

Biosolid Hauling Services Contract
City of Waukesha – United Liquid Waste Recycling, Inc.

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, 201 Delafield St., Waukesha, WI 53188, referred to herein as the City; and United Liquid Waste Recycling, Inc. 715 Morgan Street, PO Box 247, Clyman, Wisconsin 53016, referred to herein as ULWR. Together, the City and ULWR are referred to as the Parties:

Recitals

The City's Clean Water Plant, referred to herein as WCWP, generates biosolid sludge, and requires a means of disposing of that sludge.

ULWR offers biosolid sludge disposal services of the kind required by the City, and the City has determined that ULWR is qualified to dispose of its biosolids.

Now, therefore, in consideration of the mutual promises contained herein, the City and ULWR agree and contract as follows:

1. **ULWR Obligations.** ULWR shall perform the following obligations referred to herein as the Work:
 - a. ULWR shall haul away and dispose of all biosolids generated by WCWP during the term of this Contract. ULWR acknowledges that City makes no representation as to the quantity of Biosolids that will be generated during the term of this Contract.
 - b. ULWR shall dispose of biosolids by land application at sites chosen from the WDNR current list of sites approved for disposal of biosolids from WCWP.
 - c. ULWR shall be responsible at its sole expense for WDNR-required soil testing per Wisconsin Administrative Code NR 204.06. Analysis shall be performed by a State of Wisconsin certified laboratory.
 - d. ULWR shall not apply biosolids to sites or portions of sites with a soil pH of less than 6 s.u.
 - e. ULWR shall not apply biosolids to any site at greater than the WDNR-recommended rate. Rate calculations shall include residual nitrogen from biosolids for the two previous crop years.
 - f. ULWR shall provide all information regarding land application, including landowner information, location, soil testing, solids application rates, daily log sheets, and nutrient calculations to WCWP no later than January 15, 2018. Additional information shall be provided to WCWP as requested.
 - g. All biosolids must be removed from WCWP solids storage building no later than November 19, 2017, unless other arrangements are approved by WCWP superintendent in writing.
 - h. Biosolids may be hauled in legal quantities deemed appropriate by ULWR limited only by the availability of WCWP personnel to load and weigh the biosolids.
 - i. ULWR shall provide straw, or other suitable material, to be spread on the floors of dump trailers so that the biosolids will slide from the trailer more easily, to prevent sticking in the trailers and reduce the amount of biosolids hauled more than once.
 - j. ULWR must possess a valid WID identification number. The special waste permit must be displayed on trucks during hauling.
 - k. ULWR trucks must be properly licensed in Wisconsin.

- I. ULWR will provide a list of trucks to be used for hauling, including license numbers of trucks and trailers.
 - m. ULWR trucks must be large enough to haul a minimum of 20 cubic yards at once.
 - n. ULWR trucks must be covered sufficiently to prevent spillage during hauling operations.
 - o. ULWR shall develop and provide to the City a Spill Recovery Plan, which shall be followed by ULWR in the event of a loss of hauled material on any public or private highway or right of way.
 - p. ULWR shall reimburse WCWP if WCWP staff is required to work overtime to meet deadlines in this Contract. This shall be accomplished by a credit against invoices issued by ULWR.
 - q. ULWR shall be required to procure at ULWR expense all permits and license required by law.
 - r. ULWR shall comply with WCWP's Plant Safety Rules for Contractors, which shall be provided to ULWR by WCWP staff. ULWR shall acknowledge receipt of the Rules in writing.
2. **City Obligations.** The City shall perform the following:
 - a. WCWP will load ULWR trucks and check the weight of each truck.
 - b. WCWP will provide ULWR the most recent available analysis for the biosolids.
 - c. Weight receipts shall be generated for each load by WCWP unless other arrangements are approved by WCWP superintendent.
3. **Payment.** The City shall pay ULWR for the Work as follows: \$12.49 per ton of biosolids hauled, as shown on WCWP weight receipts. ULWR will invoice City monthly, and invoices shall show tonnage and rate calculations. City shall review all invoices and if in agreement with ULWR calculations shall pay the full amount within 30 days of receipt.
4. **Term of Contract.** The initial term of this Contract shall commence on its execution and terminate on December 31, 2017. The City may terminate this Contract at any time, with or without cause, upon 30 days' advance written notice to ULWR.
5. **Penalty.** In addition to all other remedies available at law or in equity, ULWR shall be assessed a penalty of \$250 for each day after November 19, 2017 that ULWR has not completed hauling biosolids from the storage building, as provided in section 1.g. A penalty of \$250 per day shall be assessed against ULWR for each day that ULWR fails to perform soil testing and reporting, or fails to provide application-rate data. These penalties shall be assessed by a reduction in the amounts payable by City to ULWR.
6. **Exclusivity.** Provided ULWR is not in breach of this Contract, the City shall not contract with another entity for disposal of biosolids sludge during the term of this Contract.
7. **Indemnification.** ULWR shall indemnify and hold the City harmless from any and all claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind arising out of, or connected in any way with, ULWR's performance of services under this Contract, including court costs and actual attorney fees.
8. **Insurance.** ULWR shall maintain insurance of the following kinds and for not less than the following limits, at ULWR's sole expense, at all times during the performance of the Work. Policies shall be occurrence, and not claims-made, policies. ULWR shall obtain an endorsement making the City an additional insured and loss payee, and ULWR's insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Contract, ULWR shall deliver a certificate of insurance to City showing that all requirements of this section are met.

