ITEM NO. 5

STAFF REPORT

CITY OF OCEANSIDE

DATE: November 30, 2011

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **AMENDMENT 2 TO THE PROFESSIONALS SERVICES AGREEMENT WITH TERRA RENEWAL FOR BIOSOLIDS-HAULING, EXTENDING THE TERM FOR FIVE YEARS**

SYNOPSIS

Staff and the Utilities Commission recommend that the City Council approve Amendment 2 in an amount not to exceed $4,414,978 to the professional services agreement with Terra Renewal of Garden Grove (formerly Solid Solutions) for the hauling of biosolids from the San Luis Rey and La Salina Wastewater Treatment Plants to permitted land application sites in Arizona, extending the term from December 2011 to December 2016; and authorization for the City Manager to execute the agreement.

BACKGROUND

On February 13, 2002, Council approved a contract in the amount of $3,802,660 with Solid Solutions of Garden Grove for biosolids-hauling.

On December 13, 2006, Council approved Amendment 1 in an amount not to exceed $4,740,992 to the agreement with Solid Solutions of Garden Grove (formerly Irvine) for the hauling of biosolids (or sludge) from the San Luis Rey and La Salina Wastewater Treatment Plants to permitted land application sites in Arizona, extending the term from December 2006 to December 2011. The terms and conditions of the amended agreement remain identical to the terms and conditions of the existing agreement.

On March 12, 2008, Terra Renewal West, LLC, purchased Solid Solutions, LLC, and the name was changed to Terra Renewal.

Because of stricter regulations, it is becoming increasingly difficult to find sludge-hauling companies that have a sufficient number and variety of reuse locations in the event one or more of the sites is not accepting sludge. In addition, it is difficult to find a company that can provide this service on the schedule required at both the San Luis Rey and La Salina Wastewater Treatment Plants, so staff is requesting a 5-year extension to the agreement with Terra Renewal.

ANALYSIS

Terra Renewal is familiar with the requirements of both plants and has provided excellent service for the past five years. Their proposal for contract rates is $39.95 per wet ton. To calculate the costs for the next four years, a Consumer Price Index (CPI) adjustment will be used and will not exceed 5 percent each year.

The biosolids-hauling costs as defined in the contract are rate-based and increase incrementally each year for five years. Staff estimates 20,000 tons of biosolids will be produced each year. Below are the annual estimated not-to-exceed costs including a potential variable fuel surcharge:

Contract Year	Not to exceed cost per year
12/11– 12/12	$799,000
12/12 – 12/13	$838,950
12/13 – 12/14	$880,897
12/14 – 12/15	$924,942
12/15 – 12/16	$971,189
TOTAL ESTIMATED COST OVER 5 YEARS:	$4,414,978

The total estimated cost in the table above is a decrease of $326,014 from the previous 5-year contract.

Staff and the Utilities Commission have been pursuing other alternative options for biosolids disposal including alternative energy development however; these are in the developmental stages at this time and have not been shown to be cost effective. For the foreseeable future, hauling biosolids for land application is the most cost effective and practical option.

FISCAL IMPACT

The FY 11-12 approved operating budgets of $1,000,981 for biosolids-hauling for the San Luis Rey and La Salina Wastewater Treatment Plants (800805721.5355.0003 & 800804721.5355.0003) so there are available funds. The biosolids-hauling expenditure will be included in the department budget for Council's review during the annual budget process.

COMMISSION OR COMMITTEE REPORT

The Utilities Commission approved staff's recommendation at its meeting on September 20, 2011.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATIONS:

Staff and the Utilities Commission recommend that the City Council approve Amendment 2 in an amount not to exceed $4,414,978 to the professional services agreement with Terra Renewal of Garden Grove (formerly Solid Solutions) for the hauling of biosolids from the San Luis Rey and La Salina Wastewater Treatment Plants to permitted land application sites in Arizona, extending the term from December 2011 to December 2016; and authorization for the City Manager to execute the agreement.

PREPARED BY:

For Greg Blakely
Water Utilities Division Manager

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Cari Dale, Water Utilities Director

Teri Ferro, Financial Services Director

Exhibit A - Amendment 2

CITY OF OCEANSIDE
AMENDMENT 2 TO
HAULING AND OFFSITE REUSE (OR DISPOSAL) AGREEMENT

PROJECT: HAULING AND OFFSITE REUSE (OR DISPOSAL) FROM THE LA SALINA AND SAN LUIS REY WASTEWATER TREATMENT FACILITIES – 800805721 & 800804721

THIS AMENDMENT NO. 2 TO HAULING AND OFFSITE REUSE (OR DISPOSAL) AGREEMENT (hereinafter "Amendment 2"), dated October 12, 2011 for identification purposes, is made and entered by and between the City of Oceanside, Water Utilities Department, a municipal corporation, hereinafter designated as "CITY", and TERRA RENEWAL, LLC, hereinafter designated as "PROVIDER".

RECITALS

WHEREAS, CITY and PROVIDER (as successor-in-interest to Solid Solutions, LLC) are the parties to that certain Agreement dated February 13, 2002, and amended December 13, 2006, hereinafter referred to as the "Agreement", wherein PROVIDER agreed to provide certain services to the CITY as set forth therein;

WHEREAS, the parties desire to amend the Agreement to extend the term thereof and to modify the compensation, as set forth below.

AMENDMENT

NOW, THEREFORE, the parties hereto do mutually agree that the Agreement shall be amended as follows:

1. ARTICLE II: TERM OF AGREEMENT shall be amended by deleting Sections 2.1 and 2.2 and amending Section 2.1 to read as follows:

2.1 Term. The term of this Agreement shall be for an additional five-year period, commencing from December 13, 2011, and expiring December 13, 2016.

