For a limit of \$ 1,000,000** Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

14.1.5 OTHER INSURANCE PROVISIONS

A. The insurance policies required in this Contract are to contain and be endorsed to contain the following provisions:

1. With respect to all Liability Policies except Professional Liability and Workers Compensation:

(a) BPI or their subcontractor shall add the other Parties, its officers, officials, employees, and agents to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the other Party's in connection with this Contract.

(b) Each Parties insurance coverage shall be primary insurance as respects the other Parties, its officers, officials, employees, agents, and consultants. Any insurance and/or self-insurance maintained by the other Parties, its officers, officials, employees, agents and consultants shall not contribute with the Parties insurance or benefit the Party in any way.

(c) BPI or their subcontractors insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

14.1.6 King County, a charter county government under the constitution of the State of Washington maintains a fully funded Self-Insurance program as defined in King County Code 4.12 for the protection and handling of the County's liabilities including injuries to persons and damage to property.

14.1.7 The aforementioned insurance requirements of the City shall be fulfilled by the City's membership and coverage in the Washington Cities Insurance Authority (WCIA) a self-insured municipal insurance pool..

14.2 Unless otherwise approved by the City, all insurance shall be on an "occurrence" basis and shall be maintained through the term of this Contract and for a period of three hundred sixty-five (365) days after termination or acceptance of work, as the case may be. All insurance shall be provided on forms and by insurance companies satisfactory to the City.

14.3 No provision in this Contract shall be construed to limit the liability of any Party as provided by law. Each Parties' liability shall extend as far as the appropriate periods of limitation provided by law.

14.4 Each Party shall provide the other parties with certificates and endorsements evidencing insurance from the insurer(s) certifying to the coverage of all insurance required herein within ten (10) days after the signing of the contract by all parties is final. If BPI neglects so to obtain and maintain in force any such insurance or deliver such policy or policies and receipts to the City, then the City may, at its option, terminate this Contract immediately, purchase required insurance coverage by withholding the premium amounts from payments due BPI, or demand BPI purchase the required insurance within a time frame acceptable to the City.

14.5 Failure to provide such required insurance shall entitle any Party to suspend or terminate the other Parties work hereunder for default in accordance with Subsection 17.2. Suspension or termination of this Contract shall not relieve any Party from its insurance obligations hereunder.

SECTION 15 COORDINATION WITH THE CITY'S TREATMENT PLANT OR CONTRACTOR

The City or its Contractor will provide BPI with e-mail notification if normal delivery schedule changes occur. The City or its Contractor will attempt to keep biosolids availability as uniform as possible to BPI.

SECTION 16 DAMAGES

Nothing in this Contract is intended to waive any damages the City or its Contractor may be entitled to as a result of BPI's default. Should BPI fail to commence or continue performance of this Contract after the signing of the contract by all parties is final, BPI shall reimburse the City or its Contractor for the actual damages and costs incurred by the City or its Contractor until other satisfactory arrangements for up to the remaining term of this Contract can be implemented. The City or its Contractor shall have the right to deduct such costs or damages from any amount due, or that may become due BPI, or the amount of such damages shall be due and collectable from BPI or Surety. The City or its Contractor agrees to make all reasonable and practicable efforts to mitigate its damages.

SECTION 17 TERMINATION OR CONTRACT SUSPENSION

17.1 Any of the three parties may terminate this Contract in whole or in part for any reason by delivering written notice to each of the other parties at the mailing addresses stated herein, properly executed, at least ninety (90) days before the proposed termination date. BPI and KC shall be paid any amounts owing, including necessary and reasonable Contract close-out costs, up to the date of termination as specified in the notice, less any deductions provided by this Contract or by law. The City or its Contractor shall have at least ninety (90) days to find a suitable replacement, as determined by the City or its Contractor. BPI shall promptly submit its request for the termination payment, together with detailed supporting documentation. If BPI has any property in its

possession belonging to the City or its Contractor, BPI shall account for the same and handle it in the manner the City or its Contractor directs.

17.2 Either party may terminate the Contract for default in the event of a failure by either of the other two parties to comply with the provisions of this Contract including, but not limited to, the following:

- (A) failure to perform services or other work as required;
- (B) failure to comply with any material terms or provisions of the Contract;
- (C) failure to comply with laws or regulations;
- (D) failure or delay due to inability to obtain the required employees or equipment; or
- (E) failure to provide continuous and solvent business operations.

Termination for default may be delivered by mail and shall be effective upon mailing, directed to either party at the mailing addresses stated above, setting forth the manner in which the party is (or parties are) in default.

