

CITY OF TERRE HAUTE WASTEWATER UTILITIES CONTRACT

THIS CONTRACT made the 28 day of July, 2014, by and between the CITY OF TERRE HAUTE, INDIANA, and the CITY OF TERRE HAUTE WASTEWATER UTILITY, by and through its Board of Public Works and Safety, a municipal corporation in the State of Indiana (hereinafter called the "Utility"), and RENEWABLE TRANSPORT SERVICES, INC. (hereinafter called the "Contractor").

WITNESSETH:

WHEREAS, Utility has previously determined that it has a need for SLUDGE HAULING TRANSPORTATION SERVICES; and

WHEREAS, Contractor has represented that it is able to satisfactorily provide the services according to the terms and conditions contained herein; and

NOW, THEREFORE, in consideration of the above and mutual covenants contained herein, the parties agree as follows:

1. Services to be Performed. The Contractor hereby agrees to provide Utility with SLUDGE HAULING TRANSPORTATION SERVICES, outlined in Appendix A attached hereto and made a part hereof ("Service").

2. Time of Service. Services shall be performed in a timely manner.

3. Term of Agreement/Option of Renewal. Services performed pursuant to this Contract shall commence upon the issuance of a purchase order by Utility and shall continue for a period of five (5) years, unless cancelled or terminated as provide herein. This Contract may be renewed, by written agreement of the parties, for five (5) additional One-Year periods after the initial contract period. This option shall be exercised only if all terms and conditions remain the same.

4. Amendment of the Contract. This Contract may be amended only by mutual written agreement of the parties.

5. Assignment. The Contractor shall perform this contract. No assignment shall be allowed without the prior written consent of Utility which consent shall not be unreasonably withheld. In the event of a corporate acquisition and/or merger, the Contractor shall provide written notice to Utility within thirty (30) business days of Contractor's notice of such action or upon the occurrence of said action, whichever occurs first.

6. Cancellation. Either party reserves the right to cancel this Contract for cause if at any time the other party fails to fulfill or abide by any of the terms or conditions specified, provided, that such other party shall have a thirty (30) day cure period. Failure of either party to comply with any of the significant provisions of this Contract shall be considered a material breach of contract and shall be cause for immediate termination of the Contract, subject to the foregoing cure period. Termination or cancellation of the contract will not relieve the Contractor

of any obligations for any deliverables entered into prior to the termination of the Contract, and Utility shall be obligated to pay all sums owed to Contractor for services rendered prior thereto.

7. Compensation. As compensation for the Contractor providing services to Utility as described herein, Utility shall pay the Contractor per the terms of Appendix B, based on the submission of invoices for work completed. Contractor shall submit invoices to Utility weekly and Utility will remit payment to Contractor based on the Schedule attached hereto as Appendix C. Invoices shall provide a detailed statement of Services performed during the invoice period and are subject to verification by Utility.

8. Permits/Licenses. The Contractor must secure and maintain any and all permits and licenses required to complete this contract.

9. Minimum Insurance Requirements. During the term of this Contract, the Contractor must maintain insurance in at least the amounts required below:

(a) Commercial General Liability Insurance covering claims for bodily injury, personal injury and property damage arising out of Contractor's performance under this Contract with a per occurrence combined single limit of not less than \$5,000,000, including auto insurance.

(b) Workers' Compensation Insurance with statutory limits covering all of a Contractor's employees performing work under this Contract.

(c) An environmental policy in the amount of \$1,000,000 in the aggregate for coverage of potential spills of Sludge during its transportation by Contractor.

The Contractor must provide a Certificate of Insurance to Utility evidencing such coverage prior to issuance of a purchase order or commencement of any work under this Contract. Contractor shall ensure that any subcontractors or persons hired by subcontractors maintain the same level of insurance coverage as the Contractor.

10. Indemnification. Each party shall indemnify, pay the cost of defense, including attorneys' fees, and hold harmless the other party, its employees, officers, owners, agents and elected officials from all suits, actions or claims of any character brought on account of any injuries or damages received or sustained by any person, persons or property caused by the negligence or willful misconduct of such party (including in the case of Utility, Utility's Suppliers).

11. Severability. The terms and conditions of this agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the agreement impossible to perform.

12. Document. Each party to this Agreement shall perform any and all acts and execute and deliver any and all documents as may be necessary and proper under the

circumstances in order to accomplish the intents and purposes of this Agreement and to carry out its provisions.

13. Inurement. This Agreement will inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

14. Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter contained herein and any and all previous agreements, written or oral, express or implied, between the parties or on their behalf relating to the matters contained herein are hereby terminated and canceled.

