

RESOLUTION NO. 2900


**RESOLUTION AUTHORIZING THE MAYOR TO SIGN A CONTRACT
WITH NATURAL SELECTION FARMS, INC. FOR TRANSPORT AND
LAND APPLICATION OF CLASS A AND CLASS B BIOSOLIDS**

WHEREAS, the City's Public Works Department desires to obtain services through a contract with Natural Selection Farms, Inc., for the removal of Class A and Class B biosolids waste; and

WHEREAS, the City's Wastewater Treatment Plant generates approximately 350 dry tons of biosolids per year, all of which have been Class A Biosolids and must be properly removed, transported and disposed of;


NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, the Mayor be and is authorized to sign a contract between the City and Natural Selection Farms, Inc., for transport and land application of Class A and Class B Biosolids.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 8th day of February 8, 2022.



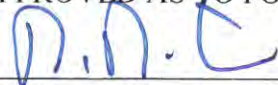
Sherry Raymond, Mayor

ATTEST:



Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:



Rob Case, City Attorney

**AN AGREEMENT BETWEEN
CITY OF SELAH, WASHINGTON, AND
NATURAL SELECTION FARMS, INC.,
FOR THE BENEFICIAL USE OF BIOSOLIDS**

This Contract is made and entered into as of the 1st day of January, 2022, (the "Effective Date") by and between the City of Selah, Washington, a Washington municipal corporation, (the "Generator") and Natural Selection Farms, Inc., ("NSF") a Washington corporation.

Whereas, the Generator produces sewage sludge in the form of biosolids (hereinafter referred to as "biosolids") as a by-product of its sanitary sewage treatment process at its wastewater treatment plant, 222 S. Railroad Ave., Selah, Washington, and desires to recycle biosolids from the plant for beneficial use; and

Whereas, the Generator produces both Class A and Class B biosolids at its treatment plant and desire to address the disposition of both; and

Whereas, NSF has the ability to perform land application of biosolids in an approved manner at appropriate sites, and may be able to develop business opportunities for the mutual benefit of NSF and Generator regarding Class A biosolids; and

Whereas, NSF and Generator now wish for NSF to perform the land application of biosolids tendered by Generator to NSF in accordance with the terms more fully set forth herein;

Now, therefore, in consideration of the mutual promises and covenants herein contained and for other good and valuable consideration, it is hereby agreed as follows:

1. Purpose and Exclusivity. Generator and NSF enter into this Contract to establish terms and conditions for NSF to receive Generator's biosolids and perform the land application of biosolids produced by Generator and tendered to NSF. This Contract is an exclusive contract for the benefit of NSF as regards to the Generator's biosolids. As the exclusive franchisee and sole authorized contractor for said purposes, this contract encompasses all Class A and Class B biosolids produced by the Generator in accordance with the terms of this Contract for the sole and exclusive performance of services by NSF.
2. Generator's Obligations. Generator shall be obligated to perform the following with respect to biosolids produced at the Generator's facilities in Selah, Washington:
 - a. schedule loading of biosolids onto NSF trucks/trailers or trailers arranged for by NSF at a time mutually agreeable to Generator and NSF; provided, that the parties presently expect that NSF will be provided four (4) hours' notice prior to being required to accept a load of Class B biosolids and

twenty-four (24) hours' notice prior to being required to accept a load of Class A biosolids;

- b. ensure that all tendered biosolids meet federal, state and local standards governing land application of biosolids as the same currently exist and as they may be modified or altered from time to time, and as set forth herein at Section 3;
 - c. test all tendered biosolids in accordance with best available testing procedures and applicable federal, state, and local laws and regulations and provide NSF all information required by law or that otherwise is necessary for NSF to use and manage application of the biosolids in a safe, consistent, and reliable manner, including providing to NSF test results confirming acceptable compliance with all applicable trace metal and pathogen standards as well as confirming percent solids by weight and nitrogen content as expressed by total Kjeldahl nitrogen (TKN);
 - d. pay NSF service fees as provided in Section 6 below;
 - e. pay all costs, whether in the form of fees, levies, or other charges, charged by any local agency related to the importation, management, disposal, or use of biosolids tendered to NSF under this Contract. In the event that any such cost or fee is charged to NSF, Generator agrees to timely pay the same prior to delinquency promptly upon presentation of any invoice therefor submitted to Generator by NSF; and
 - f. pay such amounts as may be reasonably incurred by NSF in order for NSF to efficiently accept Generator's biosolids, provided that the parties presently contemplate that this charge will be mutually agreed upon in advance. The failure to so agree will relieve NSF of any further obligation to accept biosolids pursuant to this Contract but will not otherwise alter the remaining rights and obligations of the parties hereunder.
3. Generator's Covenants and Warranties. The Generator warrants that all biosolids tendered to NSF shall comply with all specified testing standards and results stated herein and all requirements under federal, state and local laws and regulations applicable to the land application of biosolids, as the same currently exist and as they may be modified or altered from time to time.
4. NSF's Obligations. Subject to Section 7 below, NSF shall:
- a. receive biosolids at the Generator's Selah wastewater treatment plant in Selah, Washington, for application and use thereof on agricultural lands in Eastern Washington as a nutrient based soil amendment, compost ingredient or other permitted beneficial use;