2. Sections 3.2, 3.4 and 3.7 of ARTICLE III: COMPENSATION FOR SERVICES shall be amended to read as follows:

3.2 Compensation per load shall be based on the actual tons of biosolids hauled. PROVIDER shall be responsible for establishing the maximum weight of each load to be hauled based on the allowable hauling capacities of its equipment. The CITY has the right to reduce PROVIDER's recommended maximum load up to 1,000 lbs in order to accommodate the CITY's operational needs. PROVIDER's compensation is based on hauling 100% of the biosolids generated by the CITY. The cost per ton shall be as follows during the term of this AGREEMENT.

Contract Year	Cost Per Ton
Year 11 (12/11 – 12/12)	$39.95 per ton
Year 12 – 15	To be adjusted according to the 12-month change in the Consumer Price Index (CPI), not to exceed 5.0%, effective December 1 of each contract year.

3.4 TOTAL COMPENSATION. PROVIDER's compensation for all work performed in accordance with this AGREEMENT shall not exceed the total contract price of $4,414,978 over the five-year term. No work shall be performed by PROVIDER in excess of the total contract price without prior written approval of the Water Utilities Director.

3.7 PER LOAD BASIS FOR GRIT HAULING. For the purposes of this agreement, a load shall be considered 20 cubic yards of grit and screenings. All grit and screenings hauling and disposal shall be charged to the CITY at a rate of $35.00/yard, plus tipping fees as set by the appropriate authority.

3. Except as expressly set forth in the Amendment, the Agreement shall remain in full force and effect and is hereby ratified and reaffirmed.

SIGNATURES. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the PROVIDER and the CITY.

IN WITNESS WHEREOF, the parties hereto being duly authorized on behalf of their respective entities to execute this Amendment , do hereby agree to the covenants contained in the Agreement, including this Amendment 2 and have caused this Amendment 2 to be executed by setting hereunto their signatures this _____ day of _____, 2011.

TERRA RENEWAL, LLC

By: _____
Todd Mathes/Division President

By: _____
Donald Budhu/CFO

26-1172160
Employer ID No.

CITY OF OCEANSIDE

By: _____
Peter A. Weiss, City Manager

APPROVED AS TO FORM:

_____
City Attorney

NOTARY ACKNOWLEDGEMENTS OF CONSULTANT MUST BE ATTACHED.

STEPHANIE BOWDEN
Notary Public, State of Texas
My Commission Expires
March 07, 2016

11/3/11

AGREEMENT BETWEEN THE CITY OF OCEANSIDE AND SOLID SOLUTIONS, LLC FOR HAULING AND OFFSITE REUSE (OR DISPOSAL) FROM THE LA SALINA AND SAN LUIS REY WASTEWATER TREATMENT FACILITIES

This AGREEMENT is made and entered into this 13th day of February, 2002 between the City of Oceanside, hereinafter referred to as CITY, and Solid Solutions, LLC, hereinafter referred to as PROVIDER.

WITNESSETH

WHEREAS, the CITY desires to secure contract services for hauling and offsite reuse and/or disposal of digested and partially dewatered sewage sludge, hereinafter referred to as biosolids, generated at the La Salina and San Luis Rey Wastewater Treatment Facilities; and

WHEREAS, PROVIDER represents that it has the necessary equipment, land, permits, and skills required to perform the necessary contract services;

NOW THEREFORE, CITY and PROVIDER agree as follows:

ARTICLE I: SCOPE OF SERVICE

1.1 PROVIDER shall provide the services as described in Attachment A, SCOPE OF SERVICES, dated October 1, 2001, incorporated herein by reference. PROVIDER shall follow practices consistent with all applicable regulatory requirements and generally accepted professional standards.

ARTICLE II: TERMS OF AGREEMENT

2.1 TERMS OF AGREEMENT. The term of this AGREEMENT shall be for a five year period commencing from the date this AGREEMENT is executed, as first written above.

2.2 EXTENSION OF AGREEMENT. This AGREEMENT shall be extended for an additional five year period upon written notification from the CITY to PROVIDER at least 90 calendar days prior to the completion of the initial five-year contract period. The terms and conditions of the extended AGREEMENT shall be identical to the terms and conditions of this AGREEMENT.

ARTICLE III: COMPENSATION FOR SERVICES

3.1 PER TON BASIS CALCULATIONS FOR BIOSOLIDS. The CITY is not equipped with State certified scales. The PROVIDER, at his own expense, shall weigh each load of biosolids destined for PROVIDER'S facilities at a scale certified by the PROVIDER. Copies of all weigh tickets shall be submitted to the CITY as part of the PROVIDER'S invoice.

3.2 Compensation per load shall be based on the actual tons of biosolids hauled. PROVIDER shall be responsible for establishing the maximum weight of each load to be hauled based on the allowable hauling capacities of its equipment. The CITY has the right to reduce PROVIDER's recommended maximum load up to 1,000 lbs in order to accommodate the CITY's operational needs. PROVIDER's compensation is based on hauling 100% of the biosolids generated by the CITY. The cost per ton shall be as follows during the term of the AGREEMENT.

Contract Year	Cost Per Ton
Year 1 (12/01 – 12/02)	$36.92 per ton
Year 2 (12/02 – 12/03)	$37.47 per ton
Year 3 (12/03 – 12/04)	$38.78 per ton
Year 4 (12/04 – 12/05)	$39.94 per ton
Year 5 (12/05 – 12/06)	$41.13 per ton

Years 6 through 10 to be negotiated at time of extension.

