

City of Fayetteville Staff Review Form

2022-0644

Legistar File ID

8/16/2022

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Tim Nyander

7/27/2022

WASTEWATER TREATMENT (730)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends the approval of a Drying as a Service Agreement with Griffin Residuals, LLC for the drying of biosolids at the Biosolids Management Site at an estimated cost of \$406,250.00 for the remainder of 2022, approval of a contingency in the amount of \$81,250.00, and approval of a budget adjustment.

Budget Impact:

5400.730.5110-5315.00

Water and Sewer

Account Number

Fund

N/A

N/A

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 360,600.00

Funds Obligated \$ 360,600.00

Current Balance \$ -

Does item have a cost? Yes

Item Cost \$ 487,500.00

Budget Adjustment Attached? Yes

Budget Adjustment \$ 487,500.00

Remaining Budget \$ -

Purchase Order Number:

V20210527

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



MEETING OF AUGUST 16, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Water & Sewer Committee

FROM: Tim Nyander, Utilities Director

DATE: July 27, 2022

SUBJECT: Griffin Residuals – Biosolids Drying as a Service Agreement

RECOMMENDATION:

Staff recommends the approval of a Drying as a Service Agreement with Griffin Residuals, LLC for the drying of biosolids at the Biosolids Management Site at an estimated cost of \$406,250.00 for the remainder of 2022, approval of a contingency in the amount of \$81,250.00, and approval of a budget adjustment.

BACKGROUND:

The DaaS Agreement is an agreement between Griffin Residuals and The City of Fayetteville to pursue a business relationship in drying the City's biosolids. Griffin Residuals' will invest the capital equipment and services at the City's Biosolids Management site (BMS) to enable the receiving and drying of the City's biosolids following transport from the Paul R. Noland (East) and West Side (West) wastewater treatment plants. The business relationship is anticipated to include the use of property and/or buildings at the BMS and a fee-per-ton for biosolids dried at the Drying as a Service (DaaS) facility.

DISCUSSION:

Griffin Residuals, LLC will install, operate, and train city staff to operate a Biosolids dryer to replace the previous biosolids dryer that suffered a catastrophic failure on December 13, 2021. The machinery owned by Griffin Residuals, LLC will be installed and initially operated and fully maintained by Griffin Residuals, LLC, who will also pay for the electricity and natural gas used to operate the dryer. Griffin Residuals will receive a per ton sludge processing rate of \$65.00 per ton with an estimated monthly sludge feed amount of 1,250 tons. After an initial three year operation to confirm the quality and ability of the machinery and operation, the City will have the option to exercise a Buy-Out of this sludge processing equipment for a set price of \$1,995,000.00.

Biosolids drying is a very specialized service. The City's options after the catastrophic failure of the current dryer was to purchase a new dryer, send solids to the landfill indefinitely in a partially dried form, or search for a service to dry solids. The Drying as a Service program that was selected provides the City with the opportunity to temporarily utilize a cutting-edge technology

with minimal capital investment. If this drying technology is viable, this agreement allows the City to purchase the dryer that is in place and continue operating with in-house staff. If we decide that this drying technology is not what is best for the City, it will be removed at no additional cost.

A bid waiver is requested because in our research this is the only Drying as a Service that best fits the current configuration of our facilities. Drying as a Service is difficult to find. Other drying services are structured toward regional drying operations, which is drying solids from several municipalities together. By drying dedicated solids from Fayetteville, we can continue to market the finished product as fertilizer for sale, offsetting in part the drying operation.

This item was presented to the Water & Sewer Committee on July 12, 2022 with a unanimous vote to forward it to the City Council for consideration. Approval of this agreement by the City Council will set into motion the installation of the necessary piping, electrical components, conveyors, and other equipment by the City in preparation for installing the Griffin Residuals dryer.

BUDGET/STAFF IMPACT:

A budget adjustment is requested to move funds from the Lake Sequoyah Dredging account to the Contract Services account to cover the costs of drying biosolids. The rate of \$65.00 will be charged on an estimated 1,250 tons per month. The estimated cost for the remainder of 2022 is \$406,250.00. A 20% contingency is also requested.

Attachments:

Drying as a Service Agreement
Budget Adjustment

GRiffin RESIDUALS DRYING AS A SERVICE AGREEMENT
CITY OF FAYETTEVILLE, ARKANSAS

This Griffin Residuals Drying As A Service Agreement (“**Agreement**”) is executed as of the last date set forth on this Agreement’s signature page below (the “**Execution Date**”), by and between Griffin Residuals, LLC, a Kentucky limited liability company (the “**Company**”) with offices located at 5872 Highway 1389, Owensboro, KY 42303, and the City of Fayetteville, AR, a municipal corporation in the State of Arkansas (the “**City**”) with offices located at 113 West Mountain Street, Fayetteville, AR 72701 and 2435 S Industrial Drive, Fayetteville, AR 72701. The Company and the City are each individually a “**Party**” and collectively are the “**Parties**”.

RECITALS

WHEREAS, Company, among other things, builds, owns, and operates advanced biosolid facilities;

WHEREAS, the City is responsible for providing wastewater treatment and disposal services for the municipality of Fayetteville, AR. As part of its obligations, the City operates two wastewater treatment plants, the Paul R. Roland Wastewater Treatment Facility (the “**East Plant**”) and the West Side Wastewater Treatment Facility (the “**West Plant**”);

WHEREAS, the City transfers dewatered biosolids (the “**Biosolids**”) from the East Plant and the West Plant to the City’s Biosolids Management Site located at 16464 East Wyman Road, Fayetteville, AR 72701 (the “**BMS**”, and, with the East Plant and the West Plant, the “**City Facilities**”) for further processing. The BMS utilizes six (6) solar green houses to partially dry the Biosolids prior to further processing;

WHEREAS, certain equipment located at the BMS used to dry Biosolids suffered a catastrophic failure on December 13, 2021 and is currently inoperable;

WHEREAS, the City and the Company entered into a non-binding letter of intent on or about February 1, 2022, to investigate the possibility of the Company assisting the City in the implementation of Biosolids drying operations at the BMS;

WHEREAS, the City and the Company now desire to enter into a binding contract whereby the Company will provide the City with certain services and equipment (collectively, the “**Project**”) to be located in “Solar House F” (as hereinafter defined) of the BMS for use in drying Biosolids in exchange for the City’s payment to the Company of certain compensation and other consideration, all as more specifically set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants, undertakings, conditions, and consideration set forth below, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I **OVERVIEW OF TRANSACTION**

1.1. **Contract Documents.** This Agreement consists of the terms and conditions set forth in the sections (“**Sections**”) captioned by numbered article designations (“**Articles**”) and the following appendices (each, an “**Appendix**” and collectively, the “**Appendices**”) which are incorporated and made part this Agreement by this reference and are included in any reference to this Agreement. The Recitals in this Agreement are hereby incorporated into the Agreement, are material terms of this Agreement, and are being relied up by the Parties in executing this Agreement.

A. **Appendix A – Scope of Work:** Appendix A sets forth the scope of the respective work to be respectively performed by the City and Company in furtherance of the Project.

B. **Appendix B - Compensation:** Appendix B sets forth the compensation to be paid to the Company pursuant to this Agreement.

C. **Appendix C – Buy-Out Agreement:** Appendix C sets forth the form of the agreement the Parties will enter if the City exercises its “Buy-Out” rights pursuant to Section 8.7 of this Agreement.

D. **Appendix D – Company Insurance:** Appendix C sets forth the types and amounts of insurance coverage (the “**Company Insurance**”) that the Company shall and will maintain in place during the Term; however, the Parties acknowledge and agree that the Company can change the insurer that provides the Company Insurance so long as any such change does not reduce the amounts of the Company Insurance.

E. **Appendix E – City Insurance:** Appendix E sets forth the types and amounts of insurance coverage (the “**City Insurance**”) that the City shall and will maintain in place during the Term; however, the Parties acknowledge and agree that the City can change the insurer that provides the City Insurance so long as any such change does not reduce the amounts of the City Insurance.

1.2. **Hierarchy of Documents.** If the terms and conditions of the Articles of this Agreement vary or are inconsistent with any portion of the Appendices, the terms of this Agreement shall control and be given priority. This Agreement contains the entire agreement between the parties and supersedes all prior agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement. Neither party will be bound by or be deemed to have made any representations, warranties, commitments, or other undertakings with respect to the subject matter of this Agreement that are not contained in this Agreement. In this regard, neither Party may rely on any representation, warranty, collateral contract, or other assurance (except those set out in this Agreement and the documents referred to in it) made by or on behalf of the other Party before the Execution Date, and each Party waives all rights and remedies which, but for this Section 1.2, might otherwise be available to it in regard to any such representation, warranty, collateral contract, or other assurance.

1.3. **Project Term and Commencement of the Project.** The term of this Agreement and the Project shall commence on the Execution Date and shall continue for a term of three (3) years (the “**Term**”) following issuance of the Performance Test Certificate (as defined below) on the Certification Date (as defined in Appendix A) unless terminated earlier by mutual Agreement or in accordance with the express terms of any other provision of this Agreement. The Term shall be automatically extended by:

- A. Any period of extension granted to the Company pursuant to this Agreement or otherwise by the City;
- B. Pursuant to Section 6.7 in the event of any Force Majeure Event (as defined in Article VI);
- C. Any period during which the Company was unable to carry out its obligations due to a default, delay, or interruption by the City or other Competent Authority (including delays in obtaining, issuing, or renewing a Required Consent); or
- D. As agreed by the Parties in writing.

The timelines and deadlines for the performance of the Parties respective duties under this Agreement are more specifically set forth in Appendix A.

1.4. **Parties’ Relationship.** The City has retained the Company as an independent contractor to provide the goods and services necessary to complete the Project pursuant to the terms of this Agreement. The Parties are independent from one another, and nothing in this Agreement creates any agency, joint venture, partnership, or other form of joint enterprise, employment, or fiduciary relationship between the Parties. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.

1.5. **Designated Representatives.** The City and the Company shall each designate a representative (“**Designated Representative**”) to act on each Party’s respective behalf in overseeing the performance of the Project and this Agreement. The City and the Company each may change their respective Designated Representatives upon written notice to the other Party given as specified in this Agreement. The Parties agree that the Designated Representatives shall be the primary means for communication and all other interactions between the City and the Company that are required or needed under this Agreement.

ARTICLE II **DEFINITIONS & RULES FOR INTERPRETATION**

2.1. **Definitions.** Terms that are specifically defined elsewhere in this Agreement, including in other Articles or in the Appendices, shall have the meanings given to them in those other portions of this Agreement. The Parties further acknowledge and agree that certain of the defined term set forth in this Section 2.1 may only be included in this Agreement in anticipation that those defined terms may be relevant to future amendments or modifications to this Agreement and, as such, such terms might not be used elsewhere in this Agreement as of the Execution Date.