- b. provide all of the facilities, equipment, and personnel necessary for such work, and perform the application of Generator’s biosolids in compliance with all applicable local, state, and federal regulations; and
 - c. obtain and maintain all required permits and approvals for its operations and activities under this Contract in accordance with law.
5. NSF's Covenants and Warranties. NSF warrants and represents that it has the business, professional, and technical expertise to use and manage the application of biosolids and shall at all times do so in a prudent and workmanlike manner. Furthermore, NSF warrants and represents that it has the equipment (subject to the terms of paragraph 2(f) above), plant and employee resources required to perform this contract. Such equipment shall at all times relevant to the performance of services hereunder be maintained in a good and safe condition fit for use as required.
6. Billing and Payment.
- a. Billing. NSF shall provide to the Generator, by the thirtieth (30th) day after acceptance of the Generator’s biosolids, a statement in a format that is mutually agreeable to NSF and the Generator, detailing the number of wet tons of biosolids accepted by NSF. The method of determining tonnage shall be by certified truck scale and shall be at the Generator’s expense.
 - b. Service Fees. The Generator shall pay NSF’s service fees as provided herein. Generator shall pay NSF the sum of \$1,206.72 per load to receive the Generator’s Class B biosolids from the Generator’s wastewater treatment plant for use at a beneficial use land application facility selected by NSF, in NSF’s sole discretion. In addition, a fee of \$25.00 per wet ton will be charged for land application. These fees are made up of the following components:

	<u>Fuel related component</u>	<u>Non-fuel related component</u>	<u>Subtotal fee</u>
Land application fee	\$6.25	\$18.75	\$25.00
Hauling fee	\$301.68	\$905.04	\$1,206.72

Except as the parties may subsequently agree upon, Generator will not be charged a service fee for NSF’s services relating to Class A biosolids. These minimum service fees will be adjusted from time to time as set forth herein.

- c. Loading. For Class B biosolids only, NSF will charge a standby fee of \$100.00 per hour (calculated in 15 minute increments), for trucks that are delayed in loading in excess of one (1) hour if said delay is

due to the actions or failure to act of Generator. These fees will be charged, as applicable, in addition to the service fee described in paragraph 6(b), above, and will also be subject to adjustment from time to time as set forth herein.

- d. Price Adjustment for Change in Law. NSF may, after notice to Generator, increase the minimum service fee by one hundred percent (100%) of NSF's reasonable actual increased costs of performing its obligations under this Contract due to a change in law. For purposes of this section, a "change in law" includes new laws, regulations, ordinances of general application and modifications of them; new decisions of tribunals, either judicial or administrative, and any modifications of them; or the imposition of any material conditions on the renewal of any permit, license or approval which makes the transportation, storage, land application or other management of biosolids more burdensome financially than under the requirements in effect at the Effective Date; a "change in law" shall include, without limitation, a determination that performance by NSF of the terms of this Contract requires that NSF pay prevailing wage rates, as may be required by law; it being a basis of the price terms in this Contract that NSF is and shall not be required to pay prevailing wage rates. Whether or not a change in law material to this Contract has occurred shall be determined by NSF, in NSF's sole discretion. Such increase in service fees may occur only for reasonable costs that are actually incurred, and shall not be allowed for any cost increases that are in any way attributable to activities caused by NSF or its subcontractors, employees, or agents, or are otherwise within NSF's control. In the event Generator does not approve an increase for a change in law as provided for herein, then NSF, at its option, may terminate this Contract upon written notice and with no further obligation to Generator.
- e. Other Changed Conditions. In the event of any material change in the nature of the biosolids subject to this Contract, including but not limited to any deviation from the test parameters set forth above, or in the event of any other change in circumstances that causes an increase in NSF's cost or the time and equipment required for performance of any part of the work under this Contract, an equitable adjustment in the service fee, the delivery schedule, or both shall be made and, if the same shall be acceptable to Generator and NSF, the Contract shall be modified in writing accordingly. If no such change may be agreed upon by the parties, then NSF shall be entitled, at its option, to terminate this Contract upon written notice and with no further obligation to Generator.