3.3 FUEL SURCHARGE. A fuel surcharge will be assessed to the base fee per ton if diesel fuel prices rise to $1.71 per gallon or above based upon the Opis Diesel Price Index Information Service – Diesel Price Index for San Diego, California for the last Monday of the billing month. The fuel charge shall be assessed as follows:

Diesel Price Index

For San Diego ($ per gallon)	Cost per Ton Surcharge
$1.71 - $1.80	1.25%
$1.81 - $1.90	2.50%
$1.91 - $2.00	3.125%
$2.01 - $2.10	3.75%

For each additional $0.10 above $2.10, add an additional 0.625 %

3.4 TOTAL COMPENSATION. PROVIDER's compensation for all work performed in accordance with this AGREEMENT shall not exceed the total contract price of $3,802,660 over the five-year term. No work shall be performed by PROVIDER in excess of the total contract price without prior written approval of the Water Utilities Director.

3.5 CITY shall provide a schedule for sludge pick up with at least a minimum of 12 hours prior notice to PROVIDER. The City will be charged an additional $150.00 for scheduling and cancellation of pick-ups without a 12-hour prior notification to PROVIDER.

3.6 If it should be necessary to provide sludge hauling and disposal to Allied/San Diego Landfill Systems instead of the PROVIDER's normal land application sites, the City shall be charged a rate of $13.50 per ton, plus tipping fees as set by the appropriate authority. Hauls to a landfill shall be permitted only in cases of emergencies. For the purpose of this agreement, an emergency shall consist of either of the following: (1) sludge is not in compliance with EPA 503 Class B Regulations; or (2) inclement weather conditions, which prevent disposal at PROVIDER's land application sites.

3.7 PER LOAD BASIS FOR GRIT HAULING. For the purposes of this agreement, a load shall be considered 20 cubic yards of grit and screenings. All grit and screenings hauling and disposal shall be charged to the CITY at a rate of $19.00/yard, plus tipping fees as set by the appropriate authority.

ARTICLE IV: PAYMENT FOR SERVICES

4.1 PROVIDER's vehicle operators will be required to sign a load ticket and to specify the option and site where the biosolids are to be hauled for each trailer, prior to being removed from the treatment plants. PROVIDER will retain a copy of the load ticket and the CITY will retain a copy of the load ticket. The load tickets will be used by the CITY to verify PROVIDER's monthly invoice.

4.2 The CITY shall be responsible for tipping fees for loads hauled to appropriate disposal sites in accordance with Section 3.5 of this Agreement. PROVIDER shall furnish the CITY with tipping fee tickets signed by the appropriate disposal facility.

4.3 Compensation shall be billed bi-monthly by PROVIDER per the CITY's requested format and shall be based on the actual loads of biosolids hauled from Oceanside in the designated time period. The CITY shall make payment to the PROVIDER within thirty (30) calendar days of receipt of the invoices containing the information and documentation required by this Agreement and upon approval of the invoices by the CITY.

Acceptance and payment by CITY for services furnished hereunder shall not in any way relieve the PROVIDER of its responsibility to provide services in strict accordance with Federal, State and local law. Provider warrants that the disposal site for the biosolids comply with applicable Federal, State and local law. Neither CITY's acceptance of, nor payment for any of the services shall be construed to operate as a waiver of any rights under this AGREEMENT or of any cause of action arising out of the performance of this AGREEMENT.

ARTICLE V: TERMINATION OF AGREEMENT

5.1 If during the terms of this AGREEMENT, CITY determines that PROVIDER is not faithfully abiding by any term or condition contained herein, CITY may notify PROVIDER in writing of such defect or failure to perform. Such notice must allow PROVIDER a ten (10) working day period thereafter in which to perform said work or cure the deficiency. If PROVIDER has not performed the work or cured the deficiency within the specified period, this shall constitute a breach of AGREEMENT, and CITY may terminate AGREEMENT immediately by written notice to PROVIDER. At such time, neither party shall have any further duties, obligations, responsibilities, or rights under this AGREEMENT. In said event, PROVIDER shall be entitled to the reasonable value of its service performed from the beginning of the period in which the breach occurs or up to the day it received CITY's notice of termination, whichever occurs first. The City shall be entitled to a reduction in such payment for any damages resulting from such breach. In no event shall PROVIDER be entitled to receive compensation or payment in excess of that specified under Article III.

5.2 In the event that the CITY decides to produce, or contract to produce, a Class A biosolid, as defined in the EPA 503 Regulations, this agreement may be terminated by the CITY or PROVIDER after a minimum service period of three (3) years has been completed. In this case, the CITY or PROVIDER will give the other party a ninety (90) day written notice to terminate the agreement.

ARTICLE VI: LIABILITY

6.1 PROVIDER is an independent contractor and not an employee of CITY. No permitted or required approval by CITY of personnel, costs, schedules, documents, or services of PROVIDER shall be construed as making the CITY responsible for the manner in which PROVIDER performs its services. Such approvals are intended only to give CITY the right to satisfy itself with the quality of work performed by PROVIDER.

6.2 PROVIDER agrees to hold harmless and defend CITY, its officers, agents, and employees with respect to any claim or legal proceedings or judgment made, filed, or presented against the foregoing, by reason of PROVIDER's, its officers, agents, employees negligence, malfeasance, save and except in those instances where such expense, liability or claim is caused solely by an act or omission of CITY, its officers, agents, or employees.