Unless otherwise required by the context in which a defined term appears, the following terms shall have the meanings specified in this Section 2.1:

A. **“City Consents”** means the Required Consents that the City is obligated to provide pursuant to this Agreement;

B. **“City Representative”** means the City’s Designated Representative and is Tim Nyander;

C. **“Company Assets”** means all goods, supplies, parts, equipment (inclusive of the TDE), two dried solids stainless steel conveyors, Tooling, and other property that the Company provides to the City in furtherance of the Project. The City acknowledge and agrees that the Company has sole title to the Company Assets and that title to the Company Assets shall remain in the Company unless and until the City properly consummates a “Buy-Out” (as that term is defined in Section 8.7);

D. **“Company Representative”** means the Company’s Designated Representative and is Tid Griffin, the Company’s CEO;

E. **“Competent Authority”** means the Washington County Circuit Court or Federal District Court of the Western District of Arkansas, or state or federal regulatory agency;

F. **“Contract Payments”** means all amounts payable by the City to the Company in connection with this Agreement, including the compensation set forth in Appendix B;

G. **“Design Documentation”** means the Design Documentation as well as all other drawings, diagrams, details, documents, specifications, samples, models, or information (including calculations, logic or sequence overview diagrams and functional design specifications for computer software) currently existing or hereinafter created related to the Project and all amendments and revisions thereto prepared by the Parties after the Execution Date in connection with the Project;

H. **“Directive”** includes any present or future directive, requirement, instruction, condition of or limitation in any necessary consent, license, authorization, permission, approval, permit, direction, code of practice, or rule of any Competent Authority having the force of law, and includes any modification, extension, or replacement thereof then in force;

I. **“Fees”** means the charges, fees, and rates of payment shown in Appendix B (as amended from time to time in accordance with this Agreement);

J. **“Insolvency Event”** means (i) the making by a Party of any general assignment for the benefit of creditors; (b) the filing by or against a Party of a petition to have that Party adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy or insolvency (unless, in the case of a petition filed against a Party, the same is dismissed within sixty (60) days); (c) the appointment of a trustee or

receiver to take possession of substantially all of a Party's assets or of a Party's interest in this Agreement, where possession is not restored to a Party within sixty (60) days; (d) the attachment, execution, or other judicial seizure of substantially all of a Party's assets or of a Party's interest in this Agreement where such seizure is not discharged within sixty (60) days; (e) any change in the incorporation status of the City; or (f) any other events which constitute insolvency events under relevant Legal Requirements. The Parties acknowledge and agree that a Party who has suffered an Insolvency Event has committed a Default (as defined in Article VIII) of this Agreement;

K. **“Intellectual Property Rights”** means all ownership and rights in inventions, drawings, Tooling, patents, copyrights, design rights, trademarks, trade dress, trade names, service marks, trade secrets, know-how, and other intellectual property rights (whether registered or unregistered) and all applications for any of them, anywhere in the world;

L. **“Land Documents”** means the leases, sub-leases, and other agreements validly granting the Company all necessary rights needed to be executed by the Parties in order for the Company to perform the work and provide the services necessary to undertake and perform the Project;

M. **“Legal Requirements”** means all applicable statutory and common laws, ordinances, regulations, and Directives having binding legal effect;

N. **“Performance Test Certificate”** means a certificate issued by the Company certifying that all or a part of the Project has met the Project Specifications;

O. **“Project Specifications”** means the design and construction specification for the Project, including any construction timetables, milestones, work, designs, specifications, construction and/or commissioning plans, other plans, and testing necessary for the completion of the Project in accordance with the provisions of this Agreement, in each case, to the extent expressly agreed and set forth by the Parties in Appendix A;

P. **“Representatives”** collectively means the City Representative and the Company Representative.

Q. **“Required Consents”** means all consents, licenses, authorizations, permissions, approvals, and permits of any Competent Authority which are necessary for the construction or operation of the Project or for the performance of any of the Company's obligations or rights under this Agreement, including the City Consents;

R. **“Services”** means the services, labor, resources, and work that the Company is providing to the City pursuant to this Agreement;

S. **“Sludge”** means a mixture of solids and water produced as a result of the collection or treatment of wastewater;

T. **“Sludge Delivery Point”** means each of the points for the delivery of Sludge into the Project, including those expressly described in the Project Specifications;

U. **“Solar House F”** is physically located within the BMS and is the northern most of the six (6) solar greenhouses located at the BMS and is the same greenhouse sometimes referred to as solar greenhouse F or solar greenhouse #6;

V. **“Subject Output”** means dried Biosolids meeting the Class A requirements as set forth in 40 C.F.R. § 503.32;

W. **“TDE”** means the thermal drying equipment to be supplied by Company pursuant to this Agreement and consists of a Gryphon Model 1050 thermal belt dryer with ancillary equipment, including its electrical control cabinets and cooling tower. Title to the TDE shall at all times remain in the Company unless and until the City purchases the TDE from the Company pursuant to certain “Buy-Out” rights being granted to the City pursuant to Article VIII.

X. **“Tooling”** means, collectively, all tooling, dyes, test and assembly fixtures, gauges, jigs, patterns, casting patterns, cavities, molds, and documentation (including engineering specifications and test reports) used by Company in connection with the Project, together with any accessions, attachments, parts, accessories, substitutions, replacements and appurtenances thereto; and

Y. **“Wastewater Treatment Plant”** or **“WWTP”** means any works, facility, or plant used for the treatment or disposal of wastewater.

2.2. Rules for Interpretation. In interpreting this Agreement, the following rules shall be applied:

A. Where the context requires words importing the singular shall include the plural and vice versa;

B. Where the context requires words importing “persons” or “Persons”, such terms shall include individuals, firms, corporations, associations, and all other forms of entity or organization, municipalities, utilities, or other legal entities;

C. A reference in this Agreement to any Article, Section, Appendix, clause, sub-clause, paragraph, schedule, part, or annex is, except where it is expressly stated to the contrary, a reference to such Article, section, Appendix clause, sub-clause, paragraph, schedule, part, or annex of this Agreement;

D. Headings are for convenience of reference only;

E. Each reference to this Agreement or to any other document, contract, or agreement shall include a reference to each permitted variation of, or supplement to, this Agreement and such document, contract, or agreement as amended, varied, or supplemented from time to time;

F. Each reference to this Agreement refers to this Agreement together with the Appendices;

G. References to any Legal Requirements shall include any statute or statutory provision which amends or replaces or has amended or replaced it and shall include any subordinate legislation made under any such Legal Requirements;

H. A Person includes its successors and permitted assignees or transferees; and

I. The words "include," "includes" and "including" are deemed to be followed by the words "without limitation." The word "or" is not exclusive.

ARTICLE III **THE COMPANY'S SERVICES AND WARRANTIES**

3.1 Scope of Company's Services. The Company shall provide the Services in accordance with the schedules, requirements, and timelines set forth in Appendix A. In this regard, the Company shall have the right and obligation at its cost to install, own, operate, finance, and maintain the TDE and other Company Assets subject to City's performance of its obligations (including making all required Contract Payments) under this Agreement. The Company's ongoing operation and maintenance of the TDE and other Company Assets as specified in Appendix A, in whole or in part, is subject to the City's compliance with the terms of this Agreement.

3.2 Standards for Performance of the Services. The Company represents and warrants that it shall perform the Services required under this Agreement in a professional and good and workmanlike manner and in accordance with the terms of this Agreement, good engineering and operating practices, any applicable Legal Requirements, and any vendor warranties. Further, the Company's employees, subcontractors, or agents assigned to perform any Services under the terms of this Agreement shall have the requisite skills, training, and knowledge reasonably commensurate with his or her level of performance or responsibility, so as to be able to perform the Service in a competent and professional manner. The Company agrees that it is performing Services at the direction of City and will heed the City's instructions regarding the timing, conditions, and scope of such Services provided that those instructions are not in conflict with the terms and provisions of this Agreement or with applicable Legal Requirements. Further, the Company shall not be required to carry out any Services except to the extent the Company has received all required information and cooperation from the City, and the City agrees to promptly provide all requested approvals, information, and authorizations to enable the Company to perform the Services and complete the Project in accordance with this Agreement.

3.3 The Company's Personnel Standards. The Company shall provide as reasonably necessary all labor and professional, supervisory, and managerial personnel as are required to perform the Services. All individuals employed by the Company to perform the Services shall be employees of the Company or of the Company's contractors, and their working hours, rates of compensation and all other matters shall be determined solely by the Company.

3.4 Operating Records and Reports. The Company shall develop and maintain equipment logs, records, and reports that document the performance of the Services, including the installation of the TDE in Solar House F, all in form and substance as may be reasonably required

by the City. The Company shall maintain current revisions of drawings, specifications, lists, clarifications, and other materials related to the Services and the installation of the TDE.

3.5 Non-Exclusivity. Nothing in this Agreement shall preclude the Company from engaging in other business similar or identical to the Project with third parties.

3.6 The Company's Additional Representations and Warranties. The Company further represents and warrants to the City that:

A. The Company has complied with all Legal Requirements and Required Consents such that the Company has the full right, power, and authority to enter into this Agreement and to perform its obligations under this Agreement;

B. The execution of this Agreement by the Company Representative, whose signature is set forth on the signature page of this Agreement, and the delivery of this Agreement by the Company has been duly authorized by all necessary action on the part of the Company;

C. The execution, delivery, and performance of this Agreement by the Company will not violate, conflict with, require consent under, or result in any breach or default under any Legal Requirements or Required Consent, with or without notice or lapse of time or both, or the provisions of any contract or agreement with third parties;

D. This Agreement constitutes the legal, valid, and binding obligation of the Company and is enforceable against the Company in accordance with its terms;

E. Except for Required Consents to be obtained by the City, the Company has obtained all Required Consents required by the Legal Requirements to perform its obligations under this Agreement;

F. All information that the Company has provided to the City is true and accurate and fairly represents the facts to which such information relates; and

G. The Company Representative has and is deemed to have full power and authority to act on behalf of the Company. Any notice given to the Company Representative or consent given by the Company Representative to the City under this Agreement shall bind the Company (for whom the Company Representative shall be deemed to act as agent) as though it had been given by the Company. The City may rely on the Company Representative as having full authority to act on behalf of the Company, including with regard to any Required Consents, Directives, requests, notices, or agreements given to the City. The Company may remove and replace the Company Representative at any time but shall give the City prior written notice of any such intended removal or replacement and provided always that no such removal or replacement of any Person as the Company Representative shall invalidate or otherwise affect any actions or decisions of such Person in his capacity as the Company Representative prior to such removal or replacement. If the Company notifies the City of the removal of the Company Representative, then, until the Company appoints a replacement, any notification to be made by the City to the Company Representative shall be made to the Company.

ARTICLE IV

CITY RESPONSIBILITIES, REPRESENTATIONS, AND WARRANTIES

4.1. Information. At the Company's request, the City shall provide the Company with all assistance and information reasonably necessary for the Company to discharge its obligations under this Agreement. The Company shall be entitled to rely upon such information provided by the City in the Company's performance of the Services.

4.2. Reasonable Access. At all times during the Term and following Termination until such time as the City has made the Termination Payment, the Company may enter upon the immediate site of the Project and all related areas, premises, and facilities in the vicinity of the Project or otherwise to the extent they affect the construction, operation, and maintenance of the Project. The City agrees to obtain all Required Consents to ensure the Company's access to the foregoing.

4.3. Testing. The Company shall be entitled to conduct tests and take samples related to the Project, and the City hereby grants the Company access to test results and samples taken by or on behalf of the City related to the Project.

4.4. Alterations to Sewerage Systems. The City shall keep the Company informed of all desired, proposed, or required physical alterations to the City's sewerage systems which may impact the Project in any way, including the volume of Biosolids to be processed through the Project, and the City shall not make any such alterations unless all possible impact to the Project (including, increases in the Fees) have been discussed and any necessary alterations to the Project have been agreed to between the City and the Company. In any event, the Company shall have no less than a reasonable period of time in which to make any alterations to the Project which are required prior to the commencement of any proposed alterations by the City to its sewerage systems.

