

CITY OF WALLA WALLA
STANDARD PROFESSIONAL SERVICES CONTRACT

THIS PROFESSIONAL SERVICES CONTRACT (Contract) is made this 3rd day of April 2013, by and between the City of Walla Walla, Washington, a municipal corporation, hereinafter referred to as "CITY", and **SHAW ENVIRONMENTAL, INC., 1230 Columbia Street, Suite 1200, San Diego CA 92101**, hereinafter referred to as "SERVICE PROVIDER":

RECITALS:

CITY intends to hire a service provider for Operations and Maintenance of the Sudbury Road Landfill, Gas Field and Flare.

SERVICE PROVIDER agrees to provide the following professional services requested by CITY: The contractor duties will include operation and maintenance of the well field, Landfill Gas (LFG) condensate system, gas collection and monitoring system, and the flare system. The goal of this contract is to operate and optimize the system for stable operation of the flare systems to ensure regulatory compliance, and to maximize carbon credit revenue returns and methane destruction.

WITNESSETH:

That for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed:

SCOPE OF SERVICES:

1. SERVICE PROVIDER shall provide to CITY the services outlined in attached documents the REQUEST FOR PROPOSALS (RFP) Sudbury Road Landfill – Gas Field and Flare O&M Proposal and the proposal, titled "Sudbury Road Landfill – Gas Field and flare O&M Proposal" dated February 22, 2013, submitted by the SERVICE PROVIDER, provided that the RFP shall take precedence in the event of conflict and the SERVICE PROVIDER also agrees to remotely check the run status of the flare each working day as outlined in the RFP.

2. SERVICE PROVIDER shall provide the services set out above in accordance with the following schedule:

- a. Services will commence June 1, 2013 (the "Commencement Date") and continue for twenty-four months unless otherwise extended or terminated as provided below.
 - b. All deliverables, e.g., O&M records and other final submittals, are to be provided to CITY no later than August 1, 2015.
3. To assist SERVICE PROVIDER in carrying out these obligations, CITY shall perform the following services:
 - a. Make all records on file and necessary to complete the work, available to SERVICE PROVIDER.

EFFECTIVE AND TERMINATION DATES:

1. This Contract shall be effective as of the date set forth above, and shall terminate twenty four (24) months from the Commencement Date. The term of the contract would be two years, with three - two year extensions for a maximum contract length of eight (8) years.
2. CITY and SERVICE PROVIDER may by mutual written agreement, terminate this Contract at any time.
3. CITY may, on 30 days written notice to SERVICE PROVIDER, terminate this Contract for any reason deemed appropriate at its sole discretion.

COMPENSATION:

CITY shall pay SERVICE PROVIDER for work performed under this Contract an amount not to exceed **\$67,000** for all work identified in the Scope of Services and in accordance with the "Sudbury Road Landfill – Gas Field and Flare O&M Proposal" dated February 22, 2013, submitted by the SERVICE PROVIDER. Plus, if the contractor, through the approved management of the existing well gas field, exceeds generating 18,000 CRT's per year, then the City will share 45% of the incremental revenue increase (above 18,000 CRT's) of Carbon Credit Sales, with the contractor.

1. CITY shall pay SERVICE PROVIDER for as outlined in the proposal.
2. SERVICE PROVIDER shall submit to CITY an itemized invoice (payment request) at the end of each month.

3. CITY shall process payment requests in its normal course and manner for accounts payable. Payment of uncontested amounts is net 30 days from receipt of invoice. Invoices for payment shall be mailed to: City Hall 15 N. 3rd Avenue, Walla Walla, WA 99362.
4. The amount of any excise or gross receipts tax that may be imposed shall be added to the compensation as determined to be appropriate.
5. Final payment to SERVICE PROVIDER may be withheld by CITY until all SERVICE PROVIDER's work product is complete and provided to CITY.
6. In the event of termination, CITY shall pay SERVICE PROVIDER for work performed in accordance with this Contract prior to the termination date.
7. In the event of termination by SERVICE PROVIDER under a breach of contract by CITY, CITY shall pay to SERVICE PROVIDER as provided in subsection 7 of this Section, and SERVICE PROVIDER's remedy shall be limited to termination of this Contract and receipt of payment as provided in this section.
8. In the event of termination by CITY under a breach of contract by SERVICE PROVIDER, CITY shall pay to SERVICE PROVIDER as provided in subsection 7 of this Section, with the exception that if CITY completes the work either through its own forces or through another SERVICE PROVIDER, and the cost exceeds the amount that would have been paid to SERVICE PROVIDER, the excess cost shall be deducted from the amount owed SERVICE PROVIDER.