6.3 CITY agrees to hold harmless and defend PROVIDER, its officers, agents, and employees with respect to any claim or legal proceedings or judgment made, filed, or presented against the foregoing, by reason of CITY's, its officers, agents, employees negligence, malfeasance, save and except in those instances where such expense, liability or claim is caused by an act or omission of PROVIDER, its officers, agents, or employees.

ARTICLE VII: ENVIRONMENTAL PROTECTION AGENCY (EPA) COMPLIANCE

7.1 The CITY shall be responsible for producing a digested biosolids of a quality acceptable by the California Department of Health and the U.S. Environmental Protection Agency (EPA) as a non-hazardous material. The CITY shall also be responsible for producing a digested biosolids that meet the U.S. EPA's class B Pathogen Reproduction requirements.

7.2 The PROVIDER shall not add to the CITY's biosolids hauled, reused, disposed, or in any other way handled by the PROVIDER, any material; considered hazardous, or which creates byproducts or residues considered to be hazardous under Federal or California State laws.

7.3 In the event the PROVIDER adds any material to the biosolids that cause the biosolids to be hazardous, the PROVIDER will be responsible for all costs incurred to properly treat and dispose of the biosolids. Costs shall include any defense, remediation, and any damages incurred due to improper disposal and/or handling of biosolids. In the event any hazardous biosolids are disposed of by the PROVIDER under the AGREEMENT, the PROVIDER shall promptly notify the CITY of this nature of the biosolids and the proposed method of disposal.

ARTICLE VIII: INSURANCE

8.1 During the course of the AGREEMENT, PROVIDER shall pay for and maintain, in full force and effect, all insurance required by any governmental agency having jurisdiction to require particular insurance of PROVIDER in connection with or related to the services covered hereby.

8.2 PROVIDER shall furnish satisfactory proof by certificate or otherwise as may be required, that it has procured and maintained, during the life of this AGREEMENT, public liability, vehicular and property damage insurance covering both CITY and PROVIDER, and listing the CITY as an additional insured.

8.3 The insurance carrier shall be a California admitted insurance carrier, and insurance shall be in such form as to protect the CITY and its employees against loss from liability imposed by law from damages on account of bodily injury, including death resulting therefrom, suffered or alleged to have been suffered by any person or persons, other than employees, resulting directly or indirectly from the negligent performance or execution of this AGREEMENT by PROVIDER or any subcontractor with PROVIDER thereunder, and also to protect the CITY and its employees against loss from liability imposed by law for damage to any property, caused directly or indirectly by the negligent performance or execution of the AGREEMENT by PROVIDER. Such insurance shall also cover accidents arising out of the use and operation of automobiles, trucks, and/or other mobile equipment. All said public liability and property damage insurance shall be for the period of performance under this AGREEMENT. The amounts of coverage of said insurance shall not be less than the following:

General Bodily Injury	$1,000,000 single limit
General Property	$1,000,000 single limit
Auto Bodily Injury	$1,000,000 single limit
Auto Property Damage	$1,000,000 single limit
General Contractual Liability	$1,000,000 single limit

8.4 Said policies shall have a non-cancellation clause providing that thirty (30) calendar days written notice shall be given to the CITY prior to any such cancellation, and a certificate of such insurance shall be furnished to CITY by direct mail from PROVIDER's insurance carrier and shall specifically cover any contractual liability incurred hereunder. Failure of the PROVIDER to replace the insurance required by this Agreement at least thirty (30) calendar days before the date of cancellation shall be deemed a material breach of this Agreement.

8.5 PROVIDER shall further maintain adequate workers' compensation insurance, including occupational disease provisions, under the laws of the State of California, and other State (as applicable) and employer's general liability insurance for the benefit of its employees and shall require similar insurance to be provided by its subcontractors. A certificate shall be furnished to the CITY showing compliance with above.

ARTICLE IX: PERFORMANCE BOND

9.1 PROVIDER shall, at its sole cost, maintain and keep in full force and effect at all times during the terms of this AGREEMENT, or any extension thereof, a $25,000 Performance Bond in the form of Attachment C, incorporated herein by reference. The Performance Bond shall be issued by an admitted surety insurer in the State of California.

9.2 In lieu of a Performance Bond, PROVIDER may substitute either a letter of credit from a financial institution licensed or chartered by the State or Federal government, or funds equal to the value of the Performance Bond ($25,000).

9.3 Substituted funds shall be held by the CITY in Certificate of Deposit throughout the term of the AGREEMENT, or any extension thereof. Upon successful completion of the AGREEMENT, or any extension thereof, PROVIDER shall be refunded the deposited funds including any interest accrued. Should PROVIDER fail to perform, the CITY shall collect the funds equal to the value of the Performance Bond and PROVIDER shall collect any interest.

9.4 A letter of credit shall be automatically renewed annually from the date of expiration, throughout the term of the AGREEMENT or any extension thereof, unless notice of non-renewal is provided in writing to the CITY at least 60 days prior to its expiration date. If a notice of non-renewal is provided, payment of the funds secured by the letter of credit must be made to the CITY unless the CITY notifies the financial institution in writing within thirty (30) days of the notice of non-renewal that such payment is not required.

9.5 In addition, the letter of credit shall state that the CITY has the right to receive upon demand, immediate, unconditional payment under the letter of credit of the amount due to the CITY as a result of the PROVIDER's failure or inability to comply with any provision or condition of the AGREEMENT with the CITY, upon presentation to the insurer of written certification by the General Manager of the amount due and the reasons thereof.

9.6 Collection by the CITY of bond funds, deposited funds, or funds associated with a letter of credit, does not preclude the CITY from pursuing other remedies provided by law.