15. Notices. Except as herein otherwise provided, each notice, request, demand, statement, report and bill which must or may be given pursuant hereto will be in writing and may be mailed by prepaid first class mail (or equivalent), delivered by hand or sent by telecopier to the address or number indicated below:

If to Utility:

City of Terre Haute Wastewater Utility
3200 South State Road 63
Terre Haute, Indiana 47802
Attention: C. Mark Thompson, Director of Utilities
Phone: 812-232-6564

If to Client:

Renewable Transport Services, Inc.
1254 S.W. Street
Indianapolis, Indiana 46225
Attention: Noah Sodrel
Phone: (317) 710-9553

16. Modification and Waiver. This document may be amended through the mutual agreement of the parties for any reason. All such modification of the terms and provisions hereof are to be only by the mutual agreement in writing signed by the parties.

17. Governing Law/Jurisdiction. This Agreement shall be governed by the laws of the State of Indiana, and the parties understand and agree that the Federal and State Courts of Vigo County, Indiana, shall have exclusive jurisdiction over any civil action arising out of this Agreement, or the services or obligations performed or to be performed by the parties.

18. Compliance with Laws. This Agreement and the respective obligations of the parties hereunder are subject to present and future valid and applicable laws and valid orders, rules and regulations of duly constituted authorities having jurisdiction.

19. Affiliates. References herein to affiliates of a specified person shall mean a person that directly or indirectly, through intermediaries by contract or otherwise, controls or is controlled by, or is under common control with, the person specified and shall include Utility's Suppliers vis a vis the Utility.

20. Furnishing of Information. The parties will, upon request, provide such additional information as may be reasonably required to allow the parties to efficiently and effectively carry out their respective obligations hereunder and to determine and enforce individual or collective rights under this Contract.

21. Equitable Remedies. Notwithstanding anything to the contrary contained herein, the parties shall have the right to seek injunctive or equitable relief for any harm arising under this Contract.

22. Faithful Performance. The parties shall faithfully perform and discharge their respective obligations under this Agreement and endeavor in good faith to negotiate and settle all matters arising during the performance of this Agreement not specifically provided for.

23. Independent Contractor. Utility's relationship with Contractor is that of an independent contractor, and nothing in this Agreement is intended, or should be construed, to create a partnership, agency, joint venture or employment relationship.

24. Costs. Each of the parties hereto shall pay its own costs and expenses incurred in the negotiation, preparation and execution of this Contract and of all documents referred to in it and in carrying out the transactions contemplated hereby and thereby.

25. Counterparts. This Contract may be executed in any number of counterparts with the same effect as if all parties to this Contract had signed the same document and all counterparties will be construed together and constituted one and the same instrument.

26. Survival. All provisions of this Contract which are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Contract shall remain in effect and be enforceable following such expiration.

27. Force Majeure. If a party is unable to perform in whole or in part any obligation or covenant set forth hereunder (except for requirement to pay amounts when due) due to any event or circumstance beyond the reasonable control of the party, the obligations of such party under this Agreement will be suspended or curtailed to the extent necessary for the period such force majeure condition continues; provided, however, that if such force majeure condition or event persists for a period of thirty (30) consecutive days, the other party may, at its sole option, cancel or terminate this Contract at any time thereafter during such continuing force majeure condition or event.

28. Minimum Service. Anything herein to the contrary notwithstanding, Utility shall provide at least one hundred and twenty (120) hours of Service requirements each week for Contractor for which Contractor shall receive compensation as set forth on Appendix B hereto. In the event that Utility shall need to increase the amount of Service provided hereunder, it shall communicate such needs to Contractor. Contractor and Utility agree to amend this provision in good faith to provide additional minimum Service hours if more equipment is required to provide such Service taking into account the length of time remaining in the Term of this Contract.

29. Covenant Against Contingent Fees. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any other

company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift(s), or any other consideration, contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, Customer shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the subscription fee or consideration or otherwise recover the amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

30. Compliance with E-Verify Program. Pursuant to IC 22-5-1.7, Contractor shall enroll in and verify the work eligibility status of all newly hired employees of Contractor through the E-Verify Program ("Program"). Contractor is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.

31. Aliens.

(A) Contractor shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that Contractor or its Subcontractor subsequently learns is an unauthorized alien. If Contractor violates this section, Customer shall require Contractor to remedy the violation not later than thirty (30) days after Customer notifies Contractor. If Contractor fails to remedy the violation within the thirty (30) day period, Customer shall terminate the Agreement for breach of contract. If Customer terminates the Agreement, Contractor shall, in addition to any other contractual remedies, be liable to Customer for actual damages. There is a rebuttable presumption that Contractor did not knowingly employ an unauthorized alien if Contractor verified the work eligibility status of the employee through the Program.

(B) If Contractor employs or contracts with an unauthorized alien but Customer determines that terminating the Agreement would be detrimental to the public interest or public property, Customer may allow the Agreement to remain in effect until Customer procures a new Contractor.