4.5. Legal Requirements and Required Consents. The City shall at its cost carry out its obligations under this Agreement so as to comply at all times with all Legal Requirements and Required Consents (including those introduced after the Execution Date). The City shall be deemed to have satisfied itself as of the Execution Date as to the sufficiency and adequacy of the City Consents for the purpose of the Company discharging its obligations under this Agreement. The Company is not and shall not be liable for any errors or omissions made in obtaining any Required Consents for purposes of this Agreement or for any costs of rectifying any such errors or omissions. The City shall give the Company all reasonable assistance in rectifying any such errors or omissions in the Required Consents. The City shall take full responsibility as if it had applied for and obtained the Required Consents on its own behalf. In this regard:

A. The City shall be responsible for obtaining all Required Consents (including the City Consents). The City shall at all times comply with all laws (including Legal Requirements, Required Consents, and Directives) applicable to this Agreement, the City's performance of its obligations under this Agreement, and the City's use or sale of any product or Subject Output relating to the Project. Without limiting the generality of the foregoing, the City shall (i) at its own expense, maintain all Required Consents and (ii) not engage in any activity or transaction involving the Project that violates any law.

B. The City shall notify the Company immediately in the event that any Required Consent is proposed to be amended or replaced by the relevant Competent Authority, or in the event that a new Required Consent is to be issued by a Competent Authority, and shall from time to time, at its own cost, provide to the Company such other information in relation to the progress of such amendment, replacement, or issue as the Company may require, and the City shall copy the Company on all correspondence the City has with such Competent Authority. The City agrees to take account of the Company's comments and input in relation to any matter concerning such amendment, replacement, or issue.

C. If, following an amendment or replacement of a Required Consent or the issuance of a new Required Consent, the Company requests that the City appeal a decision of a Competent Authority, the City shall use its best efforts to appeal that decision.

D. Without limiting the City's obligations, the Company shall have the right and authorization, but not the obligation, to undertake any process, application, or otherwise to obtain any Required Consent for the Project on behalf of the City and the Project in the event that the City fails to do so. The City shall provide the Company with all information within the City's possession or control reasonably required by the Company in relation to or for the purpose of so obtaining any Required Consent.

E. If the City fails to pay any fee or other amount due pursuant to a Legal Requirement or Required Consent when it is due, the Company may (at its sole discretion) pay such fee and the amount so paid shall be immediately due and payable by the City to the Company.

F. The City shall comply with any decree, declaration, order, judgement, Directive, stipulation, or requirement given, made, or issued by any Competent Authority against or in relation to the City as a result of a breach by the City of any Legal Requirement or Required Consent.

G. The City shall provide the Company with all information reasonably requested by the Company in relation to the Required Consents (including, if so requested, copies of applications and copies of Required Consents) and shall consult with the Company in connection with such matters.

H. The City acknowledges and agrees that, if the Required Consents are withheld from the City for any reason whatsoever, the City shall nevertheless remain liable for and pay to the Company the Minimum Fees specified in Appendix B as if the Required Consents had been issued for a period of up to sixty ("60") days.

4.6. Information Regarding Construction Work. The City shall promptly provide the Company with all accurate and complete information requested by the Company which is necessary (A) to enable the Company to perform any construction work that the Company is obligated to perform pursuant to this Agreement or (B) for the Company to exercise its rights under this Agreement. The City shall immediately notify the Company in writing of all incidents of whatsoever nature affecting or likely to affect the progress of any construction work.

4.7. Performance Testing. The City agrees to fully cooperate with the Company in any performance tests related to the Project required by the Company, including any set forth in the Project Specifications. The Company shall have the right to cure any issues detected during a performance test, and the City agrees to cooperate in such cure efforts. Upon the Company's determination that the Project has passed all such performance tests, the Company shall issue a Performance Test Certificate.

4.8. Operation and Maintenance. If applicable, the City shall execute and deliver to the Company any required operation and/or maintenance agreements for the Company's operation of the Project.

4.9. City Representations and Warranties. The City represents and warrants to the Company that:

A. The City has complied with all Legal Requirements and Required Consents such that the City has the full right, power, and authority to enter into this Agreement and to perform its obligations under this Agreement;

B. The execution of this Agreement by the City Representative, whose signature is set forth on the signature page of this Agreement, and the delivery of this Agreement by the City have been duly authorized by all necessary action on the part of the City;

C. The execution, delivery, and performance of this Agreement by the City will not violate, conflict with, require consent under, or result in any breach or default under any Legal Requirements or Required Consent, with or without notice or lapse of time or both, of the provisions of any contract with third parties;

D. This Agreement constitutes the legal, valid, and binding obligation of the City and is enforceable against the City in accordance with its terms;

E. The City has obtained all Required Consents required by the Legal Requirements to perform its obligations under this Agreement;

F. All information that the City has provided to the Company is true and accurate and fairly represents the facts to which such information relates; and

G. The City Representative shall be the primary point of contact between the City and the Company. The Company may rely on the representations, directions, and instructions (the "**Authorized Directions**") issued to it by the City Representative provided that the Authorized Directions do not contradict or conflict with any terms of this Agreement, including the terms of the Appendices. The City may remove and replace the City Representative at any time but shall give the Company prompt written notice of any such removal or replacement and provided that no such removal or replacement of any Person as the City Representative shall invalidate or otherwise affect any prior Authorized Directions given by the City Representative to the Company. If the role of City Representative is vacant, then, until the City appoints a replacement, any notification to be made by the Company to the City Representative shall be made to the City's Mayor.

H. The City Mayor has and is deemed to have full power and authority to act on behalf of the City if the Fayetteville City Council (the “**Council**”) has passed a Resolution agreeing to this Agreement. The Council must expressly by resolution agree to any consents or changes to this Agreement with respect to its scope and costs. The Company Representative shall have the power and authority to bind the Company pursuant to this Agreement.

4.10. No Waiver of Sovereign Immunity. The City agrees that its statutory sovereign immunity (which is not waived) is primarily applicable to negligence and unintentional torts but is not applicable to breach of contract claims.

4.11. Non-Solicitation of Company Employees. During the Term and for a period of one (1) year following the expiration of the Term or the termination of this Agreement (whichever first occurs), the City will not solicit, hire, or otherwise employ any of the Company’s employees.

ARTICLE V **COMPENSATION, PAYMENT, AND TITLE TO OUTPUT AND ASSETS**

5.1. The Fees. As compensation to the Company for performance of the Services and the delivery of the Project, the City shall pay the Company the Fees specified in Appendix B, with such payments being made without retention, set off, withholding, or deductions of any sums due and owing to the Company.

5.2. Billing, Payment, Default, and Termination. Each month, the Company shall issue and deliver to the City a written or electronic invoice itemizing the Services that the Company provided to the City during the prior month. The City shall pay the Company the sums specified in each invoice within thirty (30) days of receipt.

5.3. Title to Subject Output. Title to the Subject Output will remain with the City throughout the Term and thereafter. The City bears all risk and responsibility for disposing the Subject Output and all other products and output generated or processed by the City Facilities, and the Company has no responsibility whatsoever for the Subject Output or any of the other products or output generated or processed by the City Facilities.

5.4. Title to Company Assets. At all times during the Term, all ownership rights and title in and to the Company Assets shall remain exclusively with the Company. The City shall not offer for sale, transfer, assign, pledge, lien, or otherwise encumber the Company Assets absent the Company’s prior express written consent.

ARTICLE VI **FORCE MAJEURE**

6.1. As used in this Agreement, the phrase “**Force Majeure Event**” means any one or more acts, events, or occurrences that are unforeseeable and not caused by the negligence or willful misconduct of the affected Party that are beyond the reasonable control of such Party, including, without limitation:

A. an act of war (whether war is declared or not), hostilities, invasion, act of foreign enemies, terrorism, or civil disorder;

B. tempest, earthquake, epidemic, pandemic, biological outbreak, viral outbreak, pathogenic outbreak, or any other natural disaster of overwhelming proportions;

C. ionizing radiations or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

D. unusually severe or inclement weather, severe drought, court or governmental orders or injunctions, inability to obtain permits despite the Party's due diligence, shortage or unavailability of materials or labor,

which alone or in combination prevents a Party from complying with its obligations under this Agreement (each an "**Event**"), unless, in relation to the City:

E. the Event was within the control of the City or any other Competent Authority;

F. the Event could have been foreseen or avoided by the City or Competent Authority;

G. the City or Competent Authority has not used all reasonable efforts at all times to overcome the applicable Event; or

H. the Event was caused by any Directive.

6.2. Notice of a Force Majeure Event. If a Force Majeure Event occurs, a Party whose performance under this Agreement may be affected by the Event shall immediately provide written notice of the existence of the Force Majeure Event to the other Party. Within a reasonable time following the date of termination of a Force Majeure Event, the Party which invoked it shall submit to the other Party reasonable proof of the nature and effect of the Force Majeure Event upon the invoking Party's performance under this Agreement.

6.3. Effect of a Force Majeure Event. Neither Party (the "**First Party**") shall be in breach of its obligations under this Agreement or liable to the other Party (the "**Second Party**") for any losses or damages of any nature whatsoever incurred or suffered by the Second Party if and to the extent that: (A) the First Party is prevented from discharging those obligations as a result of a Force Majeure Event; or (B) such losses or damages are caused by a Force Majeure Event.

6.4. Reasonable Efforts. The Parties shall use all reasonable efforts to prevent and mitigate the effects of any Force Majeure Event, including taking all commercially reasonable steps to overcome or minimize the actual or anticipated delay or impact caused by a Force Majeure Event.

6.5. Delays and Extension of Term. The Term of this Agreement shall be extended at the request of either Party by the amount of time lost because of a Force Majeure Event, provided that, if a single Force Majeure Event continues for a period longer than twelve (12) months, then the Parties shall act in good faith to negotiate any modifications to this Agreement.

ARTICLE VII **TIME FOR COMPLETION**

7.1. Project Schedule. The Project shall be completed within the time and in accordance with the schedules and deadlines set forth in Appendix A.

7.2. Delays. If by reason of:

- A. Any change to the Project Specification whether by addition, modification, omission, or otherwise made in accordance with this Agreement;
- B. A change in any Legal Requirements;
- C. A Force Majeure Event;
- D. A City Default;
- E. The discovery of any archaeological find or materially different site conditions from those expected as of the Execution Date; or
- F. Any other event not caused by the Company;

(each of the foregoing being a “**Delay Event**”), the Company has been delayed in the achievement of any construction timetable, milestone, time of completion, or other Project Specification, the corresponding time for such construction, milestone, completion, or other Project Specification shall be automatically extended accordingly by the length of delay caused by the Delay Event(s).

7.3. Additional Compensation. In addition to all other rights and remedies of the Company, the Company shall be entitled to an equitable adjustment to the Fees if a City Default (whether cured or not) increases the costs incurred by the Company in performing the Services or in furtherance of the Project.

ARTICLE VIII **TERMINATION AND BUY-OUT RIGHTS**

8.1. Definitions Regarding Termination. The following definitions apply to this Agreement:

- A. “**Cure**” means the actions taken by or through a Party to resolve, remedy, cure, correct, or otherwise satisfy a Default.
- B. “**Cure Period**” means the period within which a Party has to Cure a Default and it commences upon a Party’s receipt of a Default Notice from the other Party. The

Cure Period shall be thirty (30) days (or such other period of time as may be specified in this Agreement as to the specific circumstances) unless the nature of the Default is such that more than thirty (30) days (or such other period of time as may be specified in this Lease as to the specific circumstances) are reasonably required for its Cure.

C. **“Default”** occurs when a Party materially defaults in performing or is otherwise in material breach of any of the terms of this Agreement.

