



REPORT TO CITY COUNCIL

Approved by:

Daniel Foss, Interim Public Works Director

Arnaldo Rodriguez, City Manager

Council Meeting of: May 6, 2020

Agenda Number: D-1

SUBJECT:

Award of Agreement to Synagro-WWT, Inc. for Sludge Hauling and Disposal Services from the Wastewater Treatment Plant at \$41.00 per ton

RECOMMENDATION:

In response to bids received under City of Madera (City) Request for Proposals 201920-09, staff recommends that the City Council (Council) adopt a resolution approving award of an agreement to Synagro-WWT, Inc. for sludge hauling and disposal services from the Wastewater Treatment Plant, in the amount of \$41.00 per ton, for a period of one (1) year with an option of four (4) one year extensions if elected by the City.

SUMMARY:

The City of Madera (City) Wastewater Treatment Plant's treated sludge biosolids are hauled away to an offsite remote facility for further processing and beneficial end use. The City's existing contract for sludge biosolids disposal was awarded in 2014 and was extended for four (4) one-year terms consistent with the terms of that agreement. No additional extensions are available. A Request for Proposals (RFP) for a new service contract was issued in accordance with the City's Purchasing Policy on the City's website, published twice in the Madera Tribune and postcards were sent to any vendors provided by the department as potential vendors. The bid was opened on February 24, 2020 with the following results.

Company	Bid Price per Ton
Synagro WWT, Inc.	\$41.00

DISCUSSION:

The wastewater biosolids produced at the City's wastewater treatment facility must be processed under strict guidelines promulgated under the Environmental Protection Agency's (EPA) Title 40 CFR, Part 503 Biosolids Rule and the City's Waste Discharge Requirements (WDR) permit as issued by the California Regional Water Quality Control Board (CRWQCB). The sludge biosolids treatment and dewatering facilities at the City's wastewater treatment plant operate 365 days per year and consists of biosolids conditioning and loading facilities, 3 heated anaerobic digesters, and 2 sludge dewatering centrifuges producing up to 210 tons of Class B dry cake biosolids per month. These biosolids must be processed as described above and Synagro-WWT, Inc. is qualified to provide such services. While Synagro-WWT was the only bidder who responded to the current RFP, they have consistently outbid the competition in prior years. For this reason, staff is recommending proceeding with award of an agreement at this time.

FINANCIAL IMPACT:

This bid price represents a 28 percent increase from the rate in our previous contract. All cost associated from this agreement will come from the Sewer System Utility Fund, Fund Number 20403410, account 6440. There is no impact on the General Fund. Council previously allocated \$65,000 in funding for this contract is appropriated in the current year's budget and no additional funds will be required beyond those budgeted.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

While not specifically address, this action is consistent with the Vision Madera 2025 Plan; Managed Growth: Strategy 101.6 - Ensure infrastructure can sustain population growth in the development of the general plan.

ALTERNATIVES:

Council may direct staff to seek additional bids.

ATTACHMENTS:

1. Resolution– Approving an Agreement
 - a. Exhibit 1– Synagro-WWT, Inc. Sludge Hauling and Disposal Services Agreement
 - i. Exhibit A – Insurance Requirements

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,
CALIFORNIA APPROVING AN AGREEMENT FOR SLUDGE
HAULING AND DISPOSAL SERVICES WITH SYNAGRO-WWT, INC.**

WHEREAS, the City of Madera (City) produces approximately 190 to 210 tons of sludge biosolids (sludge) from the Wastewater Treatment Plant per month; and

WHEREAS, the sludge is required to be hauled and disposed of in accordance with applicable rules and regulations as set forth by the Environmental Protection Agency and the California Regional Water Quality Control Board; and

WHEREAS, the City engaged in a bid process for the performance of such services through publication of Request for Proposals (RFP) 201920-09; and

WHEREAS, the RFP was published on 01/13/2020, the response period closed on 02/24/2020; and

WHEREAS, the City advertised the RFP on the City's website, published twice in the Madera Tribune and postcards were sent to vendors; and

WHEREAS, Synagro-WWT, Inc. was the only responsive and responsible bidder; and

WHEREAS, an agreement for sludge hauling and disposal services has been drafted that is in the best interest of the City and Synagro-WWT, Inc.

NOW THEREFORE, THE COUNCIL OF THE CITY OF MADERA resolves, finds, and orders as follows:

1. The above recitals are true and correct.
2. The Sludge Hauling and Disposal Services Agreement with Synagro-WWT, Inc., a copy of which is attached as Exhibit 1 to this Resolution, is approved.
3. This resolution is effective immediately upon adoption.

CITY OF MADERA
SLUDGE HAULING AND DISPOSAL SERVICES

THIS AGREEMENT made and entered into on May 6, 2020, by and between the CITY OF MADERA, a municipal corporation of the State of California, hereinafter called "City" and Synagro-WWT, Inc., hereinafter called "Service Provider."