ARTICLE X: CONFLICT OF INTEREST

10.1 If so desired by the CITY, PROVIDER shall file with the CITY and maintain a conflict of interest statement in compliance with the CITY's Conflict of Interest Code.

ARTICLE XI: ADDITIONAL PROVISIONS

11.1 NOTICES. All notices, bills, and payments shall be made in writing and may be given by personal delivery, or by U.S. mail, postage prepaid, and addressed as follows:

CITY OF OCEANSIDE:

Water Utilities Director
City Of Oceanside Water Utilities Department
300 North Coast Highway
Oceanside, CA 92054

PROVIDER:

Solid Solutions, LLC
19700 Fairchild, Suite 290
Irvine, CA 92612

ATTN: Jeff Thurber

11.2 DATA FURNISHED BY CITY. Upon PROVIDER's request, CITY shall make available all non-privileged data in its possession relevant to the services provided by PROVIDER. It shall be PROVIDER's responsibility to apply reasonable caution in the use and interpretation of the data furnished by the CITY and promptly advise the CITY of any incorrect or suspect data furnished.

11.3 ENTIRE AGREEMENT. This AGREEMENT represents the entire understanding of the CITY and PROVIDER as to those matters covered hereunder. The AGREEMENT may not be modified or altered except in writing signed by both parties.

11.4 ASSIGNMENT. This AGREEMENT shall not be assigned by either party without the prior written consent of the non-assigning party. The non-assigning party shall not unreasonably withhold its written consent of the assignment.

11.5 SUBCONTRACTS. The CITY has entered into the AGREEMENT in order to receive the professional service of PROVIDER. The provisions of the AGREEMENT shall apply to any subcontractor of PROVIDER. The CITY shall have the right to approve all related subcontractor agreements. All subcontractor activities shall be conducted in accordance with Government Code 7550.

11.6 LITIGATION COSTS. In the event an action is filed by either party to enforce any rights or obligations under this AGREEMENT, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs and expenses, in addition to any other relief granted by the court.

11.7 GOVERNING LAW. This AGREEMENT shall be administered and interpreted under the laws of the State of California. Venue for any litigation arising from this AGREEMENT shall be in the County of San Diego, State of California. If any part of this AGREEMENT is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the reminder of this AGREEMENT shall be in full force and effect.

11.8 FORCE MAJEURE. Neither PROVIDER or CITY shall be charged with failure to comply with any of the obligations of this Agreement if such failure is caused by fires, floods, embargos, governmental regulations, wars, strikes, or any other cause beyond its possible control.

11.9 WAIVER. No term or provision hereof shall be deemed waived and no default of breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented to such breach. The consent by any party to, or waiver of, a breach or default of the other, shall not constitute a consent to, waiver of, or excuse for, any other subsequent breach or default.

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ARTICLE XII: SIGNATURES

12.0 SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the PROVIDER and the CITY.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Agreement to be executed by setting hereunto their signatures this 13th day of February, 2002.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

BY: _____
SIGNATURE

Jeff Thurber / General Manager
NAME/TITLE

BY: _____
SIGNATURE

_____
NAME/TITLE

95-4835459
FEDERAL EMPLOYER I.D. NO.

BY: _____
CITY MANAGER

_____
ATTEST: CITY CLERK

_____
APPROVED AS TO FORM:
CITY ATTORNEY

NOTARY ACKNOWLEDGMENTS OF PROVIDER MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Diego } ss.

On 2/6/02 (Date), before me, Charles W. Hughes, Notary Public, (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),

personally appeared Jeff Thurber (Name(s) of Signer(s)),

☐ personally known to me
☒ proved to me on the basis of satisfactory evidence

to be the person(~~s~~) whose name(~~s~~) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

CHARLES W. HUGHES
Commission # 1234923
Notary Public - California
San Diego County
My Comm. Expires Oct 15, 2003

Place Notary Seal Above

WITNESS my hand and official seal.

Charles W. Hughes
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document
Title or Type of Document: Agreement
Document Date: 2/6/02 Number of Pages: 9
Signer(s) Other Than Named Above: Steve Jepsen

Capacity(ies) Claimed by Signer
Signer's Name: Jeff Turber

☐ Individual
☒ Corporate Officer — Title(s): General Manager
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer is Representing: Solid Solutions, LLC

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF OCEANSIDE AND SOLID SOLUTIONS, LLC FOR HAULING AND OFFSITE REUSE (OR DISPOSAL) FROM THE LA SALINA AND SAN LUIS REY WASTEWATER TREATMENT FACILITIES

This amendment to the AGREEMENT is made and entered into this 13th day of December, 2006 between the City of Oceanside, hereinafter referred to as CITY, and Solid Solutions, LLC, hereinafter referred to as PROVIDER.

WITNESSETH

WHEREAS, the CITY desires to amend the existing AGREEMENT by extending the term for five years as referenced in Section 2.2;

WHEREAS, these contract services are for hauling and offsite reuse and/or disposal of digested and partially dewatered sewage sludge, hereinafter referred to as biosolids, generated at the La Salina and San Luis Rey Wastewater Treatment Facilities; and

WHEREAS, PROVIDER represents that it has the necessary equipment, land, permits, and skills required to perform the necessary contract services;

NOW THEREFORE, CITY and PROVIDER agree as follows:

ARTICLE I: SCOPE OF SERVICE

1.1 PROVIDER shall provide the services as described in Attachment A, SCOPE OF SERVICES, dated October 15, 2006, incorporated herein by reference. PROVIDER shall follow practices consistent with all applicable regulatory requirements and generally accepted professional standards.