D. **“Default Notice”** means the written notice sent by a Party who claims that the other Party is in Default and that specifically details the facts and circumstances of the alleged Default.

E. **“Termination Notice”** means the written notice sent by the Party claiming that the other Party has failed to Cure its Default within the Cure Period. The Termination Notice shall specify the Termination Date and shall be delivered in the manner set forth in Section 15.5.

F. **“Termination Date”** means the date upon which any termination of this Agreement becomes effective. Except as expressly specified in this Agreement as to the specific circumstances providing for different timing (*see, e.g.,* Section 5.2), the Termination Date will be a date no earlier than thirty (30) days following the date of issuance of the Termination Notice.

8.2. Default by the Company. If the Company commits a Default (a “**Company Default**”) and fails to Cure the Company Default within the Cure Period, the City shall have the right to terminate this Agreement by sending its Termination Notice to the Company. The Parties further agree that:

A. If the Company Default consists of the Company failing to provide the Services because of a mechanical issue, maintenance issue, performance issue, defect, or other significant problem in or with the Company Assets (collectively, a “**Services Breach**”) with the repair or remedying of the Services Breach being commercially unreasonable, the City’s sole remedy for damages shall be the right to withhold and deduct from the Fees (that otherwise would have been due and payable to the Company during the period of time in which the Company Default was in existence (the “**Services Default Period**”) an amount equal to the actual direct damages suffered by the City during that Services Default Period. If the City’s actual damages exceed the Fees that otherwise would be owed during the Services Default Period (the “**Default Period Fees**”), then the City’s damages shall be capped at the Default Period Fees, and in no event shall the Company have to pay the City any damages or compensation because of a Services Breach.

B. If the Default consists of the Company having abandoned the Project or the Company’s willful, wanton, and unjustified refusal to provide the Services, then, the City shall have all remedies allowed by law, including the right to seek direct and consequential damages.

Upon termination due a Company Default, the Company shall bear all costs associated with its withdrawal and demobilization for the Project, including the costs of repossessing the Company Assets.

8.3. **Default by the City**. If the City commits a Default (a “**City Default**”) and fails to Cure the City Default within the Cure Period, the Company shall have the right to terminate this Agreement by sending a Termination Notice to the City.

8.4. **Termination for Convenience**. At any time and on terms mutually agreed to in writing by the Parties, the Parties may jointly elect by way of a written agreement to terminate this Agreement for their mutual convenience.

8.5. **Termination Compensation**. Upon termination due to a City Default or due to the expiration of the Term, the City shall pay the Company:

A. All sums accrued and owing as of the Termination Date;

B. The costs and expenses reasonably incurred by the Company related to its withdrawal and demobilization from the Project, including the costs of repossessing the Company Assets; and

C. In the case of a City Default, a capital sum reasonably agreed by the Parties as compensation for the damages suffered by the Company as a result of the termination (collectively, all such sums in this Section 8.5 comprise the “**Termination Payment**”).

Within sixty (60) days of the Termination Date, the Company shall issue an invoice (the “**Termination Invoice**”) for the Termination Payment, and the City shall make the Termination Payment within thirty (30) days of its receipt of the Termination Invoice.

8.6. **Consequences of Termination**. Upon termination of this Agreement because of a City Default or because of the expiration of the Term:

A. The City shall immediately relinquish possession of the Company Assets, and the Company shall have the right to retake possession of all Company Assets, free and clear from all liens, charges, and encumbrance; and

B. The City shall provide the Company with copies of all documents, books, and records related to the Project within thirty (30) days of the Termination Date.

8.7. **City’s Option to Buy-Out the Company Assets**. The City shall have the option to purchase the Company Assets, including the TDE, (the “**Buy-Out**”) at the End of the Term. The City must provide a minimum of ninety (90) days’ advance written notice to the Company prior to the end of the Term of the City’s intent to exercise its Buy-Out rights. The Buy-Out of the Company Assets shall be completed by way of a separate written agreement between the Parties in the form attached hereto as Appendix C, and the consummation of the Buyout shall act as a termination of this Agreement.

A. The price of the Buy-Out is set forth in Appendix B.

B. The Company Assets to be included in the Buy-Out are set forth in Appendix A (as may be amended from time to time by the Parties) or as may be otherwise agreed to in writing by the Parties.

ARTICLE IX **WARRANTY LIMITATIONS AND NON-RELIANCE**

9.1. Not a Contract for the Sale of Goods. The Parties acknowledge and agree that this Agreement is in the nature of a contract for the delivery of services, and not a contract for the sale of goods, such that the provisions of Chapters 2 (Sales) and 2A (Leases) of Subtitle 1 (Uniform Commercial Code) of Title 4 of the Arkansas Code of 1987 Annotated are inapplicable to the interpretation or enforcement of this Agreement.

9.2. No Other Warranties. Except as expressly provided in this Agreement, including but not limited to the warranties issued by the Company pursuant to Article III of this Agreement, the Parties acknowledge and agree that the Company has not made and makes no other express or implied representation or warranty whatsoever, either oral or written, including any warranties of merchantability, fitness for a particular purpose, or performance of goods or products to specific standards different from those set forth in this Agreement, whether arising by law, course of dealing, course of performance, usage of trade or otherwise, all of which are expressly disclaimed by the Company. The City acknowledges that it has not relied upon any representation or warranty made by the Company not expressly stated in this Agreement.

9.3. No Consequential Damages. Except as expressly provided for in this Agreement, in no event shall the company or its representatives be liable for consequential, indirect, incidental, special, exemplary, punitive, or enhanced damages, lost profits or revenues, or diminution in value arising out of or relating to any breach of this agreement.

ARTICLE X **INTELLECTUAL PROPERTY RIGHTS**

10.1. Ownership of Intellectual Property Rights. All Intellectual Property Rights relating to the Project, the Services, and/or this Agreement, shall (as between the City and the Company) vest in the Company. The Company hereby grants to the City a limited, non-transferable, revocable, non-exclusive license to use the Intellectual Property Rights only to the extent required in furtherance of the Project and provided that City shall not and shall not permit any other Person to:

A. Copy, modify, or create derivative works or improvements on or to the Project or the Intellectual Property Rights;

B. Rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Intellectual Property Rights to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;

C. Reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Intellectual Property Rights, in whole or in part;

D. Bypass or breach any security device or protection used by the Intellectual Property Rights;

E. Remove, delete, alter, or obscure any trademarks, specifications, end user license agreements, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Intellectual Property Rights;

F. Access or use the Intellectual Property Rights in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Rights or other right of the Company or in violation of Legal Requirements;

G. Access or use the Intellectual Property Rights for purposes of competitive analysis of the Intellectual Property Rights, the development, provision, or use of a competing services or products, or any other purpose that is to the Company's detriment or commercial disadvantage;

H. Access or use the Intellectual Property Rights in, or in association with, the design, construction, maintenance, or operation of any hazardous environments in which the use or failure of the Intellectual Property Rights could lead to personal injury or severe physical or property damage; or

I. Otherwise access or use the Intellectual Property Rights beyond the scope of the authorization granted under this Agreement.

10.2. Limitation on Use. Drawings, Tooling, or other information or Intellectual Property Rights supplied by the Company shall not without the Company's consent be used, copied, or communicated to any third party otherwise than as strictly necessary for the purposes of, or otherwise expressly permitted by, this Agreement.

10.3. No Dissemination. All Intellectual Property Rights (inclusive of information supplied by of to the City and the City Representative to or from the Company for the purposes of this Agreement) shall remain the property of the Company. The City shall not, without prior express written consent of the Company, use, copy, or communicate to a third party the Intellectual Property Rights otherwise than as strictly necessary for the purposes of, or otherwise permitted by, this Agreement.

10.4. New Intellectual Property Rights. All Intellectual Property Rights developed by the Parties in furtherance of this Agreement shall be and remain the property of the Company. The City shall execute any and all documents reasonable or necessary in order to evidence the Company's ownership of such new Intellectual Property Rights. If the City performs any of its obligations under this Agreement through vendors or third parties, any Intellectual Property Rights generated in furtherance of the Project shall be and remain the property of the Company. The City agrees that it shall not remove any notices or legends pertaining to protection of the Company's Intellectual Property Rights from materials provided to the City by the Company.

10.5. **Additional Actions.** Each Party agrees to do whatever may be necessary to give effect to or confirm the rights of the Company in and to the Intellectual Property Rights. The Company shall have the sole right to prepare, file, prosecute, and maintain patent, copyright, trademark, trade dress, service mark, or other legal applications or registrations of any nature or kind with respect to the Intellectual Property Rights. All such applications and registrations shall be at Company's sole expense, and the City shall cooperate with the Company at the Company's expense, if Contractor desires, to obtain such legal protections for all or any part of the Intellectual Property Rights. The City shall execute all documents reasonable or necessary for the Company to acquire such legal protections.

10.6. **Survival.** The provisions and obligations set forth in this Article shall survive the termination of this Agreement and remain in force upon and following the termination of this Agreement.

ARTICLE XI **CONFIDENTIALITY**

11.1. “**Confidential Information**” means non-public confidential information which would be exempt pursuant to the Freedom of Information Act and which might include Intellectual Property Rights, trade secrets, know-how, research and development, training, software, programs, hardware configuration information, price lists, data, manuals, handbooks, sponsors, investors, business strategies and plans, marketing, sales records, drawings, specifications, designs, materials, parts lists, customer lists, consumer information, suppliers, contract terms, test criteria, vendor lists, financial information, or other information or data relating to the business of the Company, whether or not reduced to writing. However, Confidential Information shall not include:

- A. Any information which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Article;
- B. Any disclosure which may reasonably be required for the performance of that Party’s obligations under this Agreement;
- C. Disclosure of information which is required by the Freedom of Information Act or any other Legal Requirement or regulatory authority;
- D. Disclosure of any information which is already lawfully in the possession of the receiving Party prior to its disclosure by the disclosing Party;
- E. The provision of information to owners, creditors, suppliers, or subcontractors of the Company for purposes connected with the Project;
- F. Provision of information to the Company’s lenders or their professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation, or otherwise) to the Company to enable it to carry out its obligations under this Agreement;

G. Disclosure of information by the City or the Company to the any Person or body who has statutory responsibilities in relation to the treatment or disposal of Sludge; and

H. Registration or recording of the Required Consents and the Land Documents (or any of them) in any public register.

11.2. Commitment. As a condition to entering into the Agreement and furnishing its Confidential Information, the City hereby agrees to refrain from disclosing Confidential Information provided that such Confidential Information is either marked “Confidential”. Notwithstanding the foregoing, Confidential Information may be disclosed to:

A. Fayetteville’s Council Members, directors, officers, employees, agents, advisors, and representatives of such advisors (the persons to whom such disclosure is permissible being collectively called “**Permitted Recipients**”) who need to know such information;

B. Third-party contractors providing services relating to this Agreement who have been bound by confidentiality restrictions at least as protective as those in this Article XI; and

C. A Competent Authority or others as may be required by Legal Requirements.

ARTICLE XII **INDEMNITY**

12.1. Duty to Indemnify. Neither Party shall have a contractual duty to indemnify the other Party from third-party claims.

ARTICLE XIII **INSURANCE REQUIREMENTS**

13.1. Company Insurance. See the attached Certificate of Liability Insurance contained at Appendix D.

ARTICLE XIV **DISPUTE RESOLUTION**

14.1. Choice of Law. This Agreement shall be governed by and construed under and in accordance with the laws of the State of Arkansas without regard to conflicts of law principles that would require application of any other law.