17.3 In the event the City or its Contractor believes BPI is in default, the City or its Contractor may include a compliance schedule with the Notice of Termination, which must be met in order to avoid termination. The compliance schedule shall state that within a time period specified by the City or its Contractor, BPI shall submit to the City a written detailed plan describing the actions required to achieve compliance that is subject to the City's or its Contractor's approval.

17.4 In the event the Contract is terminated for default, BPI and KC will only be paid the base unit price for services or work delivered or performed in accordance with the Contract, less any deductions provided by this Contract or by law. Further, BPI shall be responsible for additional direct and indirect costs incurred by the City or its Contractor to have the work under this Contract performed by other parties or any other damages or injuries to the City or its Contractor, its facilities or personnel related to BPI's services.

SECTION 18 RECORDS, REPORTS, AND MEETINGS

18.1 BPI shall, for the term of the Contract and six (6) years thereafter, consistently maintain full, complete and accurate books of account and records related to this Contract at its principal place of business. These records shall also include detailed information describing the application rates to all project sites. The City shall have the right during reasonable business hours to inspect and audit such books and records. All books and records of account shall be maintained by BPI according to generally accepted accounting principles and applicable requirements of the State of Washington.

18.2 The following books of account and reports may be reviewed by the City and shall be made available upon request to the City:

- a daily project site log (including: generator, field identification, delivery dates and tonnage) during application of biosolids;
- a weekly project site summary of activities and events;
- application logs (including: application rate, date, acreage and tonnage) for each project site that is applied;
- WAC 173-308 annual report (the City shall assist BPI and KC in collecting and documenting the data required for this regulatory report); and
- copies of all written correspondence relating to this project.

18.3 The City or its Contractor shall have the right during reasonable business hours to inspect the BPP biosolids management facilities. BPI shall provide the City or its Contractor access to perform said inspections.

SECTION 19 INDEMNIFICATION

19.1 BPI agrees that it shall be liable for and shall indemnify, defend and hold harmless the City or its Contractor and KC, and their officers, agents, and employees, from and against any claims, actions, suits, costs and damages of any nature whatsoever, including reasonable attorney's fees in defense thereof, for injuries or death to persons, or damage to property, arising directly or indirectly out of BPI's intentional or negligent act or omission in the performance of its duties as described in this Contract, BPI's breaches of this Contract or BPI's acts or omissions in violation of law, including fines, penalties and judgments. In the event of any Claim arising out of the concurrent negligence of BPI and the City or its Contractor, or BPI, the City or its Contractor and KC, BPI's indemnification obligations under this section shall be limited to the extent of BPI's negligence.

19.2 KC agrees that it shall be liable for and shall indemnify, defend and hold harmless the City or its Contractor, and their officers, agents, and employees, from and against any claims, actions, suits, costs and damages of any nature whatsoever, including reasonable attorney's fees in defense thereof, for injuries or death to persons, or damage to property, arising directly or indirectly out of KC's intentional or negligent act or omission in the performance of its duties as described in this Contract, KC's breaches of this Contract or KC's acts or omissions in violation of law, including fines, penalties and judgments. In the event of any Claim arising out of the concurrent negligence of KC and the City or its Contractor, or KC, the City or its Contractor and BPI, KC's indemnification obligations under this section shall be limited to the extent of KC's negligence.

19.3 The City or its Contractor agrees that it shall be liable for and shall indemnify, defend and hold harmless BPI and KC, and their officers, agents, and employees, from and against any claims, actions, suits, costs and damages of any nature whatsoever, including reasonable attorney's fees in defense thereof, for injuries or death to persons, or damage to property, arising directly or indirectly out of the City's or its Contractor's intentional or negligent act or omission in the performance of its duties as described in this Contract, the City's or its Contractor's breaches of this Contract or the City's or its Contractor's acts or omissions in violation of law, including fines, penalties and judgments. In the event of any Claim arising out of the concurrent negligence of the City or its Contractor and BPI or KC, the City or its Contractor's indemnification obligations under this section shall be limited to the extent of the City's or its Contractor's negligence.

19.4 For purposes of paragraphs 19.1, 19.2 and 19.3 above, each party, by mutual negotiation hereby waives any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

19.5 The indemnification obligations under this section shall not expire with the termination of this Contract.

SECTION 20 DISPUTES UNDER THIS CONTRACT

20.1 Questions or claims regarding meaning and intent of the Contract or arising from this contract shall be submitted in writing to the City, within fifteen (15) working days of the date in which either of the other parties knows or should know of the question or claim. The City will ordinarily respond to the other parties in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth day following receipt by the City.