- a. Commercial general liability, including products-completed operations, a minimum of \$5,000,000 per occurrence, \$5,000,000 aggregate.
 - b. Automobile liability, a minimum of \$1,000,000 bodily injury, \$1,000,000 property damage.
 - c. Umbrella, \$5,000,000.
 - d. Worker compensation, statutory requirements.
9. **Notices.** Any notice required under this contract shall be in writing, except in case of emergency when notice may be verbal. Notice shall be given as follows:

To the City:

City of Waukesha Clean Water Plant
600 Sentry Drive
Waukesha, WI 53186-5950
262-524-3625

To ULWR:

United Liquid Waste Recycling, Inc.
Robert W. Tracy, Jr. – President
P.O. Box 247
Clyman, WI 53016

10. **Assignment, Subcontractors.** ULWR shall not assign this Contract to any third party or engage subcontractors to perform any of its obligations under this Contract without the expressed, written, advance consent of the City, which may be withheld without cause.
11. **Parties Are Independent Contractors.** Nothing in this Contract shall be construed to create any relationship between the Parties other than independent Contractors. The Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.
12. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.
13. **Force Majeure.** Neither Party shall be in default of this Contract if the failure to perform was the result of an unforeseen circumstance beyond the Party's control, provided performance resumes or takes place as soon as reasonably possible after circumstances return to normal.
14. **Corporate Authorization.** The individuals executing this Contract on behalf of ULWR warrant and represent that they are duly authorized to bind the ULWR to this Contract. ULWR warrants and represents that the execution of this Contract is not prohibited by the ULWR's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order. ULWR shall provide proof upon request.
15. **Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.

16. **Construction of Contract Terms.** If any term or provision of this Contract requires interpretation or construction, the determination of WCWP staff shall be final.
17. **Integration.** This Contract embodies the entire agreement of the Parties with respect to the subject matter expressed herein. All other inconsistent agreements and understandings of the Parties with respect only to the subject matter expressed herein are superseded and are unenforceable.
18. **Amendments.** No amendments, additions, or changes of any kind to this Contract will be valid unless in writing and signed by all of the Parties to this Contract.
19. **Severability.** If any term of this Contract is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Contract without affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it will be so severed, and the remainder of this Contract will remain in effect and enforceable.
20. **Survival and Parties Bound.** Unless specifically limited in this Contract, any term, condition or provision of this Contract will survive the execution of this Contract or any stated time periods, to the extent necessary for their performance. This Contract is binding upon, and inures to the benefit of, the Parties' successors, assigns, heirs, executors, trustees and personal representatives.
21. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

ULWR Disposal Services Solid Waste Midwest, LLC

 Robert W. Tracy, Jr., President
 Date: _____

City of Waukesha

 Shawn N. Reilly, Mayor
 Date: _____

 Attest: Gina L. Kozlik, City Clerk
 Date: _____

To certify that funds are available for payment:

 Richard L. Abbott, Finance Director
 Date: _____