14.2. Good Faith Negotiation. In the event of any dispute, claim, question, or disagreement (any of which is a “**Dispute**”) arising from or relating to the Project, the Services, this Agreement, or an alleged Default, the Parties shall use their best good faith efforts to settle the dispute by normal business discussions between the Representatives and/or their respective

superiors having authority to resolve the Dispute or through mediation between the Parties conducted by a mutually agreeable third-party neutral.

14.3. Equitable Relief. Each Party acknowledges and agrees that:

i. A Default or expressly threatened Default by it of this Agreement would give rise to irreparable harm to the other Party for which monetary damages would not be an adequate remedy; and

ii. In the event of a Default or threatened Default, the other Party shall, in addition to any and all other rights and remedies that may be available to it under the Legal Requirements or otherwise, be entitled to seek equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a Competent Authority, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy.

14.4. Continued Performance. During the pendency of any litigation, the City and the Company shall continue to perform their obligations under this Agreement unless to do so would be commercially unreasonable in light of the circumstances.

ARTICLE XV **MISCELLANEOUS PROVISIONS**

15.1. Assignment. Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party; however, the Company may assign this Agreement or an interest in this Agreement in connection with the sale or reorganization of its business and additionally may grant a security interest in this Agreement and in the Company Assets in connection with any Company financing arrangements relating to or in furtherance of the Project.

15.2. Amendments and Changes. No amendments or modifications of this Agreement, including, but not limited to, changes to the Project Specifications and changes to the Services, shall be valid unless evidenced in a writing that is signed by the Representatives. The Fayetteville City Council must approve any amendment to this contact that would affect its scope or price beyond any contingent amount previously approved by the City Council.

15.3. Survival. Notwithstanding any provisions in this Agreement to the contrary, the obligations set forth in this Agreement shall survive in full force and remain in effect for a period of two years after the expiration or termination of this Agreement.

15.4. No Waiver. The Parties acknowledge and agree that any delay, waiver, or omission by a Party with respect to the enforcement of any right under this Agreement shall not be construed to be a waiver by such Party of any subsequent breach or Default of the same or other required right under this Agreement.

15.5. Notices. All notices and other communications (collectively “**Notices**”) required or permitted under this Agreement shall be in writing and shall be given to each party at its address

and email address set forth in this Section 15.5 or at such other address and email as the Parties may in the future specify in writing.

A. All Notices shall be sent both: (i) via electronic mail and (ii) either via (a) first class mail, (b) registered or certified mail (return receipt requested and postage prepaid), or (c) by a nationally recognized overnight courier service.

B. Notices shall be deemed to be given and received on the date that the Party who is giving the Notice transmits the electronic mail specified in Section 15.5.A.(i) provided that said Party also sends the Notice via the methods set forth in Section 15.5.A.(ii) on the same date that the electronic mail is sent.

C. Notices shall be sent to the following addresses:

To the Company:

Tid Griffin
tid@griffinresiduals.com
Griffin Residuals, LLC
5872 Highway 1389
Owensboro, KY 42303

With a copy to:

William C, Buhay
wbuhay@wwhg.com
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
3344 Peachtree Road NE
Suite 2400
Atlanta, GA 30326

To the City:

Fayetteville Mayor
City Hall, Mayor's suite
113 West Mountain Street
Fayetteville, AR 72701
mayor@fayetteville-ar.gov
and
Utilities Director (Tim Nyander)
City of Fayetteville, AR
2435 S Industrial Drive
Fayetteville, AR 72701
tnyander@fayetteville-ar.gov

15.6. Counterparts. The Parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both Parties constitute one instrument. Thereafter, each counterpart shall be deemed an original instrument as against any Party who has signed it. The parties acknowledge and agree that execution of this Agreement may be evidenced by facsimile, electronic, or digital transmission.

15.7. Partial Invalidity. If any term, provision, covenant, or condition of this Agreement is held by a Competent Authority to be invalid, void, or unenforceable, the rest of this Agreement shall remain in full force and effect and in no way be affected, impaired or invalidated.

15.8. Vendor's / Subcontractor's Warranties. For the City's benefit, the Company shall transfer and assign any warranties it obtains from third parties relating to the Services, the Company Assets, or the Project to the City, including any warranties against defects in materials and workmanship to the extent such warranties are reasonably obtainable, and, to the extent of any such warranties actually obtained, the City agrees to first pursue relief from such vendor. The Company itself shall not be liable for any such warranties. Upon the City's request, the Company agrees to assist the City in the enforcement of any such warranties. Each such warranty shall be enforceable by the Company for the Company's benefit or assignable by the Company to the City without any further action or consent by or on the part of any third party. Unless otherwise requested, the Company shall administer such warranties and immediately notify the City of any defects discovered or suspected that may be covered by such warranties.

15.9. Mutual Cooperation. Each Party agrees, upon the reasonable request of the other Party, to execute any documents and take any further steps as may be reasonably necessary in order to implement and give full effect to this Agreement.

15.10. Costs and Expenses. Each Party shall bear its own costs and expenses (including attorney's fees and expenses) in connection with the preparation, negotiation, and completion of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

For the City

By: _____

Name: Lioneld Jordan

Title: Mayor, City of Fayetteville

Date: _____

For the Company

By: 

Name: Tim Griffith

Title: CEO

Date: 7/11/2022

APPENDIX A

SCOPE OF WORK PURSUANT TO THE GRIFFIN RESIDUALS DRYING AS A SERVICE AGREEMENT BETWEEN GRIFFIN RESIDUALS, LLC AND THE CITY OF FAYETTEVILLE, ARKANSAS

The following terms and conditions set forth the scope of work of the Parties and the Project Specifications for the performance of the Project.

1. Project Construction.

- A. **Acknowledgment of Receipt of Project Specifications.** The City acknowledges, affirms, and agrees that Company has provided to City and City agrees to the contents of the Project Specifications existing as of the Execution Date, including the Design Documentation (and all other details of design or engineering standards to be employed by the Company) and all drawings of the general arrangement and details of the Project. A request by the City for a change to the Project Specifications or the Services shall not and does not relieve or excuse the City from discharging all of its obligations under this Agreement. The City acknowledges and understands that the Company may condition any changes to the Product Specifications or Services on the payment of additional Fees by the City to the Company.
- B. **Coordination of Engineering Plans.** As soon as practicable following the Execution Date, the Parties shall work together and coordinate in good faith to develop all additional Design Documentation including the additional engineering plans and drawings (the “**Facility Plans**”) necessary for the delivery and installation of the Company Assets and the implementation of the Project.
- C. **Mobilization, Installation, and Training.**
 1. **City Utilities.** The City shall bear and be solely responsible for the design, installation, and proper supply of all utilities and utility lines (the “**City Utilities**”), including natural gas, potable water, effluent wash water, sewer connections, electricity, and compressed air to service the Company Assets. The City shall provide City Utilities pursuant to the Design Documentation and Facility Plans.
 2. **Delivery of the Company Assets.** The Company shall deliver the Company Assets, inclusive of the TDE, to the City at Solar House F upon the Company’s receipt from the City of all of the following:
 - a) The Design Documentation, including the Facility Plans, as well as all other existing building design and engineering/planning for the installation of the Company Assets in Solar Green House F, including detailed and accurate information identifying and denoting:
 - i) The electrical connections for all current and future uses of the TDE;

- ii) Condensate drainage and return to the City's Facilities;
 - iii) Wash water drainage and return to the City's Facilities; and
 - iv) The availability of and specifications for the delivery of fresh water and natural gas to service the Project;
 - b) The granting by the City to the Company of reasonable access to the City's Facilities for the Company's inspections, assessments, and preparatory work;
 - c) Validly executed State of Arkansas, Division of Environmental Quality (AR-DEQ), Office of Water Quality (OWQ) permits or statements of "no objection to use of existing permits" under permits AR0020010, AFIN 72-00781 and AR0050288, AFIN 72-01033 for the installation and operation of the Company Assets;
 - d) All other Required Consents;
 - e) A fully executed copy of this Agreement and all other documents or instruments reasonably requested by the Company that are required to be validly executed and delivered by City;
 - f) Validly executed financing agreements (if any); and
 - g) Certified copies of the insurance policies that the City is required to have in place under this Agreement.
3. **Installation of the Company Assets.** Upon notice from the City that Solar House F is ready for the installation of the Company Assets and agreement between the Parties as to the Facility Plans, the Company shall install the Company Assets in Solar House F pursuant to the Facility Plans.
- a) **Electrical Connections.** Following the City's installation of the City's Utilities, the Company shall perform the final electrical terminations to the TDE's controls/electrical cabinet and junction boxes.
 - i) **Company Supplied Conveyors.** As part of the Company Assets, the Company shall supply at Solar House F one (1) dried solids conveyor (the "**Company Conveyor**"), consisting of a side discharge conveyor located at the end of the TDE.
 - b) **City Supplied Conveyors.** The City shall provide and install an inclined conveyor adjacent to the Company Conveyor. The City, with coordination and input from the Company, shall design and install all conveyance equipment to and from the TDE (the "**City Conveyors**").

- i) The City Conveyors will be electronically connected to and controlled by the TDE's controls cabinet.
 - ii) The City Conveyors shall have electric motors and controls and shall have low voltage control cabling run and connected to the TDE's controls cabinet.
 - iii) If the Parties mutually agree in a writing executed by the Representatives, the City may continue operation of the City-supplied hopper (the "**Hopper**") and conveyance equipment with hydraulic motors. In that event, the Company's PLC control of the hydraulic motors shall be approved and coordinated between the Parties.
 - iv) The City shall be solely responsible for the operation, maintenance, and repair of the Hopper and the elevated conveyor.
4. **Responsibilities During Mobilization and Installation.** The Parties have agreed to mobilize and install (collectively, the "**Commissioning**") the Project in accordance with the provisions of this Appendix A.
- a) For purposes of clarity, during the Commissioning, the City shall:
 - i) Operate and maintain all of the City Facilities in accordance with the standards, practices, methods, and procedures conforming to the Legal Requirements and with that degree of skill, diligence, prudence, and foresight which would reasonably be expected from a utility (whether public or private) in the same type of industry; and
 - ii) Ensure that all City employees, contractors, or other persons act in accordance with any training provided by or otherwise directed by the Company.
 - b) The City shall provide the Company with all required assistance to enable the Company to commission the Project in accordance with this Appendix A.
 - c) The Company may retain or set off amounts due to it from the City against amounts due (if any) by the Company to the City under this Agreement.
5. **Certification Date, Operational Support, and Training.** Following the completion of the installation of the Company Assets (the "**Certification Date**"), the Company shall issue the Performance Test Certificate certifying that the Company Assets, inclusive of the TDE, have been properly installed and are functioning as intended. Further, the Company shall provide operational support and classroom training to the City and its employees for a three (3) week period (the "**Training Period**") following the Certification Date. During the Training Period, the Company shall be responsible for the operation of the Company

Assets. Upon the conclusion of the Training Period, the City shall assume the operation of the Company Assets; however, the Company shall have full access to the Company Assets at all times during the Term, including for the purpose of making any adjustments for the efficient operation of the Company Assets.