BREACH OF CONTRACT:

1. Either CITY or SERVICE PROVIDER may terminate this Contract in the event of a breach of this Contract by the other party.
2. Prior to such termination however, the party seeking to terminate shall give the other party written notice of the breach, which written notice shall specify the failure and demand correction or remedy in ten (10) days. If the party has not entirely cured the breach within ten (10) days of the notice, then the party giving notice may terminate this Contract at any time thereafter by giving written notice of termination.

NOTICE:

Any notice provided for under this Contract shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such address as either party hereafter shall specify in writing to the other party:

If to the CITY: CITY OF WALLA WALLA
ATTN: FRANK NICHOLSON, P.E.
55 MOORE STREET
WALLA WALLA, WASHINGTON 99362-1859

If to the SERVICE PROVIDER: SHAW ENVIRONMENTAL, INC.
ATTN: ERIK KORSMO, PROJECT MANAGER
180 PROMENADE CIRCLE
SUITE 320 SACRAMENTO, CA 95834
ERIK.KORSMO@CBI.COM
503.939.3688

WITH COPY TO: SHAW ENVIRONMENTAL, INC.
ATTN: DARRELL THOMPSON, CLIENT MANAGER
1230 COLUMBIA ST., SUITE 1200
SAN DIEGO, CA 92101
DARRELL.H.THOMPSON@CBI.COM
760-977-8106

COMPLIANCE WITH LAWS:

1. In connection with its activities under this Contract, SERVICE PROVIDER shall comply with all applicable Federal, State and local laws and regulations.
2. This Contract shall be construed to be governed by the laws of the State of Washington.

NON DISCRIMINATION:

During the performance of this contract, SERVICE PROVIDER agrees as follows:

1. SERVICE PROVIDER will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, genetic information, marital status, age, Vietnam era veteran status, disabled veteran condition, disability, or national origin. SERVICE PROVIDER will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin.

Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

2. SERVICE PROVIDER will not, on grounds of any of the protected class indicators listed in subsection 1 of this Section:
 - a. Deny an individual any services or other benefits provided under this agreement.
 - b. Provide any service(s) or other benefits to an individual(s), which are different, or are provided in a different manner from those provided to others under this agreement.
 - c. Subject an individual to segregation or separate treatment in any manner related to the receipt of any service(s) of other benefits provided under this agreement.
 - d. Deny any individual an opportunity to participate in any program provided by this agreement through an opportunity to do which is different from that afforded others under this agreement. SERVICE PROVIDER in determining (1) the types of services or other benefits to be provided, or (2) the class of individuals to whom or the situation in which, such services or other benefits will be provided, or (3) the class of individuals to be afforded an opportunity to participate in any services or other benefits, will not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination due to any of the protected class indicators listed in subsection 1 of this Section.

INDEMNIFICATION:

1. SERVICE PROVIDER agrees to indemnify, hold harmless and at CITY's request, defend CITY, its officers, officials, employees and volunteers harmless from and against any and all liability or alleged liability, all suits, legal proceedings, claims, injuries, damages, losses and

expenses, including but not limited to attorney's fees, arising out of or in connection with or incidental to any negligent act or performance, or error or omission of SERVICE PROVIDER or anyone acting on behalf of SERVICE PROVIDER in connection with or incidental to this Contract.

