



January 21, 2016

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement between
 Clackamas County Service District No. 1 and Clean Water Services for acceptance of
Class B Biosolids for Beneficial Reuse

Purpose/Outcomes	Approval of an Intergovernmental Agreement between Clackamas County Service District No. 1 and Clean Water Services for acceptance of Class B Liquid Biosolids for beneficial reuse to avoid potential regulatory violations when adverse weather and/or other unforeseen circumstances prevent the District from utilizing its primary beneficial reuse strategies (land application of liquid and/or dewatering for land application).
Dollar Amount and Fiscal Impact	\$0.15 per gallon of Class B liquid Biosolids
Funding Source	Clackamas County Service District No. 1 Budget fiscal year 15/16 through 17/18
Duration	Effective from approval date through December 31, 2018, with an option to extend by mutual agreement.
Previous Board Action/Review	The BCC previously approved an IGA in 2009 with Clean Water Services. No prior action has been taken with respect to this agreement.
Strategic Plan Alignment	1. This IGA supports our goal of recycling 50% of recovered solids 2. Recycling recovered solids supports the goal of honoring, utilizing, promoting and investing in natural resources
Contact Person	Chanin Bays, Resource Recovery Program Supervisor – Water Environment Services – 503-557-2820
Contract No.	

BACKGROUND:

Clackamas County Service District No. 1 (“CCSD#1”) manages biosolids programs for the two plants within the District. The District strives to maintain contingency options for biosolids when beneficial reuse options are not feasible or available to reduce risk and disposal costs. On



Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

Gregory L. Geist
Director

October 23, 2009 CCSD#1 and Clean Water Services entered into an Intergovernmental Agreement to provide this contingency option. In June of 2012, the agreement was terminated. This year, CCSD#1 re-entered negotiations with Clean Water Services to renew the previous agreement. This new agreement will allow CCSD#1 to haul liquid Class B Biosolids from Kellogg Creek Water Resource Recovery Facility to Clean Water Services for beneficial reuse when such options are not available to the district.

The IGA with Clean Water Services has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Clackamas County Service District No. 1, a county service district, approve the IGA for acceptance of Class B Biosolids by Clean Water Services.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (IGA), is entered into this _____ day of _____, 2015, between Clean Water Services (District) and Clackamas County Service District No. 1 (CCSD #1).

RECITALS

1. From time to time CCSD #1 may be unable to beneficially use the Class B biosolids generated at its facilities.
2. CCSD #1 desires to have District accept its class B biosolids and beneficially use them when CCSD #1 is unable to do so.
3. District, in its sole discretion, will determine the amounts, if any, of class B biosolids it will receive, process, and beneficially use under the conditions contained herein.

NOW, THEREFORE, the parties agree as follows:

A. CCSD #1 OBLIGATIONS AND DISPOSAL CONDITIONS

1. Class B Biosolids. CCSD #1 warrants that all biosolids delivered to District will be Class B biosolids as defined in OAR Chapter 340, Division 50 and 40 CFR Part 503 (Biosolids). On a monthly basis for the duration of this agreement, CCSD #1 shall provide District with characteristics data that demonstrates that the Biosolids meets the requirements of Class B Biosolids.
2. Measurement of Discharge Volume. CCSD #1 shall determine the volume of Biosolids discharged by using one of the following methods:
 - a) subtracting the empty truck weight from the full truck weight and converting the weight of the material discharged to gallons. Truck weights shall be determined by use of scales available at District facilities, or by certified commercial scales; or
 - b) if the actual volume capacity of the truck tank is known, using the known volume and assuming a full tank was discharged.
3. Notice/Acceptance. All Biosolids deliveries shall be made to District's Durham Advanced Wastewater Treatment Facility in Tigard. CCSD #1 shall provide notice of its desire to commence delivery of Biosolids at least 24 hours in advance. District, in its sole discretion, shall determine whether to accept the Biosolids. District shall also have sole discretion to halt or curtail the delivery of Biosolids at any time.
4. Spills/Cleanup. CCSD #1 and its hauler must prevent spills or tracking of Biosolids at District's facilities. CCSD #1 shall be responsible for the clean up and removal from

District's premises of all spills, contaminated matter and contaminated clean up material including clean up of the discharge location as needed following the discharge of each load. If CCSD #1 does not clean up and remove all spillage, contaminated matter and contaminated cleanup material from District's premises immediately, District shall clean up and remove the spillage, contaminated matter and contaminated cleanup material and CCSD #1 shall reimburse District for the entire cost of cleanup.