D. **Construction Timetable**. The following is the Parties' projected "**Construction Timetable**" as of the Execution Date (which both Parties acknowledge and agree is subject to change):

1. The Company shall deliver the TDE within thirty (30) days of the Execution Date or such other time as the Parties agree is commercially reasonable. The Company will require ten (10) business days to set and install the TDE. The Parties shall coordinate in good faith the final determination of the specific dates for the shipment, delivery, and offloading of the TDE.
2. The City shall have forty-five (45) days or such other time as the Parties agree is commercially reasonable following delivery of the TDE to complete the utility connections and building modifications to Solar House F (the "**City's Construction Work**").
3. Following the City's written notice to the Company that the City has properly completed the structural and other modifications to Solar House F, the Company shall deliver the Company Conveyor to Solar House F for the City's installation and complete field assembly of the TDE and the City's Utilities (collectively, the "**City's Assembly**").
4. Following the City's Assembly, the Company shall perform the final electrical connections to the TDE's control cabinet and junction boxes. For purposes of clarity, Table 1 to this Appendix A sets forth the Parties' respective responsibility for the supply and installation of the utilities serving the Project.
5. The start-up of the operations of the TDE and the training of the City's staff by the Company shall begin within seventy-five (75) days of the initial delivery of the TDE, unless an alternate schedule is agreed to in writing by the Parties.
6. As of the Execution Date, and based on the Parties' belief that they will need thirty (30) days following the Execution Date to complete their planning for and coordination of the construction work, but subject to supply chain issues and the delivery of materials and services by third parties, the schedule for the construction work is tentatively as follows:
 - a) On a date to be mutually agreed to by the Parties: The Company shall begin the delivery of the TDE to the BMS;
 - b) Approximately two (2) weeks after the Company's delivery of the TDE: The completion of the Company's placement and installation of the TDE;

- c) Approximately six and one-half (6½) weeks after the completion of the Company's placement and installation of the TDE: The completion of the City's Construction Work;
- d) Approximately four (4) weeks after the completion of the City's Construction Work: The Company's delivery of the Company Conveyor and the City's completion of the City's Assembly; and
- e) December 31, 2022: The target date by which the Parties intend to have met the Certification Date.
- f) Approximately three (3) weeks following the Certification Date: The City shall assume the day-to-day responsibility of operating the Company Assets.

The Parties acknowledge and agree that meeting the scheduled dates set forth in this Construction Timetable is contingent upon both Parties' proper and timely compliance with and discharge of their respective obligations under this Agreement, including the obligations set forth in this Appendix A, as well as the delivery of materials and services from third parties. The Parties each agree to use commercially reasonable efforts to meet the targeted timeframes set forth above. Each Party agrees to give the other prompt written notice if the notifying Party determines in its reasonable opinion that any delays are expected. In that event, the Parties shall cooperate in good faith to amend or revise the Construction Timetable to account for such delay. This is a schedule not a binding obligation but rather is a good faith estimate of the tasks to be completed by the Parties to meet the Certification Date on or before December 31, 2022, and the Parties shall cooperate in good faith to meet that goal.

2. Project Operation

A. City's Responsibility for the Management and Delivery of Wastewater and Sludge.

- 1. Delivery of Wastewater to the Project. The City shall receive, treat, and dispose of all wastewater discharged into and from the Project, including receiving, treating, and disposing of all wastewater discharged into and from the Project, and shall treat and dispose of it in accordance with all Legal Requirements and in a manner which will mitigate, so far as reasonably practicable, the extent to which any pollutant or contaminant prevents the treatment or disposal of wastewater in the Project.
- 2. Sludge Standards. The City shall ensure, on a continuing basis throughout the Term, that the composition and intake by the City of all Sludge to be treated and disposed of by the Company in accordance with this Agreement is at all times, including at the Sludge Delivery Point, compliant with all Legal Requirements, industry standards, and the Company's specifications. The City shall maintain records of compliance with each of the foregoing and shall make such records available for the Company's review and inspection upon reasonable notice given by the Company to the City.

3. Connections. The City shall promptly upon request by Company:
 - a) make or permit the Company to make connections to or disconnections from (free of expense to the Company in each case) any part of the Project with any drain or any public or private sewer; and
 - b) take, treat, and dispose of wastewater and condensate discharged from the Project.
- B. Input Weighing and Calculation of TDE Volumes. The weight of the input into the TDE will be calculated with a belt scale located at the furthermost point of the conveyor system before the elevated conveyor, which point shall be the “Sludge Delivery Point”, located in Solar Green House E located in the City Facilities. The belt scale will provide an accurate measure of the wet tons of biosolids feeding the TDE. The scale will allow precise measurement of product of different percent solids without the burden of complicated and inaccurate calculations based on sampling and assumptions.
- C. Volume Limits and Standards. The City acknowledges, understands, and agrees that:
 - a) the Project will process not less than Fourteen Thousand (14,000) wet tons of Sludge annually (the “**Sludge Supply**”), subject to adjustment by Company;
 - b) it will, on a weekly basis, shall calculate the volumes processed during the preceding week by the Project and report those volumes in writing to the Company;
 - c) The minimum amount invoiced by the Company each month will be computed based on the Project having processed at least One Thousand (1,000) wet tons during the preceding month;
 - d) If the daily influent to the Project exceeds Fifty-Five (55) wet tons of Sludge, the TDE’s production limits may be exceeded and the Subject Output may exit the TDE at less than Class A standards.

- D. Class A Requirements. The following requirements must be met for the Subject Output to meet Class A pathogen alternatives:

1. Either:
 - a) The density of fecal coliform in the Biosolids must be less than 1,000 most probable numbers per gram total solids (dry-weight basis); or
 - b) The density of *Salmonella* sp. Bacteria in the Biosolids must be less than 3 MPN per 4 grams of total solids (dry weight basis).

Either of these requirements must be met at one of the following times:

- c) When the Biosolids are used or disposed;
- d) When the Biosolids are prepared for sale or give-away in a bag or other container for land application; or
- e) When the Biosolids or derived materials are prepared to meet the requirements for exceptional quality (“EQ”) Biosolids. EQ standards are subject to the Biosolids quality received at the dryer, and meeting Class A standards with the dryer does not guaranty that EQ standards will be met.

Pathogen reduction must take place before or at the same time as vector attraction reduction, except when the pH adjustment, percent solids vector attraction, injection, or incorporation options are met. Biosolids are dried by direct or indirect contact with hot gases to reduce the moisture content of the biosolids to 10 percent or lower. Either the temperature of the Biosolids particles exceed 80 degrees C or the wet bulb temperature of the gas in contact with the Biosolids as the Biosolids leave the TDE exceeds 80 degrees C.

E. The City’s Obligations Regarding Discharge Consents.

1. The City shall ensure that all influent levels are maintained to not exceed the standards set forth in the Project Specifications, including the specifications contained in the Sludge Content Specification Sheet set forth below:

Sludge Content Specification Sheet

Item No.	Parameter	Unit	Min.	Max.
1	Dry solids cake *	% -Feed	18	45
2	Volatile Solids	% -DS	40	80
3	Ash content	% -DS	0	50
4	Total fiber content (sum of medium and coarse particles)	% -DS	N/A	N/A
5	Coarse fibers (>1.2mm)	% -DS	N/A	N/A
6	Medium sized fibers (0.3 – 1.2mm)	% -DS	N/A	N/A
7	pH – of sludge prior to dewatering	PH	5	8
8	Oil & Grease - Hexane Extractable Material	mg/kg-DS	0	1100
9	Chloride – total (liquid and solid phase of dewatered cake)	mg/kg-DS	0	1000
10	Fluoride – total (liquid and solid phase of dewatered cake)	mg/kg-DS	0	100

11	Sulphur - total (liquid and solid phase of dewatered cake)	mg/kg-DS	0	5000
12	BTX (benzene, toluene and xylene)	mg/kg-DS	0	50
13	PCB's – total	mg/kg-DS	0	0.5
14	Total Petroleum Hydrocarbons	mg/kg-DS	0	500
15	Sludge cake temperature	Deg. F	30	125
16	Dry Sludge Ignition Point	Deg. F	300	N/A

Legend:

- Unit Description mg/kg -DS Milligrams of Parameter Substance per kilogram of Dried Solids.
 - % -DS Percentage of Parameter Substance per unit quantity of Dried solids.
 - % -ash Percentage of Parameter Substance per unit quantity ash content.
- Under no circumstances shall waste containing petroleum products or related chemicals be treated.
- Septic wastes streams, Fats/Oils/Greases (Oils & Greases – HEM) that have not been subjected to thorough digestion may result in the client exceeding the limits of the above sludge specifications chart.
- All sewage sludge foreign substances (such as stones, pieces of wood or metal etc.) must not be processed in the supplied dryer.

2. To the extent any discharges from industry are licensed by the jurisdiction in which the City is located, any new license or consent granted to any industry discharge shall not materially impact the Project. The Company shall have no obligation, duty, or liability to the extent that any quantities of influent exceed those specified in the Project Specification such that they negatively impact the Project or the Company's performance under this Agreement, and the Company shall have no obligation to treat any such quantities.
3. Prior to issuing or granting consent to any third party thereby allowing that third party to make any discharges (whether from industry or otherwise) (“**Discharge Consent**”), the City shall provide written notice to the Company containing all relevant information regarding the proposed Discharge Consent, including:
 - a) The extent to which such Discharge Consent will impact any portion of the Project;
 - b) The quantity, quality, location, and other characteristics of the proposed discharge; and

- c) The identity of the discharger.

Further, the City shall give the Company a reasonable opportunity to comment on the effects that the proposed discharge may have on the ability of the Company to meet its obligations under this Agreement and any additional compensation required by Company as a result of the proposed Discharge Consent.

- 4. The City shall assume and bear all obligation, liability, and responsibility for the costs, delays, and other impacts of any Discharge Consent, including the levels of concentration of any contaminants or pollutants or otherwise, to be permitted under any such Discharge Consent as if the City itself was operating the Project as a sewerage authority. In determining the date on which the new discharge will commence, the City shall provide the Company a reasonable period of time in which to make any alterations (if any are agreed to by Company in writing) to the Project which are required to accommodate the new discharge.
- 5. Among all other information as may be requested by the Company, the City shall provide the Company with extracts of the Discharge Consents issued or entered into showing details of the quantity, quality, location, and other characteristics of the discharge permitted and the identity of the discharger.
- 6. The City shall take all reasonable steps to monitor the Discharge Consents in order to ensure full compliance by the applicable discharger with the Discharge Consents and Legal Requirement so as to prevent the receipt at the Project of any contaminants or pollutants.
- 7. The City shall bear and pay to Company all costs, expenses, and compensation incurred by the Company with respect to any Discharge Consent including:
 - a) Variations that need to be made at the Project to accommodate the new or increased discharge;
 - b) Required adjustments or variations to the time or times at which any changes must be made, having regard to the used/unused capacity of the Project, and likely future changes in flows and loads arising;
 - c) Any amendments or changes to the provisions of this Agreement that are necessary to enable the Company to perform its obligations under this Agreement in light of the new or increased discharge; and
 - d) The estimated increase or reduction in the annual operating costs for each year remaining in the Term due to, and the estimated capital cost of, any variations caused by the Discharge Consent.

For the avoidance of doubt, the Company is and shall not be responsible for any additional costs, changes, or delays caused by any Discharge Consent.