2. CITY agrees to indemnify, defend, and hold harmless SERVICE PROVIDER from all claims, damages, and expenses, including attorney's fees arising out of the unauthorized reuse of SERVICE PROVIDER's instruments of service by CITY or by other's agents acting through CITY. Instruments of service shall include such things as original documents, survey notes, tracings, computer programs, and stamped plans and specifications, reports or findings of fact.
3. SERVICE PROVIDER shall provide services under this Contract in accordance with generally accepted professional practices for the intended use of the project and no warranty or representation either expressed or implied is intended as part of these services. Any opinion of the cost of the intended project prepared by SERVICE PROVIDER represents its best judgment as a professional and is supplied for the general guidance of CITY. SERVICE PROVIDER does not guarantee the accuracy of such opinion.
4. CITY will require that any SERVICE PROVIDER or sub-SERVICE PROVIDER performing work in connection with any plans or specifications produced under this Contract, to hold harmless, indemnify, and defend CITY, SERVICE PROVIDER, their sub-SERVICE PROVIDERS and each of their officers, agents, and employees from any and all liability claims, losses, or damage arising out of or alleged to arise from the SERVICE PROVIDER's negligence in the performance of the work described in the plans and specifications.
5. Should a court of competent jurisdiction determine that this Agreement 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 the SERVICE PROVIDER and the CITY, its officers, officials, employees, and volunteers, the SERVICE PROVIDER's liability, including the duty and cost to defend, hereunder shall be only to the extent of the SERVICE PROVIDER's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the SERVICE PROVIDER's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

6. This Contract is to be binding on the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without written consent of the other.
7. SERVICE PROVIDER is responsible for damage to City equipment in the SERVICE PROVIDER care and will return the equipment in serviceable condition less normal wear and manufacturing defects.

INSURANCE:

SERVICE PROVIDER shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the SERVICE PROVIDER, its agents, representatives, or employees. SERVICE PROVIDER shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The CITY shall be named as an insured under the SERVICE PROVIDER's Commercial General Liability insurance policy with respect to the work performed for the CITY.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the SERVICE PROVIDER's profession.

MINIMUM INSURANCE LIMITS:

SERVICE PROVIDER shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident, Combined Single Limit (CSL).

2. Commercial General Liability insurance shall be written with limits no less of at least \$5,000,000 aggregate CSL
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

OTHER INSURANCE PROVISIONS:

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The SERVICE PROVIDER's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the SERVICE PROVIDER to the coverage provided by such insurance, or otherwise limit the CITY's recourse to any remedy available at law or in equity.
2. The SERVICE PROVIDER's insurance coverage shall be primary insurance as respect the CITY. Any insurance, self-insurance, or insurance pool coverage maintained by the CITY shall be excess of the SERVICE PROVIDER's insurance and shall not contribute with it.
3. The SERVICE PROVIDER shall furnish the CITY with original certificates and copy of the amendatory endorsements, including but not limited to the additional insured endorsement, evidencing the insurance requirements of the SERVICE PROVIDER before commencement of the work.
4. The SERVICE PROVIDER's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the CITY.
5. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
6. Failure on the part of the SERVICE PROVIDER to maintain the insurance as required shall constitute a material breach of contract, upon which the CITY may, after giving five business days notice to the SERVICE PROVIDER to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid by the CITY on demand,

or at the sole discretion of the City, offset against funds due to the SERVICE PROVIDER from the CITY.

ASSIGNMENT:

SERVICE PROVIDER shall not assign this Contract, in whole or in part, or any right or obligation hereunder, without prior written approval of CITY.

AMENDMENTS:

CITY and SERVICE PROVIDER may amend this Contract at any time only by written amendment. Any change in the Scope of Services shall be deemed an amendment subject to this subsection.

SEVERABILITY:

In the event any provisions of this Contract shall be held to be invalid, illegal, or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

LITIGATION/ARBITRATION:

1. Any dispute arising out of or in connection with this Contract which is not settled by mutual agreement within sixty (60) days of notification in writing by either party may be submitted to litigation or arbitration. Should that occur, all court costs and attorney's fees incurred by the prevailing party shall be paid by the non-prevailing party to the prevailing party.
2. Notwithstanding any dispute under this Contract SERVICE PROVIDER shall continue to perform its work pending resolution of the dispute, and CITY shall make payments as required by this Contract for undisputed portions of the work.
3. Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other party.

MAINTENANCE OF RECORDS:

SERVICE PROVIDER shall maintain record on a current basis to support its billings to CITY. CITY, or its authorized representative, shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of SERVICE PROVIDER regarding its billings or its performance hereunder, for a period of three (3) years after completion or termination of this Contract.

APPROVALS

CITY

SERVICE PROVIDER

Approved as to Form:

City Attorney



By: _____

By: _____

Type Name: Nabiel Shawa

Type Name: Darrell H. Thompson

Title: City Manager

Title: Client Program Manager

Attest:

Kammy D. Hill, MMC, City Clerk