5. Hours of Operation. CCSD #1 may unload the Biosolids at times approved by District.
6. Hauling Tickets. CCSD #1 shall be responsible for having its hauler complete a hauling ticket provided by District for each load of Biosolids that is hauled to a District facility. Completion of the tickets shall be required to track how many gallons of Biosolids have been hauled to a facility.
7. Sampling Procedure. CCSD #1 or its hauler shall collect and provide District with a representative sample from each truckload of Biosolids discharged to District, unless District determines that a lesser sampling frequency would be sufficient. The sample of Biosolids shall be collected as the Biosolids are being pumped from the CCSD #1 facility to the hauling truck. The sample container shall be labeled with the date and load number. The sample size shall be 500 ml (1 pint). The drivers shall deliver the container to the District and place the sample in the sample refrigerator at the discharge site.
8. Off-loading Biosolids. CCSD #1 shall not begin making deliveries of Biosolids until its truck driver has received training by District in how to off-load the Biosolids and how to clean up spills. CCSD #1 shall off-load the Biosolids at the disposal point designated by District. Whenever CCSD #1 or its hauler is at District's facilities, District shall have access to all parts of District's facilities at all times, including access to the designated off-loading area. To allow monitoring of the discharge and any effects on District facilities, CCSD #1 shall have its hauler notify District personnel when loads arrive at the disposal point. District will provide appropriate contact information.
9. Compliance with Terms. CCSD #1 shall ensure that its subcontractors, including delivery contractors and delivery truck drivers, have read, understand and agreed to the terms and conditions contained herein regarding hauling, delivery, off-loading and cleanup.
10. Qualification. This IGA does not obligate CCSD #1 to dispose of Biosolids at any District facility.

B. DISTRICT OBLIGATIONS

1. Acceptance/Amount. District, in its sole discretion, will determine the amount, if any, and rate of Biosolids it will process and beneficially use.
2. Services. District warrants that the services it furnishes under this IGA will be in full compliance with OAR Chapter 340, Division 50 and 40 CFR Part 503 and other applicable federal, state and local laws.

C. DISPOSAL FEE AND INVOICING

The initial fee for disposing of Biosolids at any District facility will be \$0.15 per gallon. This fee may be adjusted from time to time. All fee adjustments shall be based on changes to District's Rates and Charges.

Invoices will be prepared by District on a monthly basis. CCSD #1 shall have 30 days from the date of District's invoice to make payment. Payments shall be mailed to: Clean Water Services, 2550 SW Hillsboro Highway, Hillsboro, OR 97123.

D. GENERAL TERMS

1. Laws and Regulations. CCSD #1 and District agree to abide by all applicable laws and regulations.
2. Term of this IGA. This IGA is effective from the date the last party signs it and shall remain in effect until December 31, 2018, unless terminated as provided herein. The term may be extended upon mutual agreement of CCSD #1 and District.
3. Indemnification. Within the limits of the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the parties shall indemnify and defend the other and their officers, employees, agents, and representatives from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this IGA (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent or other legally culpable acts or omissions of the indemnitor, its employees, agents, contractors or representatives.
4. Integration. This document constitutes the entire agreement between the parties on the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings, representations or communications of every kind on the subject. No course of dealing between the parties and no usage of trade shall be relevant to supplement any term used in this IGA. Acceptance or acquiescence in a course of performance rendered under this IGA shall not be relevant to determine the meaning of this IGA and no waiver by a party of any right under this IGA shall prejudice the waiving party's exercise of the right in the future.
5. Attorney Fees. If any dispute arises concerning the interpretation or enforcement of this IGA or any issues related to the U.S. Bankruptcy Code (whether or not such issues relate to the terms of this IGA), the prevailing party in any such dispute shall be entitled to recover all of its attorney fees, paralegal fees, costs, disbursements and other expenses from the nonprevailing party, including without limitation those arising before and at any trial, arbitration, bankruptcy, or other proceeding and in any appeal.

6. Termination. This IGA may be terminated immediately by mutual written agreement of both parties, or by either of the parties notifying the other in writing, with the termination being effective in 30 days.
7. Resolution of Disputes. If any dispute out of this IGA cannot be resolved by the project managers from each party, the County Administrator and District's General Manager will attempt to resolve the issue. If the County Administrator and District's General Manager are not able to resolve the dispute, the parties will submit the matter to mediation, each party paying its own costs and sharing equally in common costs. In the event the dispute is not resolved in mediation, the parties will submit the matter to arbitration. The decision of the arbitrator shall be final, binding and conclusive upon the parties and subject to appeal only as otherwise provided in Oregon law.
8. Interpretation of Agreement.
 - A. This IGA shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision.
 - B. The paragraph headings contained in this IGA are for ease of reference only and shall not be used in constructing or interpreting this IGA.
9. Severability/Survival. If any of the provisions contained in this IGA are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired. All provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this IGA for any cause.
10. Approval Required. This IGA and all amendments, modifications or waivers of any portion thereof shall not be effective until approved by 1) District's General Manager or the General Manager's designee and, when required by applicable District rules, District's Board of Directors and 2) the County Administrator.
11. Choice of Law/Venue. This IGA and all rights, obligations and disputes arising out of the IGA shall be governed by Oregon law. All disputes and litigation arising out of this IGA shall be decided by the state courts in Oregon. Venue for all disputes and litigation shall be in Washington County, Oregon.

CLEAN WATER SERVICES

By: _____
Diane Taniguchi-Dennis, Deputy General
Manager

Date: _____

APPROVED AS TO FORM

District Counsel

CLACKAMAS COUNTY BOARD OF
COUNTY COMMISSIONERS
Acting as the Governing Body of
Clackamas County Service District No. 1

By: _____
Chair

Date: _____

ATTEST

By: _____
Secretary

APPROVED AS TO FORM

County Counsel