20.2 In the event the other parties disagree with any determination or decision of the City, they may, within fifteen (15) calendar days of the date of such determination or decision, appeal the determination or decision in writing to the Mayor. Such written notice of appeal shall include all documents and other information necessary to substantiate the appeal. The Mayor will review the appeal and transmit a decision or determination in writing. The decision will be considered final. Appeal to the Mayor shall be a condition precedent to litigation hereunder.

20.3 All claims, counterclaims, disputes and other matters in question between the three parties that are not resolved through direct discussions, or as described above, shall be handled in the following manner. The parties agree to first endeavor to settle the dispute in an amicable manner by mediation. The mediator shall be chosen by mutual agreement of all parties. Thereafter, any unresolved controversy or claim arising out of or relating to this contract, or breach thereof, may be settled by arbitration, and judgment upon the award rendered by the arbitrator may

be entered in any court having jurisdiction thereof. Nothing in this subsection precludes any party from seeking relief from any Superior Court with jurisdiction.

20.4 Pending final decision of a dispute hereunder, all parties shall proceed diligently with the performance of the Contract and in accordance with the direction of the City. Failure to comply precisely with the time deadlines under this paragraph as to any claim shall operate as a waiver and release of that claim and an acknowledgment of prejudice to the City, BPI or KC.

SECTION 21 SEVERABILITY

If any part of the Contract is declared to be invalid or unenforceable, the rest of the Contract shall remain binding.

SECTION 22 INDEPENDENT CONTRACTOR

Each party hereto is and shall perform this Contract as an independent contractor, and as such, shall have and maintain complete control over all of its employees, agents, and operations. None of the parties nor anyone employed by them shall be, represent, act, purport to act or be deemed to be the agent, representative, employee or servant of any of the other parties.

SECTION 23 SUBCONTRACTORS

BPI shall identify all proposed suppliers or subcontractors for items or services under this Contract.

SECTION 24 FORCE MAJEURE

Should any of the parties be prevented wholly, or in part, from performing their respective obligations under this Contract by a cause reasonably outside of and beyond the control of the party affected thereby, including but not limited to war, government regulation, restriction or action, strike, lockout, accidents, storms, earthquake, fire, acts of God or public enemy or any similar cause beyond the control of the parties, then such party shall be excused hereunder during the time and to the extent that the performance of such obligation are so prevented, and such party shall have no liability whatsoever for any damages, consequential or otherwise, resulting therefrom.

SECTION 25 NON-WAIVER

Failure by any of the parties to enforce their rights under any provision of this Contract shall not be construed to be a waiver of that provision. No waiver of any breach of this Contract shall be held to be a waiver of any other breach.

SECTION 26 ASSIGNMENT

BPI and /or KC shall not assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the City or its Contractor. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successor/party.

SECTION 27 NOTICES

All notices required under this Contract shall be personally delivered or mailed by certified or registered mail, postage prepaid as follows:

if to the City, addressed to:

Name Kari Chennault
Address City of Marysville
80 Columbia Ave.
Marysville, WA 98270

Contact: 360-363-8277 office / 425-754-2173 cell
kchennault@marysvillewa.gov

If to BPI, addressed to:

Name David K. Ruud, Operations Manager
Address Boulder Park, Inc.
P.O. Box 285
Mansfield, WA 98830

Contact: 509-683-1142 office / 509-669-3775 cell
ruudbpi@aol.com

If to KC, addressed to:

Name Jake Finlinson, Biosolids Project Manager
Address King County Wastewater Treatment Division
201 S. Jackson Street, KSC-NR-0512
Seattle, WA 98104

Contact: 206-477-3524 office / 206-305-4272 cell
jake.finlinson@kingcounty.gov

Or to such other address as any party shall specify by written notice so given. Notices shall be deemed to have been given and received as of the date so delivered or three (3) business days after being deposited in the US mail.

SECTION 28 ENTIRE CONTRACT; AMENDMENT

This Contract constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any and all other communications, representations, proposals, understandings or agreements, either written or oral, between the parties with respect to such subject matter. This Contract may not be modified or amended, in whole or in part, except in writing signed by all parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date above written.

CITY OF MARYSVILLE

By _____
Jon Nehring, Mayor

Date _____

BOULDER PARK, INC.

By _____
Leroy Thomsen, President

Date _____

KING COUNTY

By _____
Pam Elardo, P.E.
Director, Wastewater Treatment Division

Date _____

Approved as to form only:

William E. Blakney, Deputy Prosecuting Attorney

Date