

RESOLUTION NO. 2022 - 32

A Resolution Awarding the Contract for the Biosolids Application Project, Project 2022-4.

RECITALS:

Whereas, at 2:00pm on April 7th, 2022, one bid for the Biosolids Application Project, Project 2022-4, were publicly opened and read aloud; and

Whereas, the low bidder, Denali Water Solutions, formally Tribeca Transport, LLC, met all of the bid requirements, and should be considered the lowest responsible bidder; and

Whereas, the funds for this project is included in the proposed FY22/23 Wastewater Services fund (75) budget.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMinnville, OREGON, as follows:

1. Tribeca Transport, LLC was acquired by Denali Water Solutions effective April 14th, 2022. The City was notified of the acquisition on April 18th, 2022.
2. That entry into a Goods and Services Contract with Denali Water Solutions in the amount of \$ 1,075,500.00 for a five-year term or \$215,100.00 per year for the Biosolids Application Project, Project 2022-4, is hereby approved.
3. That the City Manager is hereby authorized and directed to execute the Goods and Services Contract with Denali Water Solutions is attached hereto as **Exhibit 1**.
4. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until revoked or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 24th day of May 2022 by the following votes:

Ayes: Drabkin, Garvin, Geary, Peralta

Nays: _____

Approved this 24th day of May 2022.

Scott A. Hunt

MAYOR

Approved as to form:
Walter Powell

Interim City Attorney

Attest:
Claudia Cisneros

City Recorder

Exhibit 1:

- Goods and Services Contract with Denali Water Solutions.

CITY OF McMinnville
GOODS AND SERVICES CONTRACT

This Goods and Services Contract (“Contract”) for the Biosolids Application Project (Project No. 2022-4) Project (“Project”) is made and entered into on this _____ day of _____ 2022 (“Effective Date”) by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Denali Water Solutions LLC**, a Delaware limited liability corporation (hereinafter referred to as “Contractor”).

RECITALS

WHEREAS, the City requires services which Contractor is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Contractor represents that Contractor is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Contractor is prepared to provide such services, as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Scope of Work

Contractor will perform the biosolid services, as more particularly described in the Scope of Work for the Project, attached hereto as **Exhibit A** and incorporated by reference herein (the “Work”).

Section 2. Term

The term of this Contract shall be from the Effective Date until all Work required to be performed hereunder is completed and accepted, or no later than five years from the Effective Date, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City. Contractor shall diligently perform the Work according to the requirements identified in the Project bid documents dated March 2, 2022 and Contractor’s Bid submitted in response thereto.

Section 3. Contract Sum/Project Scope

3.1. Except as otherwise set forth in this **Section 3**, the City agrees to pay Contractor a not-to-exceed amount of ONE MILLION SEVENTY-FIVE THOUSAND FIVE HUNDRED DOLLARS (\$1,075,500.00) for performance of the Work (“Contract Sum”). Except as provided

in **Subsection 3.2** herein, any compensation in excess of the Contract Sum will require an express written Change Order between the City and Contractor.

3.2. Contractor's pricing is set forth in **Exhibit B**, attached hereto and incorporated by reference herein. Contractor may set the price of diesel to be \$4.00/gallon. Any fuel costs above or below will be charged or credited to your weekly invoice. Fuel cost will be adjusted on a weekly basis as per the US Energy and Information Administration website: <https://eia.gov/petroleum/gasdiesel/>. For the price of diesel we will be using the US Energy and Information Administration, U.S. On-Highway Diesel Fuel Prices West Coast less California.

3.3. Contractor's Contract Sum is all inclusive and includes, but is not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits, and all other contributions and benefits, office expenses, travel expenses, mileage, and all other indirect and overhead charges.

3.4. Contractor will be paid for Work upon completion of the Work and within thirty (30) days of receipt of an itemized invoice, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Contractor as promptly as is reasonably possible.

Section 4. City's Rights and Responsibilities

4.1. The City will designate a Project Manager to facilitate day-to-day communication between Contractor and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

4.2. Award of this Contract is subject to budget appropriation. Funds are approved for Fiscal Year 2021-22. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this Contract early, as described in **Section 13**.

Section 5. Project Managers

The City's Project Manager is Jeff Gooden. Contractor's Project Manager is Eric Thwaites.

Section 6. Subcontractors and Assignments

Unless expressly authorized in writing by the City, pursuant to **Subsection 14**, Contractor shall not subcontract with others for any of the Work prescribed herein. Contractor shall not assign any of Contractor's rights acquired hereunder without obtaining prior written approval from the City. Some Work may be performed by persons other than Contractor, provided Contractor advises the City of the names of such subcontractors and the services which they intend to provide, and the City specifically agrees, in writing, to such subcontracting. Contractor acknowledges such services will be provided to the City pursuant to a subcontract(s) between

Contractor and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Contract, the City incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any attempted assignment of this Contract without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Contractor shall not be subject to additional reimbursement by the City.