7. Conditions Precedent. The obligations of NSF hereunder are strictly contingent

upon NSF obtaining all applicable and necessary permits, licenses and approvals of any federal, state, and local government or governmental authority.

8. Term and Extension; Adjustment of Fees. The term of this Contract shall expire on midnight, December 31, 2026; provided, however, that this term shall be automatically extended for up to two additional two-year terms, expiring on midnight, December 31, 2030, unless notice of non-renewal is provided by either party to the other party by not later than November 1 of each then-current term.

The non-fuel-related service fee set forth above shall be adjusted annually on the yearly anniversary date of this Contract, beginning one year after the date of execution. Said adjustment shall be 1% plus an additional factor dictated by, and directly proportional to, the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for all U.S. cities over the same period of time.

The fuel-related service fee set forth above shall be adjusted semi-annually, beginning six months after the date of execution and continuing every six months thereafter. Said adjustment shall be dictated by, and directly proportional to, the percentage change in the data found in the Bureau of Labor Statistics Producer Price Index-Commodities Data for #2 diesel fuel (Series ID: WPU057303), or its successor index, as found at www.bls.gov.

9. Insurance; Waiver of Subrogation. At all times during the term of this Contract, NSF shall maintain an insurance policy that insures all aspects of NSF's operation hereunder, regardless of what insurance the Generator may maintain, and which shall provide limits of liability of not less than \$2,000,000 comprehensive bodily injury and property damage. It is further agreed that certificates of insurance showing all of said coverage and endorsements shall be provided to the Generator, and that the Generator shall be named as an additional insured thereon.

The parties hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective insurance contracts, including any extended coverage endorsements thereto, provided, that this paragraph shall be inapplicable to the extent that it would have the effect of invalidating any insurance coverage otherwise available.

10. Termination; Default.

- a. NSF may terminate this Contract if:
- i. the Generator fails to make any payment required hereunder within fifteen (15) days after receiving notice of nonpayment from NSF;
 - ii. the Generator breaches any material representation or warranty set forth herein;

- iii. the Generator defaults in the performance of any other obligation of the Generator under this Contract and fails to cure such default within thirty (30) days after receiving written notice thereof from NSF;
 - iv. any applicable law or governmental regulations or other circumstances outside NSF's control cause the services required of NSF to be economically unfeasible for NSF, or NSF is otherwise prohibited from providing the services required of it by the Contract; or
 - v. as provided in Section 6(d) and 6(e) above.
- b. Generator may terminate this Contract if:
- i. NSF breaches any material representation or warranty set forth herein;
 - ii. NSF defaults in the performance of any other material obligation of the Generator under this Contract and fails to cure such default within thirty (30) days after receiving written notice thereof from the Generator;
 - iii. NSF fails to comply with any federal, state or local laws, rules, orders or ordinances, or regulations that pertain to the transportation or use of biosolids and fails to cure such non-compliance within thirty (30) days after receiving written notice from the appropriate agency or court; or
 - iv. as provided in Section 6(d) and 6(e) above.
11. Non-conforming Biosolids. NSF shall be entitled to inspect and analyze each load of biosolids tendered by the Generator. NSF's right to verify Generator's biosolids testing under this section is entirely discretionary and imposes no duty on NSF. Generator bears sole responsibility under this Contract for tendering only biosolids that conform to the warranty standards set forth in Section 3 above. If NSF tests Generator's biosolids and the biosolids are found to be non-conforming, Generator shall pay NSF's commercially reasonable costs incurred in the testing. If NSF determines that the biosolids do not conform to the warranty standards set forth in Section 3 above, it may reject the biosolids by notifying the Generator in writing, with documented test results. Timely removal (if necessary) and disposal of biosolids rejected according to these warranty standards shall be at the Generator's sole cost and responsibility; provided that if NSF rejects biosolids as non-conforming, NSF reserves the right to transport the biosolids to a disposal site or to return the biosolids to Generator's site, and to collect from Generator any commercially reasonable expenses or damages incurred thereby, including but not limited to transport, storage or disposal costs.
12. Indemnification.

- a. NSF agrees to defend, indemnify and hold Generator harmless from and against: (I) any and all claims, demands, causes of action, damages, liabilities, losses, expenses, penalties and costs of defense relative thereto, including legal fees, ("Losses") caused by or resulting from NSF's breach of this Contract; and (II) any and all Losses caused by or resulting from NSF's intentional or negligent act or omission in the performance of its duties as described in this Contract.
- b. Generator agrees to defend, indemnify and hold NSF harmless from and against: (I) any and all Losses caused by or resulting from Generator's breach of this Contract (specifically including any breach of Generator's obligation to tender only biosolids that conform to the warranty standards set forth above); and (II) any and all Losses caused by or resulting from Generator's intentional or negligent act or omission in the performance of its duties as described in this Contract.