(C) Contractor shall, prior to performing any work, require each subcontractor to certify to Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. Contractor shall maintain on file a certification from each subcontractor throughout the duration of the Agreement. If Contractor determines that a subcontractor is in violation of this section, Contractor may terminate its contract with the subcontractor for such violation. Such termination may not be considered a breach of contract by Contractor or the subcontractor.

32. Investment in Iran Disclaimer. Pursuant to Indiana Code 5-22-16.5-11, contractors who have dealings with the government of Iran are deemed to be Nonresponsible bidders for the purposes of submitting an offer in response to a solicitation; submitting a bid, offer, or proposal relating to a public works project; or entering into a contract to provide supplies or services with the state or a political subdivision. Pursuant to I.C. 5-22-16.5-9, the Indiana Department of Administration shall develop and update a list of contractors the Department determines to be engaged in investment activities in Iran. The undersigned, on behalf of Contractor, being first duly sworn, deposes and states that Contractor is not currently on the list kept by the Indiana Department of Administration, and has not engaged in any activity which will cause Contractor to be added to said list.

33. Non Appropriation Clause. The parties acknowledge that the Board of Public Works and Safety is part of the City of Terre Haute which is a governmental entity whose funds are subject to appropriation by its fiscal body. Therefore, if at any time during the initial term or subsequent term of this Agreement, the fiscal body should fail to appropriate sufficient funds to continue the Agreement, the Agreement shall become null and void; provided, however, that if the Agreement is so terminated neither the Board nor the City shall enter into a contract with a different vendor to perform similar services within a twelve (12) month period after termination. In the event of non-appropriation of funds, the Board of Public Works and Safety will give notice immediately of such failure and shall pay for all services provided prior to exhaustion of the appropriated funds. The Board of Public Works and Safety agrees in good faith to seek funding for the continuation of the Agreement during each budget cycle during the initial term or any subsequent term of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed the Contract as of the date first above written.

ATTEST: Charles P. Hanley
City Clerk

“UTILITY”

CITY OF TERRE HAUTE, INDIANA

SEAL

By: Robert Murray
City Manager

APPROVED AS TO CORRECTNESS AND FORM

COUNTERSIGNED:

By: [Signature]
City Attorney

By: [Signature]
Mayor

ATTEST: Robin A. Dunning

(Contractor's Name and Title)

By: _____
Contractor

“CONTRACTOR”

RENEWABLE TRANSPORT SERVICES, INC.

By: [Signature]
Its: PRESIDENT

APPENDIX A

SLUDGE HAULING TRANSPORTATION SERVICES

A. Contractor to provide all labor, supervision and equipment necessary for the transportation of wastewater sludge ("Sludge") from the cities, utilities and companies set forth on Appendix B-1 ("Utility's Suppliers") to the Utility's Plant ("Services").

B. For the purpose of this Agreement, "Sludge" shall mean the residential waste generated from the Utility's Suppliers waste water treatment facilities.

Contractor shall:

(1) Provide appropriate trucks and trailers (similar to the equipment described on Appendix A-1), and labor associated therewith, for the transportation of Sludge from the Utility's Suppliers to Utility's holding reservoirs located at 3100 South Slate Road 63, Terre Haute, Indiana (the "Plant").

(2) Regularly transport Sludge from each Utility's Suppliers' generating facility site on such a schedule (seven days per week, 52 weeks per year, as needed in the reasonable opinion of Contractor) so as to keep Sludge from overflowing such facilities' holding tanks. Contractor shall provide load tickets for each pick-up and shall haul Sludge to the Plant. Utility shall be responsible for scheduling Contractor's work schedule to accommodate Contractor's equipment and shall make its Plant and the other Utility's Suppliers wastewater treatment facilities available to Contractor twenty-four (24) hours a day, seven (7) days a week, except on national holidays.

(3) Provide weekly summary of Sludge hauled from any and all Utility Suppliers' facility sites, as well as the number of hours and miles per week driven by Contractor's employees in the performance of the Services.

(4) Abide by all of Utility's reasonable safety rules and procedures provided in and/or as agreed upon during Utility's visitor/contractor safety orientation; and will ensure the Contractor and its employees and subcontractors, if any, will perform work in a safe and efficient manner.

(5) Make provisions for emergency call in service and response time.

(6) The Sludge to have an average of solids content of 2% plus 2% (daily average). Contractor shall provide equipment similar to the equipment identified on Appendix A-1 and Utility acknowledges that this type of equipment will accommodate the type of Sludge Contractor is required to haul pursuant hereto.

(7) Utility shall require Utility's Suppliers, or Utility, at its option, to perform analysis of Sludge on a regular basis to insure that the Sludge shall comply with federal and state laws and regulations related thereto.

(8) The Sludge shall be loaded into the equipment of Contractor by Contractor's employees (and will be assisted by the Utility's Suppliers' employees in the event the specific site requires such assistance, if needed), and shall be unloaded at the Plant.