Section 7. Contractor Is Independent Contractor

Except as otherwise mandated by state law, the performance of Work under this Contract is at Contractor's sole risk. All damages or loss to Work, equipment, or materials incurred during the performance of the Work shall be at Contractor's sole risk. Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the Contract Sum provided for under **Section 3** of this Contract. Contractor will be solely responsible for determining the manner and means of accomplishing the end result of Contractor's Work. The City does not have the right to control or interfere with the manner or method of accomplishing said Work. The City, however, will have the right to specify and control the results of Contractor's Work so such Work meets the requirements of the Project.

Section 8. Contractor's Responsibilities

8.1. Contractor must comply with all applicable Oregon and federal wage and hour laws. Contractor shall make all required workers compensation and medical care payments on time. Contractor shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

8.2. No person shall be discriminated against by Contractor or any subcontractor in the performance of this Contract on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Contract, in whole or in part, by the City. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the implementation of the Project. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Contract or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (i) all regulations and administrative rules

established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

8.3. Contractor shall make payment promptly, as due, to all parties supplying to such Contractor labor or material for the prosecution of the Work provided for in the Contract.

8.4. Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing payment for such service.

8.5. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

8.5.1. All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

8.5.2. All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

8.5.3. All work performed on the days specified in ORS 279B.020(1)(b) for public contracts.

8.6. Contractor must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

8.7. The hourly rate of wage to be paid by any Contractor to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

8.8. Contractor, and all employers working under the Contract, are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 unless otherwise exempt under ORS 656.126.

8.9. In the performance of this Contract, Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to those dealing with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. If new or amended statutes, ordinances, or regulations are adopted, or

Contractor encounters a condition not referred to in this Contract, not caused by Contractor, and that was not discoverable by reasonable site inspection, which requires compliance with federal, state, or local laws or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

8.10. Contractor shall be liable for any fine imposed against Contractor, the City or the 'Project' as a result of a violation of any laws or permitting requirements by Contractor or any suppliers.

Section 9. Indemnity

9.1. Indemnification. Contractor acknowledges responsibility for liability arising out of the performance of this Contract, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Contractor's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Contract, or from Contractor's failure to perform its responsibilities as set forth in this Contract. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Contractor shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Contractor of its responsibility to perform in full conformity with the City's requirements, as set forth in this Contract, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Contractor's negligent performance of this Contract, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 9.2**. Contractor shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Contractor. As used herein, the term "Contractor" applies to Contractor and its own agents, employees, and suppliers, and to all of Contractor's subcontractors, including their agents, employees, and suppliers.

9.2. Standard of Care. In the performance of the Work, Contractor agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Contractor's profession practicing in the Portland metropolitan area. Contractor will re-perform any Work not meeting this standard without additional compensation. Contractor's re-performance of any Work, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Contractor's failure to perform in accordance with the applicable standard of care of this Contract and within the prescribed timeframe.

Section 10. Insurance

10.1. Insurance Requirements. Contractor must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or work hereunder. Any and all agents or subcontractors with which Contractor contracts for any portion of the Work must have insurance that conforms to the insurance requirements in this Contract. Additionally,

if a subcontractor is an engineer, architect, or other professional, Contractor must require the subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Contractor's liability hereunder. The policy or policies maintained by Contractor shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

10.1.1. Commercial General Liability Insurance. Contractor and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Contract, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Contract and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Contract.

10.1.2. Business Automobile Liability Insurance. If Contractor or any subcontractors will be using a motor vehicle in the performance of the Work herein, Contractor shall provide the City a certificate indicating that Contractor and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

10.1.3. Workers Compensation Insurance. Contractor, its subcontractors, and all employers providing work, labor, or materials under this Contract that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

10.1.4. Insurance Carrier Rating. Coverages provided by Contractor and its subcontractors must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

10.1.5. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Contractor's liabilities hereunder in insurance coverages. Additional Insured coverage under Contractor's Commercial General Liability, Automobile Liability, and Excess Liability Policies, as applicable, will

be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: “The City of McMinnville, its elected and appointed officials, officers, agents, employees, and volunteers.” An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days’ written notification of any termination or major modification of the insurance policies required hereunder. Contractor must be an additional insured on the insurance policies obtained by its subcontractors performing any of the Work contemplated under this Contract.

10.1.6. Certificates of Insurance. As evidence of the insurance coverage required by this Contract, Contractor shall furnish a Certificate of Insurance to the City. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Contractor agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days’ prior advance notice and Contractor will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

10.2. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Contractor shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are “Claims Made” policies, Contractor will be required to maintain such policies in full force and effect throughout any warranty period.