Notwithstanding any other provision herein, the obligations created by this section shall survive any termination of this Contract.

13. Safety Standards and Instruction. NSF shall provide adequate training of its personnel involved in management of biosolids. NSF shall inform its personnel that sewage treatment plants process sanitary and industrial waste, that any workers involved in biosolids management may be exposed to pathogens, and that such workers should follow proper hygiene and workplace safety practices.
14. Compliance with Laws. The Generator and NSF shall each fully comply with all applicable laws, ordinances, decisions, orders, rules or regulations of any government or governmental agency pertaining to its handling, storage, transportation, treatment, use or management of the biosolids.
15. Disputes, Governing Law, Venue. This Contract shall be governed by and construed in accordance with the laws of the State of Washington. If litigation arises concerning the interpretation of any of the terms of this Contract, venue for such litigation shall be in the Superior Court of the State of Washington in Yakima County. The prevailing party in any legal action brought to enforce this Contract shall be entitled to reasonable attorney's fees incurred therein.
16. Savings. If any part of this Contract is declared to be invalid or unenforceable, the rest of the Contract shall remain binding, unless such invalidity or unenforceability destroys the purpose and intent of this Contract.
17. Independent Contractor, No Partnership. Each party hereto is and shall perform this Contract as an independent contractor, and as such, shall have and maintain complete control over all of its employees, agents, and operations. Neither party nor anyone employed by it shall be, represent, act, purport to act or be deemed to be the agent, representative, employee, partner or servant of the other party.

18. Force Majeure. Should either party be prevented wholly or in part from performing its respective obligations under this Contract by a cause reasonably outside of and beyond the control of the party affected thereby, including but not limited to war, government regulation, strike, lockout, accidents, storms, earthquake, fire, acts of God or public enemy or any similar cause beyond the control of the parties, then such party shall be excused hereunder during the time and to the extent that the performance of such obligations are so prevented, and such party shall have no liability whatsoever for any damages, consequential or otherwise, resulting therefrom.
19. Non-Waiver. Either party's failure to strictly enforce its rights under any provision of this Contract shall not be construed to be a waiver of that provision. No waiver of any breach of this Contract shall be held to be a waiver of any other breach.
20. Assignment. This Contract shall not be assignable by either party without the written consent of the other, which shall not be unreasonably withheld.
21. Notices. All notices required under this Contract shall be personally delivered or mailed by certified or registered mail, postage prepaid as follows:

If to the Generator, addressed to:

Public Works Director
City of Selah
222 South Rushmore Road
Selah, WA 98942

If to NSF, addressed to:

Natural Selection Farms, Inc.
P.O. Box 419
Sunnyside, WA 98944

With a copy addressed to:

Kenneth W. Harper
Menke Jackson Beyer, LLP
807 N. 39th Ave.
Yakima, WA 98908

or to such other address as any party shall specify by written notice so given. Notices shall be deemed to have been given and received as of the date so delivered or three (3) business days after being deposited in the U.S. Mail.

22. Equal Employment Opportunity Requirements. NSF will not discriminate against any employee or applicant for employment because of creed, color, race, sex, age, national origin, or the presence of any sensory, mental or physical handicap, unless based on a bona fide occupational qualification.
23. No Third Party Beneficiary. This Contract is entered into solely for the benefit of the parties hereto. This Contract shall confer no benefits, direct or indirect, on any third persons, including employees of the parties. No person or entity other than the parties themselves may rely upon or enforce any provision of this Contract.
24. Parties and Successors. Subject to the limitations on assignment provided in this Contract, this Contract shall inure to the benefit of, and be binding upon the parties, their successors and assigns.
25. Counterparts/Electronic Execution. This Contract may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Electronic transmission of any signed original document, and re-transmission of any signed electronic transmission, shall be the same as delivery of an original.
26. Entire Contract, Amendment. This Contract constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any and all other communications, representations, proposals, understandings or agreements, either written or oral, between the parties with respect to such subject matter. This Contract may not be modified or amended, in whole or in part, except by a writing signed by both parties.

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

NATURAL SELECTION FARMS, INC.,
a Washington corporation

CITY OF SELAH,
a Washington municipal corporation

By: _____
Ted Durfey,
President

By: _____
Name: Sherry Raymond
Title: Mayor

Dated: _____

Dated: _____