F. The Company's Obligations for Operation of the Project.

1. **Sludge Drying.** Subject to City's performance of obligations (including timely and properly making the Contract Payment) under this Agreement and subject to the volume limits set out in the Project Specifications, the Company shall receive and dry all Sludge delivered from the City Facilities by the City-supplied conveyance equipment to the Hopper located in Solar House F.
 - a) The Company shall receive, dry, and return to the City dried solids and condensate of the commensurate amounts of sludge delivered by or on behalf of the City at the Sludge Delivery Point.
 - b) If the City exceeds the volume limits set forth in this Agreement or receives off-spec Biosolids at the Sludge Delivery Point, the Company shall receive from the City increased Fees.
 - c) The City may from time to time submit to the Company proposed amendments to the Project Specification relating to the treatment and disposal of sludge, provided no such proposed amendment shall take effect except as approved in a writing mutually executed by the Representatives.
 - d) For the avoidance of doubt, the Company shall have no obligation to take and treat sludge delivered by any third party at the Sludge Delivery Point, except as agreed to in a writing executed by the Company Representative.
 - e) The Company shall provide the Company Assets necessary for the Company to discharge its obligations under this Agreement.
2. **Utility Operating Costs.** The Company shall be responsible for the costs of any natural gas and electricity supplied to the Company Assets and associated with the drying of the sludge delivered by or on behalf of the City to the Company at the Sludge Delivery Point; provided, however, the cost of natural gas shall include the charges billed to the City by the City's natural gas provider, including the Primary Gas Charge (Cost of Gas Rider), Secondary Gas Charge (Cost of Gas Unscheduled), Act 310 Surcharge, Energy Efficiency Charge and County and State Taxes. The Parties agree that the cost of natural gas charged to the Company by the City or its natural gas provider shall not exceed \$10.00 per dekatherm and that the cost of electrical power charged to the Company by the City or its electricity provider shall not exceed \$73.50 per megawatt (or \$0.7353/kWh), unless the Company agrees in writing with the City to pay higher charges.

G. Maintenance of the Company Assets. During the Term, the Parties shall have the following maintenance obligations:

1. **The City's Maintenance Obligations.** For the avoidance of doubt, the City shall have the sole obligation to maintain in good working order all the City Facilities outside and apart from the Company Assets.

- a) With regard to the Company Assets, following the Training Period, the City shall be responsible for the providing routine maintenance needed for the Company Assets. Further, if the Company Assets need advanced maintenance, the City, when requested by the Company, shall assist the Company with conducting that maintenance.
 - b) The City shall be liable to the Company for the reasonable cost of repairing any damage to the Company Assets caused the City's abuse, misuse, negligence, or failure to perform require routine maintenance. This right and remedy shall be in addition to any and all other rights or remedies of the Company.
2. The Company's Maintenance Obligations. Prior to the expiration of the Training Period, the Company shall be solely responsible for the maintenance of the Company Assets. Following the Training Period, the Company shall be responsible for any advanced maintenance or replacement parts needed for the Company Assets.

Table 1 to Appendix A is on the Following Pages

TABLE 1 TO APPENDIX A

1. SITE UTILITIES						
1.1 HOOK-UP RESPONSIBILITIES						
UTILITY	AMPS / VOLUME IN ATTACHMENTS	VOLTAGE OR PRESSURE	CONNECTION	FED FROM	FED TO	HOOK-UP RESPONSIBLE
POWER TO COMPANY CABINET						
3-PHASE TO COMPANY VFD CABINET	600A	480V	CONDUIT	The City MCC	GE VFD CAB	The City
LOW VOLTAGE (120 VOLT)	20A	120V	CONDUIT	The City MCC	GE PLC CAB	The City
NATURAL GAS SUPPLY PIPING TO The City VALVE AT BURNER						
BURNER (15% RESERVE AT MAX. BLOWER SPEC.)	7.5 MM/BTU	5-7 PSI	2" FNPT	Supply Line	Burner	The City
BURNER POWER	20A	120V	CONDUIT	The City MCC	Burner Cabinet	The City
BURNER AIR INLET	1440 cfm	Ambient		Room Air	Burner	None
EXHAUST GAS PIPING TO SCRUBBER						
SYSTEM EXHAUST	1440 cfm	.5-1 psi	6" 150# FLANGE	Blower Exhaust	Scrubber	The City
COOLING TOWER						
COOLING TOWER MAKEUP WATER	12 gpm (max)	40psi Minimum	2" FNPT	The City DOMESTIC Supply	Cooling Tower	The City
COOLING TOWER OVERFLOW AND DRAIN	INTERMITTENT		2" FNPT	Cooling Tower	sewer or drain	The City
COOLING TOWER PUMP - SUCTION	1200 GPM	100 Ft H2O Max	6" 150LB FLANGE	U19	U15	The City
COOLING TOWER PUMP - PRESSURE	1200 GPM	100 Ft H2O Max	5" 150LB FLANGE	U14	U16	The City
CONDENSER - COLD WATER IN	1200 GPM	100 Ft H2O Max	6" 150LB FLANGE	U15	U17	The City
CONDENSER - HOT WATER OUT	1200 GPM	100 Ft H2O Max	6" 150LB FLANGE	U16	U18	The City
COOLING TOWER - HOT WATER IN	1200 GPM	100 Ft H2O Max	8" 150LB FLANGE	U17	U19	The City
COOLING TOWER - COLD WATER OUT	1200 GPM	100 Ft H2O Max	8" 150LB FLANGE	U18	U14	The City
COOLING TOWER HEAT TRACE	480V/20Amp	480V/20 amp	AWG 12	The City panel	JBOX 6	The City
NETWORK CONNECTION						
NETWORK CONNECTION TO CONTROL CABINET	Cat 6	2 cables	2 cables	PLANT Router	Company PLC CAB	The City

COMPRESSED AIR DELIVERED						
SYSTEM COMPRESSED AIR	Non-Flowing	100 PSI	1/2" FNPT	Air Compressor	Dryer Lid Lift	The Company
SYSTEM COMPRESSED AIR (removed item)					Dried Solids Conveyor 3 - Gate	removed item
SEWER LINE						
CONDENSATE REMOVED	4600 Gal/Day	Intermittent	1-1/2" FNPT	Condenser Pump	sewer or drain	The Company
BELT/CHAMBER WASH	90 gpm		3" FNPT	Griffin - Wash Drain	sewer or drain	The Company
WATER SUPPLY						
CHAMBER & BELT WASH SOLENOID STAND	90 gpm	40psi Minimum	3" 150lb FLANGE	W3 - Supply Line	Solenoid Stand	The City
CONTROL CONDUIT						
CONDUIT	CONDUIT	CABLING REQUIREMENTS	MATERIAL	FED FROM	FED TO	RESPONSIBLE PARTY
CONTROLS CONDUIT #8	1.25" RMC OR EMT	PULL STRING	18/3 w/shield	Griffin PLC CAB	JBOX 8	The Company
CONTROLS CONDUIT #9	1.25" RMC OR EMT	PULL STRING	18/3 w/shield	Griffin PLC CAB	JBOX 9	The Company
CONTROLS CONDUIT #7	1" RMC OR EMT	PULL STRING	18/3 w/shield	Griffin PLC CAB	JBOX 7	The Company
CONTROLS CONDUIT #6	1" RMC OR EMT	PULL STRING	18/3 w/shield	Griffin PLC CAB	JBOX 6	The Company
CONTROLS CONDUIT #11	3/4" RMC OR EMT	PULL STRING	18/3 w/shield	Griffin PLC CAB	JBOX 11	The Company
CONTROLS CONDUIT #10	3/4" RMC OR EMT	PULL STRING	18/3 w/shield	Griffin PLC CAB	JBOX 10	The Company

Table 1 to Appendix A Page - 2

FOR CONSIDERATION						
Hopper Control		To Dryer PLC or The City Conveyance Cabinet				
Feed Conveyor Control						
DSC 1 Control						
DSC 2 Control						
DSC 3 Control						
1.2 MOTORS PROVIDED BY COMPANY						
COMPONENT	Quantity Of Motors	VOLTAGE	HP	FED FROM	FED TO	Wiring & Conduit RESPONSIBLE
M01 - PROCESS BLOWER	1	480	300	CONTROL CAB	MOTOR	The Company
M02 - COMBUSTION BLOWER	1	480	30	CONTROL CAB	MOTOR	The Company
M03 - SIFTER BRUSH	1	480	2	CONTROL CAB	MOTOR	The Company
M04 - LEVELING AUGER/BRUSH	1	480	1	CONTROL CAB	MOTOR	The Company
M05 - SYSTEM BELT DRIVE	1	480	3	CONTROL CAB	MOTOR	The Company
M06 - EXIT CONVEYANCE 01	1	480	3	CONTROL CAB	MOTOR	The Company
M07 - LID LIFT 01	1	480	2	CONTROL CAB	MOTOR	The Company
M08 - LID LIFT 02	1	480	2	CONTROL CAB	MOTOR	The Company
M09 - COOLING TOWER PUMP 01	1	480	40	CONTROL CAB	MOTOR	The City

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M10 - COOLING TOWER FAN	1	480	15	CONTROL CAB	MOTOR	The City
M11 - CONDENSATE PUMP	1	480	1	CONTROL CAB	MOTOR	The Company
M12 - CHAMBER RINSE PUMP	1	480	10	CONTROL CAB	MOTOR	The Company
M13 - BELT WASH PUMP	1	480	10	CONTROL CAB	MOTOR	The Company
1.3 CONVEYANCE MOTORS AND LINES						
COMPONENT	Quantity Of Motors	VOLTAGE	HP	FED FROM	FED TO	Pipe / Wiring & Conduit RESPONSIBLE
POWER and HYDRAULICS						
M14 - HOPPER FEED Inclined Conveyor 1	1	Hydraulic	N/A	HOPP PANEL	HYD MOTOR	The City
M15 - HOPPER LEVELING PADDLE 1	1	Hydraulic	N/A	HOPP PANEL	HYD MOTOR	The City
M16 - HOPPER LEVELING PADDLE 2	1	Hydraulic	N/A	HOPP PANEL	HYD MOTOR	The City
M17 - HOPPER DISCHARGE SCREW 1	1	Hydraulic	N/A	HOPP PANEL	HYD MOTOR	The City
M18 - HOPPER DISCHARGE SCREW 2	1	Hydraulic	N/A	HOPP PANEL	HYD MOTOR	The City
M19 - DRYER FEED Inclined Conveyor 2	1	Hydraulic	N/A	HOPP PANEL	HYD MOTOR	The City
M20 - Dried Solids Screw 1 (DSC 1)	1	480	TBD	CONTROL CAB	MOTOR	The Company
M21 - INCLINED EXIT Screw (DSC 2)	1	Hydraulic	N/A	HOPP PANEL	HYD MOTOR	The City
M22 - Dried Solids Screw 3 (DSC 3)	1	480	15-20 HP	HOPP PANEL	MOTOR	The City
M30 - Solar Green House Conveyor (WSC)	1	480	20 Range	CONTROL CAB	MOTOR	The City
CONTROLS						
Power to Hydraulics Cabinet	2" conduit	480 / 100 amp		CONTROL CAB	HOPP PANEL	The City
Controls to Hydraulics Cabinet	1" conduit	20 16ga		CONTROL CAB	HOPP PANEL	The City

Table 1 to Appendix A Page - 4

INSTRUMENTATION						
To Hydraulics Cabinet	2" conduit	6-7 T/S		CONTROL CAB	HOPP PANEL	The City
To Load Cells	3/4" Conduit	4 to 20		CONTROL CAB	Load Cells	The City
SGH Conveyor E-Stop	1" conduit	14ga THWN		CONTROL CAB	SGH J-Box	The City
To Incline Conveyor	1/2" Conduit			CONTROL CAB	Incline Feed Conv.	The City
To Hopper	3/4" Conduit			CONTROL CAB	Hopper J-Box	The City
To Incline Conveyor and SGH Conveyor	3/4" Conduit			CONTROL CAB	Hopper J-Box	The City