Section 11. Warranty

11.1. Contractor warrants to the City that any materials and equipment furnished under this Contract will be new and of good quality, unless otherwise required or permitted by this Contract, that the Services will be free from defects, and that the Services will conform to the requirements of this Contract. Services not conforming to these requirements, including substitutions not properly approved and authorized in writing by the City, may be considered defective.

Section 12. Suspension

The City may suspend, delay, or interrupt all or any part of the Services for such time as the City deems appropriate for its own convenience by giving written notice thereof to Contractor. An adjustment in the time of performance or method of compensation shall be negotiated as a result of such delay or suspension, unless the reason for the delay was within Contractor’s control. The City shall not be responsible for Services performed by any subcontractors after notice of suspension is given by the City to Contractor.

Section 13. Early Termination; Default

13.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

13.1.1. By mutual written consent of the parties;

13.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Contractor by mail or in person; or

13.1.3. By Contractor, effective upon seven (7) days' prior written notice, in the event of substantial failure by the City to perform in accordance with the terms through no fault of Contractor, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

13.2. If the City terminates this Contract in whole or in part, due to default or failure of Contractor to perform Work in accordance with the Contract, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Contractor shall be liable for all costs and damages incurred by the City as a result of the default by Contractor, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Contractor. In the event of a default, the City will provide Contractor with written notice of the default and a period of three (3) days to cure the default. If Contractor notifies the City that it cannot, in good faith, do so within the three (3) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Contract and seek remedies for the default, as provided above.

13.3. If the City terminates this Contract for its own convenience not due to any default by Contractor, payment of Contractor shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Contractor against the City under this Contract.

13.4. Termination under any provision of this **Section 13** shall not affect any right, obligation, or liability of Contractor or the City that accrued prior to such termination. Contractor shall surrender to the City items of work or portions thereof, for which Contractor has received payment or the City has made payment.

Section 14. Contract Modification; Change Orders

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Contractor.

Section 15. Notices

Any notice required or permitted under this Contract shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United

States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of McMinnville
Attn: Jeff Gooden, Engineering Technician
230 NE Second Street
McMinnville, OR 97128

To Contractor: Denali Water Solutions LLC
Attn: Eric Thwaites
1415 Port Way
Woodland, WA 98674

Section 16. Miscellaneous Provisions

16.1. Integration. This Contract, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Contract shall control.

16.2. Legal Effect and Assignment. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Contract may be enforced by an action at law or in equity.

16.3. No Assignment. Contractor may not assign this Contract, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

16.4. Adherence to Law. This Contract shall be subject to, and Contractor shall adhere to, all applicable federal, state, and local laws (including the McMinnville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Contractor is required by law to obtain or maintain in order to perform the Work described in this Contract shall be obtained and maintained throughout the term of this Contract.

16.5. Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein.

16.6. Jurisdiction. Venue for any dispute will be in Yamhill County Circuit Court.

16.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Contract or to interpret or enforce any rights

or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Contract, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

16.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Contract shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

16.9. Severability. If any provision of this Contract is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Contract shall remain in full force and effect, to the greatest extent allowed by law.

16.10. Modification. This Contract may not be modified except by written instrument executed by Contractor and the City.

16.11. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

16.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Contract, the first day from which the designated period of time begins to run shall not be included.

16.13. Headings. Any titles of the sections of this Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

16.14. Number, Gender and Captions. In construing this Contract, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

16.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Contract generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Contract. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted

as to the specific item in question, such as in the case of where this Contract gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

16.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Contract in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

16.17. Interpretation. As a further condition of this Contract, the City and Contractor acknowledge that this Contract shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the contract, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

16.18. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein represent the entire agreement between the parties.

16.19. Counterparts. This Contract may be executed in one or more counterparts, each of which shall constitute an original Contract but all of which together shall constitute one and the same instrument.

16.20. Authority. Each party signing on behalf of Contractor and the City hereby warrants actual authority to bind their respective party.

[Remainder of Page Intentionally Left Blank]

The Contractor and the City hereby agree to all provisions of this Contract.