ARTICLE II: TERMS OF AGREEMENT

2.1 TERMS OF AGREEMENT. The term of this AGREEMENT shall be for a five year period commencing from the date this AGREEMENT is executed, as first written above.

2.2 EXTENSION OF AGREEMENT. This AGREEMENT shall be extended by amendment for an additional five year period upon written notification from the CITY to PROVIDER at least 90 calendar days prior to the completion of the initial five-year contract period. The terms and conditions of the amended AGREEMENT shall be identical to the terms and conditions of this AGREEMENT.

ARTICLE III: COMPENSATION FOR SERVICES

3.1 PER TON BASIS CALCULATIONS FOR BIOSOLIDS. The CITY is not equipped with State certified scales. The PROVIDER, at his own expense, shall weigh each load of biosolids destined for PROVIDER'S facilities at a scale certified by the PROVIDER. Copies of all weigh tickets shall be submitted to the CITY as part of the PROVIDER'S invoice.

3.2 Compensation per load shall be based on the actual tons of biosolids hauled. PROVIDER shall be responsible for establishing the maximum weight of each load to be hauled based on the allowable hauling capacities of its equipment. The CITY has the right to reduce PROVIDER's recommended maximum load up to 1,000 lbs in order to accommodate the CITY's operational needs. PROVIDER's compensation is based on hauling 100% of the biosolids generated by the CITY. The cost per ton shall be as follows during the term of the AGREEMENT.

Contract Year	Cost Per Ton
Year 6 (12/06 – 12/07)	$42.90 per ton
Year 7 – 10 12/11	To be adjusted according to the 12-month change in the Consumer Price Index (CPI), not to exceed 5.0%, effective December 1 of each contract year.

3.3 FUEL SURCHARGE. A fuel surcharge will be assessed to the base fee per ton if diesel fuel prices rise to $1.71 per gallon or above based upon the Opis Diesel Price Index Information Service – Diesel Price Index for San Diego, California for the last Monday of the billing month. The fuel charge shall be assessed as follows:

Diesel Price Index

For San Diego ($ per gallon)	Cost per Ton Surcharge
$1.71 - $1.80	1.25%
$1.81 - $1.90	2.50%
$1.91 - $2.00	3.125%
$2.01 - $2.10	3.75%

For each additional $0.10 above $2.10, add an additional 0.625 %

3.4 TOTAL COMPENSATION. PROVIDER's compensation for all work performed in accordance with this AGREEMENT shall not exceed the total contract price of $4,740,992 over the five-year term. No work shall be performed by PROVIDER in excess of the total contract price without prior written approval of the Water Utilities Director.

3.5 CITY shall provide a schedule for sludge pick up with at least a minimum of 12 hours prior notice to PROVIDER. The City will be charged an additional $150.00

for scheduling and cancellation of pick-ups without a 12-hour prior notification to PROVIDER.

3.6 If it should be necessary to provide sludge hauling and disposal to Allied/San Diego Landfill Systems instead of the PROVIDER's normal land application sites, the City shall be charged a rate of $13.50 per ton, plus tipping fees as set by the appropriate authority. Hauls to a landfill shall be permitted only in cases of emergencies. For the purpose of this agreement, an emergency shall consist of either of the following: (1) sludge is not in compliance with EPA 503 Class B Regulations; or (2) inclement weather conditions, which prevent disposal at PROVIDER's land application sites.

3.7 PER LOAD BASIS FOR GRIT HAULING. For the purposes of this agreement, a load shall be considered 20 cubic yards of grit and screenings. All grit and screenings hauling and disposal shall be charged to the CITY at a rate of $19.00/yard, plus tipping fees as set by the appropriate authority.

ARTICLE IV: PAYMENT FOR SERVICES

4.1 PROVIDER's vehicle operators will be required to sign a load ticket and to specify the option and site where the biosolids are to be hauled for each trailer, prior to being removed from the treatment plants. PROVIDER will retain a copy of the load ticket and the CITY will retain a copy of the load ticket. The load tickets will be used by the CITY to verify PROVIDER's monthly invoice.

4.2 The CITY shall be responsible for tipping fees for loads hauled to appropriate disposal sites in accordance with Section 3.6 of this Agreement. PROVIDER shall furnish the CITY with tipping fee tickets signed by the appropriate disposal facility.

4.3 Compensation shall be billed bi-monthly by PROVIDER per the CITY's requested format and shall be based on the actual loads of biosolids hauled from Oceanside in the designated time period. The CITY shall make payment to the PROVIDER within thirty (30) calendar days of receipt of the invoices containing the information and documentation required by this Agreement and upon approval of the invoices by the CITY.

Acceptance and payment by CITY for services furnished hereunder shall not in any way relieve the PROVIDER of its responsibility to provide services in strict accordance with Federal, State and local law. Provider warrants that the disposal site for the biosolids comply with applicable Federal, State and local law. Neither CITY's acceptance of, nor payment for any of the services shall be construed to operate as a waiver of any rights under this AGREEMENT or of any cause of action arising out of the performance of this AGREEMENT.