Table 1 to Appendix A Page - 5

APPENDIX B

COMPENSATION

The City shall pay the Company the following Fees for the Project:

1. **Fee Rate:** Company shall be paid for each ton of Sludge processed at the rate (“**Fee Rate**”) of Sixty-Five and no/100 Dollars (\$65.00) per ton based on a wet tons basis, as received at the Project at the Sludge Delivery Point, for a three (3) year period (the “**Operational Period**”) commencing on the Certification Date specified in Appendix A. For the avoidance of doubt the last day of the Term shall correspond to and be the same as the last day of the Operational Period.
2. **Minimum Fees and Invoice Reconciliation.** The minimum amount that the Company will invoice the City each month (the “**Minimum Fees**”) shall be and is the sum of Eighty-One Thousand Two-Hundred Fifty and no/100 Dollars (\$81,250.00).
 - A. **Processing Target.** The Minimum Fees are based on the fact that the Parties have agreed that the Company’s monthly invoices will be based on the Parties’ target (the “**Processing Target**”) for the Project to process Fifteen Thousand (15,000) tons of Sludge on an annual basis, which is equal to the Project processing One Thousand Two Hundred Fifty (1,250) tons of Sludge per month.
 - B. **Invoice Reconciliation.** At the end of each twelve (12) month period during the Operational Period, the Parties will reconcile the Fees that have been billed against the actual amounts of Sludge processed (the “**Actual Results**”) during the past twelve (12) month period as follows:
 1. If the Actual Results exceed the Processing Target, the City shall pay the Company the additional Fees owed to the Company which shall be computed by multiplying the amount of tons processed in excess of the Processing Target by the Fee Rate; and
 2. If the Actual Results are below the Processing Target, the Company shall pay the City for the shortfall which shall be computed by multiplying the amount of tons processed below the Processing Target by the Fee Rate. However, if the City’s ability to utilize the Project is hampered or hindered due to the withholding of the Required Consents, then, for the period when such Required Consents are withheld (the “**Withheld Consent Period**”), the Parties stipulate and agree that the Project shall be deemed to have met the Processing Target, and the Company shall have no liability, duty, or obligation to pay or refund to the City any sums paid to the Company which relate to the Withheld Consent Period.
 3. The Parties have agreed that the minimum annual sludge volume shall be Fourteen Thousand (14,000) wet tons of sludge annually. The parties have further agreed that the maximum payment by the Company to the City if the Actual Results are below the Processing Target, shall be \$65,000, equal to One

Thousand (1,000) tons of sludge during the twelve (12) month Operational Period.

- C. Sludge Volume Limits. Total sludge delivered to the Project for processing at the Sludge Delivery Point shall not exceed fifty (50) wet tons per day, on a seven (7) day per week operating schedule.
- 3. Buy-Out Price. The price the City must pay to the Company to exercise the Buy-Out is One Million Nine-Hundred Ninety-Five Thousand and no/100 Dollars (\$1,995,000).

APPENDIX C

BUY-OUT AGREEMENT

This Buy-Out Agreement (the “**Sale Agreement**”) is executed as of this ____ day of _____, 2025 (the “**Execution Date**”), by and between Griffin Residuals, LLC, a Kentucky limited liability company (the “**Company**”) with offices located at 5872 Highway 1389, Owensboro, KY 42303, and the City of Fayetteville, AR, a municipal corporation in the State of Arkansas (the “**City**”) with offices located at 2435 S Industrial Drive, Fayetteville, AR 72701. The Company and the City are each individually a “**Party**” and collectively are the “**Parties**”.

RECITALS

WHEREAS, the Parties entered that certain Griffin Residuals Drying As A Service Agreement (“**Agreement**”) on _____;

WHEREAS, pursuant to the Agreement, the City has the right to Buy-Out the Company Assets for the Buy-Out Price (as all of those capitalized terms are defined in the Agreement) for the sum of One Million Nine-Hundred Ninety-Five Thousand and no/100 Dollars (\$1,995,000);

WHEREAS, the City has exercised its Buy-Out right and, pursuant to this Sale Agreement, intends to and shall purchase the Company Assets;

NOW THEREFORE, in consideration of the mutual covenants, undertakings, conditions, and consideration set forth below, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS OF SALE AGREEMENT

1. **Recitals.** The Recitals in this Sale Agreement are hereby incorporated into the Sale Agreement, are material terms of this Sale Agreement, and are being relied up by the Parties in executing this Sale Agreement.
2. **Definitions.** All capitalized terms which are not defined in this Sale Agreement shall have the meanings ascribed to them in the Agreement.
3. **Payment of the Buy-Out Price and Sale of the Company Assets.** Upon the Company’s successful receipt and deposit of the payment of the Buy-Out Price by the City, the Company shall execute and deliver (the “**Closing**”) a bill of sale to the Company Assets to the City transferring and conveying all of the Company’s rights, title, and interest in and to the Company Assets to the City.
4. **The Company’s Disclaimer of All Warranties.** The Company is selling, and the City is taking ownership of, the Company Assets **AS IS, WHERE IS, WITH ALL FAULTS AND DEFECTS, AND WITH NO WARRANTIES WHATSOEVER.** THE CITY UNDERSTANDS AND AGREES THAT THE COMPANY HAS DISCLAIMED AND IS DISCLAIMING ANY WARRANTY, GUARANTY, OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, AS TO TITLE, CONDITION,

FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY. THE CITY IS ACCEPTING THE COMPANY ASSETS BASED SOLELY ON ITS OWN INDEPENDENT INVESTIGATIONS AND INSPECTIONS OF THE COMPANY ASSETS AND NOT IN RELIANCE ON ANY INFORMATION PROVIDED BY THE COMPANY OR THE COMPANY'S AGENTS OR CONTRACTORS. THE COMPANY HAS MADE NO AGREEMENT AND HAD NO DUTY TO ALTER, REPAIR OR IMPROVE THE COMPANY ASSETS. THE CITY AGREES TO DEFEND, INDEMNIFY, AND HOLD THE COMPANY HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS ASSERTED AGAINST OR INCURRED BY THE COMPANY AS A RESULT OF ANY ACTS OR OMISSIONS WITH RESPECT TO THE COMPANY ASSETS FROM AND AFTER THE EXECUTION DATE AND ANY FAILURE BY THE CITY TO COMPLY WITH ALL OBLIGATIONS UNDER THIS SALE AGREEMENT. THE PROVISIONS OF THIS PARAGRAPH 4 SHALL SURVIVE CLOSING.

5. **The City's Release of the Company.** The City, for itself and its respective citizens, heirs, beneficiaries, and assigns, hereby fully and finally forgives, releases, remises, and forever discharges the Company and the Company's employees, servants, representatives, agents, subcontractors, insurers, attorneys, heirs, successors, and assigns from any and all claims, demands, causes of action, disputes, fees, expenses (including attorney's fees and litigation expenses), costs, suits, and damages, of whatever kind or nature, known or unknown, at law or in equity, contingent or not, past or present, concerning the Company Assets, the Agreement, and any transactions that occurred between the Parties that arose on or before the Execution Date.
6. **Investigation.** Each Party represents, warrants, and agrees that it has made an investigation of the facts related to the subject matter of this Sale Agreement and the effect of this Sale Agreement, seeking advice from others, including counsel, to the extent they believe necessary.
7. **Severability.** Should any provision of this Sale Agreement be declared illegal or unenforceable by any court of competent jurisdiction, such that it cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Sale Agreement in full force and effect.
8. **Entire Agreement and Merger.** The Parties acknowledge and agree that this Sale Agreement contains the entire and complete agreement between the Parties with respect to the Company Assets and that the terms and conditions stated in this Sale Agreement shall bind and inure to the benefit of the Parties hereto and their respective heirs, successors, representatives, and assigns. This Sale Agreement is intended to supersede all prior oral and/or written representations and promises discussed between the Parties and such prior oral and/or written representations and promises are merged and integrated herein.
9. **Representation by Counsel.** The Parties acknowledge that they have been represented by or had the option to be represented and have had access to independent legal counsel of their own choosing in connection with entering into this Sale Agreement, and the Parties hereby acknowledge that their respective legal counsel has reviewed this Sale Agreement and has

participated in the drafting of this Sale Agreement. Each Party fully understands the terms and conditions of this Sale Agreement and agrees to be fully bound by and subject thereto.

10. **Authority.** Each of the undersigned warrants that he or she is legally authorized to execute this Sale Agreement on behalf of the Party for which he or she executes this Sale Agreement.
11. **Governing Law.** This Sale Agreement shall be interpreted, governed, and enforced by and under the laws of the State of Arkansas.
12. **Counterparts.** This Sale Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitute, collectively, one Agreement. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all of the Parties hereto. To facilitate execution of this Sale Agreement, the Parties may execute and exchange counterparts of the signature pages by facsimile or electronic means.
13. **Joint Agreement.** The parties acknowledge that this Sale Agreement was jointly drafted and shall not be presumptively construed in favor for against any party.
14. **Expenses and Attorney's Fees.** In the event of any dispute or litigation between any of the Parties hereto as to any matter arising under this Sale Agreement or relating to the subject matter hereof, the prevailing Party shall be entitled to recover from the non-prevailing Party all of the prevailing Party's reasonable costs and expenses, including, without limitation, reasonable attorney's fees, incurred in such litigation (including in any appellate or bankruptcy litigation).
15. **Time is of the Essence.** Time is of the essence in the performance by the various Parties of their obligations under this Sale Agreement.

IN WITNESS WHEREOF, the Parties have executed this Sale Agreement through their duly authorized officers as of the date set forth in the preamble to this Sale Agreement and acknowledge their full understanding and acceptance of this Sale Agreement's terms.

For the City	For the Company
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPENDIX D
COMPANY INSURANCE
(See Attached)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/27/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERs NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER House Insurance Service LLC PO Box 339 Hawesville KY 42348	CONTACT NAME: Brandon House	
	PHONE (A/C No. Ext) (270) 927-8841	FAX (A/C. No): (270) 927-8897
INSURED Griffin Residuals LLC 5872 State Route 1389 Owensboro KY 42303	E-MAIL ADDRESS: brandon@houseinsurancesvc.com	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Auto Owners Insurance Co.	
	NAIC # 524210	
	INSURER B :	
	INSURER C :	
	INSURER D :	
INSURER E :		
INSURER F :		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		Y	53-271005-00	04/27/2022	04/27/2023	EACH OCCURRENCE	\$ 2,000,000
							DAMAGE TO RENTED PREMISES (Fa occurrence)	\$ 300,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ Included
	GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY <input type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC						GENERAL AGGREGATE	\$ 4,000,000
	OTHER:						PRODUCTS - COMP/OP AGG	\$ 4,000,000
								\$
A	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY	<input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	53-271005-00	04/27/2022	07/27/2023	COMBINED SINGLE LIMIT (Fa accident)	\$ 2,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	UMBRELLA LIAB	<input type="checkbox"/> OCCUR					EACH OCCURRENCE	\$
	EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE					AGGREGATE	\$
	DED	<input type="checkbox"/> RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input checked="" type="checkbox"/> Y / N					PER STATUTE	OTHR-
			N / A				E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Additional Insureds: Water Environment Federation, SMG, The Franklin County Convention Facilities Authority and Levy Premium Foodservice Limited Partnership, the Greater Columbus Convention Center, the City of Columbus, and their agents, trustees, officers, board members and employees.

CERTIFICATE HOLDER

CANCELLATION

Water Environment Federation
601 Wythe St.
Alexandria, VA 22314

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

<BAH>

APPENDIX E
CITY INSURANCE