CONTRACTOR:

CITY:

DENALI WATER SOLUTIONS LLC

CITY OF McMINNVILLE

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

Employer I.D. No. _____

APPROVED AS TO FORM:

Amanda Guile-Hinman, City Attorney
City of McMinnville, Oregon

EXHIBIT A

SCOPE OF WORK

Contractor will provide to the City the following services:

A. General Conditions.

1. The Contractor will haul all biosolids per bid Schedule to City selected and approved sites. The City's Contract Administrator will supply the applicable field locations and the authorized truck travel routes to and from site locations.
2. The City's Contract Administrator will have the authority to halt application due to farming needs, weather, spillage, mechanical or operational problems at the WRF.
3. Prior to signing the Contract, the successful bidder will provide evidence of compliance with past biosolids application contracts. Failure to provide this evidence of compliance may disqualify the bidder for award of this contract.
4. The OAR 340 Division 50 rules and the Environmental Protection Agency's 40 CFR Part 503 regulations regulate the City's biosolids program. All biosolids to be hauled and applied are class "A" biosolids.
5. Due to storage tank limitations, crop requirements, and weather implications, the contract schedule compliance is critical. The Contractor will be on site and working within five (5) calendar days after the "Notice to Proceed" is issued by the City's Contract Administrator.
6. A Project Manager for the Contractor will be designated and be responsible for application and hauling coordination.
7. The Contractor will submit the Contractor's Equipment Questionnaire describing capacities and specifications used to perform the work with the Bid.

B. Biosolids Characteristics and Volume

1. Biosolids are in liquid form and stored in a 2.83 million gallon enclosed storage tank.

Concentrations of solids will vary within the storage tank (2011-2012) concentrations ranged from approximately 0.5% to 15%).

2. Biosolids have been produced with the Autothermal Thermophilic Aerobic Digestion (ATAD) process.
3. Estimated quantity of biosolids to be applied is four million five hundred thousand (4,500,000) gallons per year. Total quantity may be more or less depending on actual biosolids production.

C. Biosolids Hauling and Application.

1. Project completion will include pumping all biosolids from the storage tank to the satisfaction of the City.
2. City pumping and loading equipment will be available for use with no guarantee for performance.
3. Quantity of biosolids hauled will be reported daily to the City's Contract Administrator. Records will include truck identification, driver name and signature, time and date of haul, application area, and hauled volume for each load. Haul volumes and resultant pay quantities will be based on the City's calibrated biosolids flowmeter at the facility. After a field is completed a final report with the total gallons applied to the field and the application area (forms will be supplied by the City) will be delivered to the City's Contract Administrator.
4. The Contractor may, at their expense, supply and add food grade defoamer to the haul truck when necessary to achieve a full legal load. Product specifications for the proposed defoamer additive shall be reviewed and approved by the City's Project Manager prior to use.
5. Contractor will provide experienced, competent drivers capable of applying biosolids to agricultural land at agronomic rates. Drivers must hold the necessary current CDL license, and comply with applicable Oregon Department of Transportation drug and alcohol testing requirements.

6. Contractor is responsible to ensure that trucks are not overloaded and would pay any and all fines or penalties resulting from an overweight load.
7. Application rates will vary with biosolids characteristics and will be determined by the City's Contract Administrator.
8. Contractor will have the ability to transport and apply a minimum of 1,500,000 gallons of biosolids within 15 days (~100,000 gallons/day).
9. Contractor will use leak-proof tank trucks suitable for hauling liquid biosolids on public roadways to avoid spillage. Use of any equipment that allows leakage or damage to streets is prohibited. All costs associated with cleanup of spillage or damage will be the responsibility of the Contractor.
10. The Contractor will use either pressurized tanks or tanks with pumping capability to ensure the even application of the biosolids. The Contractor will provide proof of adequate hauling and application equipment at the time of the Bid submittal.
11. Contractor will have all State and Federal Department of Transportation (DOT) permits and/or authority required to haul biosolids by the State Public Utilities Commission and Federal Motor Carrier regulations.
12. The contractor will pay repair of damage to field entry and exit point.
13. Cost will cover hauling to sites within the distances outlined in the Contractor's Bid from the WRF biosolids storage tank to the application site. Billing for hauling will clearly state which distance price category is in effect and the cost per gallon for each hauling event.
14. The distance categories outlined in the Contractor's Bid represent the driving distances measured one-way to the application site from the WRF. The City's Contract Administrator and the Contractor will agree in advance as to the travel routes (considering various factors).
15. Due to budget constraints, field availability, weather conditions, stored biosolids volume, or other factors, hauling and application may occur during several distinct periods (spring, summer, and fall for example). Each period of application will begin with a separate "Notice to Proceed".

EXHIBIT B
CONTRACTOR'S PRICING

Bid Item	Description	Estimated Gallons to be Hauled	Unit Price	Total Cost
10	Category 1: Fields 0-10 miles from WRF	*3.6 Million Gallons	\$ <u>.045</u>	\$ <u>162,000</u> ⁰⁰
20	Category 2: Fields 10-25 miles from WRF	*0.9 Million Gallons	\$ <u>.059</u>	\$ <u>53,100</u> ⁰⁰
** Total Yearly Bid				\$ <u>215,100</u> ⁰⁰
Total 5 Year Bid				\$ <u>1,075,500</u> ⁰⁰

*Based on an 80%/20% portion of the total estimated gallons (4.5 million).

**Total Estimated Bid Cost is the sum of the totals from each category