ARTICLE V: TERMINATION OF AGREEMENT

5.1 If during the terms of this AGREEMENT, CITY determines that PROVIDER is not faithfully abiding by any term or condition contained herein, CITY may notify PROVIDER in writing of such defect or failure to perform. Such notice must allow PROVIDER a ten (10) working day period thereafter in which to perform said work or cure the deficiency. If PROVIDER has not performed the work or cured the deficiency within the specified period, this shall constitute a breach of AGREEMENT, and CITY may terminate AGREEMENT immediately by written notice to PROVIDER. At such time, neither party shall have any further duties, obligations, responsibilities, or rights under this AGREEMENT. In said event, PROVIDER shall be entitled to the reasonable value of its service performed from the beginning of the period in which the breach occurs or up to the day it received CITY's notice of termination, whichever occurs first. The City shall be entitled to a reduction in such payment for any damages resulting from such breach. In no event shall PROVIDER be entitled to receive compensation or payment in excess of that specified under Article III.

5.2 In the event that the CITY decides to produce, or contract to produce, a Class A biosolid, as defined in the EPA 503 Regulations, this agreement may be terminated by the CITY or PROVIDER after a minimum service period of three (3) years has been completed. In this case, the CITY or PROVIDER will give the other party a ninety (90) day written notice to terminate the agreement.

ARTICLE VI: LIABILITY

6.1 PROVIDER is an independent contractor and not an employee of CITY. No permitted or required approval by CITY of personnel, costs, schedules, documents, or services of PROVIDER shall be construed as making the CITY responsible for the manner in which PROVIDER performs its services. Such approvals are intended only to give CITY the right to satisfy itself with the quality of work performed by PROVIDER.

6.2 PROVIDER agrees to hold harmless and defend CITY, its officers, agents, and employees with respect to any claim or legal proceedings or judgment made, filed, or presented against the foregoing, by reason of PROVIDER's, its officers, agents, employees negligence, malfeasance, save and except in those instances where such expense, liability or claim is caused solely by an act or omission of CITY, its officers, agents, or employees.

6.3 CITY agrees to hold harmless and defend PROVIDER, its officers, agents, and employees with respect to any claim or legal proceedings or judgment made, filed, or presented against the foregoing, by reason of CITY's, its officers, agents, employees negligence, malfeasance, save and except in those instances where such expense, liability or claim is caused by an act or omission of PROVIDER, its officers, agents, or employees.

ARTICLE VII: ENVIRONMENTAL PROTECTION AGENCY (EPA) COMPLIANCE

7.1 The CITY shall be responsible for producing a digested biosolids of a quality acceptable by the California Department of Health and the U.S. Environmental Protection Agency (EPA) as a non-hazardous material. The CITY shall also be responsible for producing a digested biosolids that meet the U.S. EPA's class B Pathogen Reproduction requirements.

7.2 The PROVIDER shall not add to the CITY's biosolids hauled, reused, disposed, or in any other way handled by the PROVIDER, any material, considered hazardous, or which creates byproducts or residues considered to be hazardous under Federal or California State laws.

7.3 In the event the PROVIDER adds any material to the biosolids that cause the biosolids to be hazardous, the PROVIDER will be responsible for all costs incurred to properly treat and dispose of the biosolids. Costs shall include any defense, remediation, and any damages incurred due to improper disposal and/or handling of biosolids. In the event any hazardous biosolids are disposed of by the PROVIDER under the AGREEMENT, the PROVIDER shall promptly notify the CITY of this nature of the biosolids and the proposed method of disposal.

ARTICLE VIII: INSURANCE

8.1 During the course of the AGREEMENT, PROVIDER shall pay for and maintain, in full force and effect, all insurance required by any governmental agency having jurisdiction to require particular insurance of PROVIDER in connection with or related to the services covered hereby.

8.2 PROVIDER shall furnish satisfactory proof by certificate or otherwise as may be required, that it has procured and maintained, during the life of this AGREEMENT, public liability, vehicular and property damage insurance covering both CITY and PROVIDER, and listing the CITY as an additional insured.

8.3 The insurance carrier shall be a California admitted insurance carrier, and insurance shall be in such form as to protect the CITY and its employees against loss from liability imposed by law from damages on account of bodily injury, including death resulting therefrom, suffered or alleged to have been suffered by any person or persons, other than employees, resulting directly or indirectly from the negligent performance or execution of this AGREEMENT by PROVIDER or any subcontractor with PROVIDER thereunder, and also to protect the CITY and its employees against loss from liability imposed by law for damage to any property, caused directly or indirectly by the negligent performance or execution of the AGREEMENT by PROVIDER. Such insurance shall also cover accidents arising out of the use and operation of automobiles, trucks, and/or other mobile equipment. All said public liability and property damage insurance shall be for the period of performance under this AGREEMENT. The amounts of coverage of said insurance shall not be less than the following:

General Bodily Injury	$1,000,000 single limit
General Property	$1,000,000 single limit
Auto Bodily Injury	$1,000,000 single limit
Auto Property Damage	$1,000,000 single limit
General Contractual Liability	$1,000,000 single limit

8.4 Said policies shall have a non-cancellation clause providing that thirty (30) calendar days written notice shall be given to the CITY prior to any such cancellation, and a certificate of such insurance shall be furnished to CITY by direct mail from PROVIDER's insurance carrier and shall specifically cover any contractual liability incurred hereunder. Failure of the PROVIDER to replace the insurance required by this Agreement at least thirty (30) calendar days before the date of cancellation shall be deemed a material breach of this Agreement.

8.5 PROVIDER shall further maintain adequate workers' compensation insurance, including occupational disease provisions, under the laws of the State of California, and other State (as applicable) and employer's general liability insurance for the benefit of its employees and shall require similar insurance to be provided by its subcontractors. A certificate shall be furnished to the CITY showing compliance with above.

ARTICLE IX: PERFORMANCE BOND

9.1 PROVIDER shall, at its sole cost, maintain and keep in full force and effect at all times during the terms of this AGREEMENT, or any extension thereof, a $25,000 Performance Bond. The Performance Bond shall be issued by an admitted surety insurer in the State of California.

9.2 In lieu of a Performance Bond, PROVIDER may substitute either a letter of credit from a financial institution licensed or chartered by the State or Federal government, or funds equal to the value of the Performance Bond ($25,000), in the form of Attachment B, incorporated herein by reference.

9.3 Substituted funds shall be held by the CITY in Certificate of Deposit throughout the term of the AGREEMENT, or any extension thereof. Upon successful completion of the AGREEMENT, or any extension thereof, PROVIDER shall be refunded the deposited funds including any interest accrued. Should PROVIDER fail to perform, the CITY shall collect the funds equal to the value of the Performance Bond and PROVIDER shall collect any interest.

9.4 A letter of credit shall be automatically renewed annually from the date of expiration, throughout the term of the AGREEMENT or any extension thereof, unless notice of non-renewal is provided in writing to the CITY at least 60 days prior to its expiration date. If a notice of non-renewal is provided, payment of the funds secured by the letter of credit must be made to the CITY unless the CITY notifies the financial institution in writing within thirty (30) days of the notice of non-renewal that such payment is not required.

9.5 In addition, the letter of credit shall state that the CITY has the right to receive upon demand, immediate, unconditional payment under the letter of credit of the amount due to the CITY as a result of the PROVIDER's failure or inability to comply with any provision or condition of the AGREEMENT with the CITY, upon presentation to the insurer of written certification by the General Manager of the amount due and the reasons thereof.

9.6 Collection by the CITY of bond funds, deposited funds, or funds associated with a letter of credit, does not preclude the CITY from pursuing other remedies provided by law.

ARTICLE X: CONFLICT OF INTEREST

10.1 If so desired by the CITY, PROVIDER shall file with the CITY and maintain a conflict of interest statement in compliance with the CITY's Conflict of Interest Code.

ARTICLE XI: ADDITIONAL PROVISIONS

11.1 NOTICES. All notices, bills, and payments shall be made in writing and may be given by personal delivery, or by U.S. mail, postage prepaid, and addressed as follows:

CITY OF OCEANSIDE:

Water Utilities Director
City Of Oceanside Water Utilities Department
300 North Coast Highway
Oceanside, CA 92054

PROVIDER:

Solid Solutions, LLC
12812 Valley View Street, Suite 9
Garden Grove, CA 92845-2512

ATTN: Jeff Thurber

11.2 DATA FURNISHED BY CITY. Upon PROVIDER's request, CITY shall make available all non-privileged data in its possession relevant to the services provided by PROVIDER. It shall be PROVIDER's responsibility to apply reasonable caution in the use and interpretation of the data furnished by the CITY and promptly advise the CITY of any incorrect or suspect data furnished.

11.3 ENTIRE AGREEMENT. This AGREEMENT represents the entire understanding of the CITY and PROVIDER as to those matters covered hereunder. The AGREEMENT may not be modified or altered except in writing signed by both parties.

11.4 ASSIGNMENT. This AGREEMENT shall not be assigned by either party without the prior written consent of the non-assigning party. The non-assigning party shall not unreasonably withhold its written consent of the assignment.

11.5 SUBCONTRACTS. The CITY has entered into the AGREEMENT in order to receive the professional service of PROVIDER. The provisions of the AGREEMENT shall apply to any subcontractor of PROVIDER. The CITY shall have the right to approve all related subcontractor agreements. All subcontractor activities shall be conducted in accordance with Government Code 7550.

11.6 LITIGATION COSTS. In the event an action is filed by either party to enforce any rights or obligations under this AGREEMENT, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs and expenses, in addition to any other relief granted by the court.

11.7 GOVERNING LAW. This AGREEMENT shall be administered and interpreted under the laws of the State of California. Venue for any litigation arising from this AGREEMENT shall be in the County of San Diego, State of California. If any part of this AGREEMENT is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the reminder of this AGREEMENT shall be in full force and effect.

11.8 FORCE MAJEURE. Neither PROVIDER or CITY shall be charged with failure to comply with any of the obligations of this Agreement if such failure is caused by fires, floods, embargos, governmental regulations, wars, strikes, or any other cause beyond its possible control.

11.9 WAIVER. No term or provision hereof shall be deemed waived and no default of breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented to such breach. The consent by any party to, or waiver of, a breach or default of the other, shall not constitute a consent to, waiver of, or excuse for, any other subsequent breach or default.

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ARTICLE XII: SIGNATURES

12.0 SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the PROVIDER and the CITY.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Agreement to be executed by setting hereunto their signatures this 13th day of December, 2006.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

BY: _____
SIGNATURE

Jeff Thurber / G.M.
NAME/TITLE

BY: _____
SIGNATURE

_____
NAME/TITLE

95-4835459
FEDERAL EMPLOYER I.D. NO.

BY: _____
Interim CITY MANAGER

_____
ATTEST: CITY CLERK

_____ ASST.
APPROVED AS TO FORM:
CITY ATTORNEY

NOTARY ACKNOWLEDGMENTS OF PROVIDER MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of ORANGE } ss.

On 10.26.06 (Date), before me, SARA B. PACHECO, NOTARY PUBLIC (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),
personally appeared JEFFREY A. THUEBER (Name(s) of Signer(s)),

☐ personally known to me
☒ proved to me on the basis of satisfactory evidence

SARA B. PACHECO
Commission # 1532921
Notary Public - California
Orange County
My Comm. Expires Dec 9, 2008

to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/he~~r/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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