RECITALS

- A. The City is in need of Sludge Hauling and Disposal Services and the City has issued a Request for Proposals (RFP) for Sludge Hauling and Disposal Services.
- B. City requires a Sludge Hauling and Disposal Services Agreement from a qualified professional service provider.
- C. Service Provider is a firm having the necessary experience and qualifications to provide services under this Sludge Hauling and Disposal Services Agreement.
- D. After conducting an RFP process for Sludge Hauling and Disposal Services and after review and consideration, City desires to retain Service Provider to provide said services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual and mutual consideration, the City and the Service Provider as follows:

1. Services. Service Provider will perform the services described in the Scope of Services attached hereto as "Exhibit A" and incorporated herein by reference ("Services" in accordance with the terms and conditions of this Agreement and to the satisfaction of the City's authorized representative, {WWTP Manager}, ("**City's Authorized Representative**").

2. Obligations, duties and responsibilities of Service Provider. In performing the Services, Service Provider will meet or exceed the applicable standard of care for and exercise the degree of skill and diligence ordinarily used by reputable professionals who perform the same or similar type of services required under this Agreement.

3. Service Provider's fees and compensation: amount, how and when payable.

3.1 Fees. For all the work and services, including supplies and equipment, pertaining to the Sludge Hauling and Disposal Services Agreement and supplies required to be furnished by the Service Provider to the City, City agrees to pay to Service Provider and Service Provider agrees to accept and receive as payment in full the following fees and compensation which shall be known as the "Fee" to be paid as hereinafter set forth.

For all items of work and services and for furnishing of supplies, as set forth in Exhibit "A", City agrees to pay Service Provider, and Service Provider agrees to accept as payment in full, compensation at the rate set forth in Exhibit "B".

4. Term of Agreement. This Agreement shall be effective on ___February 1___, 2020, after approval by the City Council at a duly scheduled meeting thereof and shall continue in full force and effect through ___January 31___, 2021, unless otherwise terminated earlier by one of the parties pursuant to Section 8 of this Agreement. This Agreement may be extended by mutual written consent annually thereafter, for additional one (1) year periods on a year to year basis, for a maximum of 4 extension years. Cost for any extensions of this Agreement will be negotiated but increases cannot exceed the change in the CPI over the previous 12 months, calculated from each renewal year. The term CPI shall mean the consumer price index; not seasonably adjusted, U. S. City Average, as published by the U.S. Department of Labor, Bureau of Labor Statistics."

5. Hold Harmless and Insurance Requirements.

5.1 Independent contractor. In the furnishing of the services provided herein, the Service Provider is acting as an independent contractor and not as an employee of the City. Service Provider acknowledges and agrees that at all times, Service Provider or any agent or employee of Service Provider shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Service Provider, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Service Provider or any agent or employee of Service Provider shall not have employee status with City, not be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Service Provider or any agent or employee of Service Provider is liable for the acts and omissions of itself, its employees, and its agents. Service Provider shall be responsible for all obligations and payments, whether imposed by federal, state, or local laws, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Service Provider's performing services and work, or any agent or employee of Service Provider providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Service Provider or any agent or employee of Service Provider. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Service Provider's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Service Provider performs work under this Agreement

5.2 Indemnification and Waivers. Service Provider shall indemnify, defend, and hold harmless the City, its officers, employees, agents and volunteers ("City indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Service Provider's performance of its obligations under this agreement or out of the operations

conducted by Service Provider, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Service Provider's performance of this agreement, the Service Provider shall provide a defense to the City indemnitees, or at the City's option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims. Service Provider shall and does hereby waive any claim against the City of Madera, its officers, volunteers and employees, for any damage to equipment or other property connected with Service Provider's operations under this Agreement arising from any cause.

5.3 Insurance. During the term of this Agreement, Service Provider shall maintain, keep in force and pay all premiums required to maintain and keep in force liability and property damage insurance. The limits of such policy shall be as required by the City of Madera. A copy of the City's requirements for such insurance coverage is attached hereto as Exhibit "C".

6. Attorney's Fees/Venue. In the event that any action is brought to enforce the terms of this Agreement, the party found by the court to be in default agrees to pay reasonable attorney's fees to the successful party in an amount to be fixed by the Court. The venue for any claim being brought for breach of this Agreement shall be in Madera County.

7. Governing Law. The laws of the State of California shall govern the rights and obligations of the parties under this Agreement, including the interpretation of the Agreement. If any part of the Agreement is adjudged to be invalid or unenforceable, such invalidity shall not affect the full force and effect of the remainder of the Agreement.

8. Termination.

8.1 This Agreement may be terminated at any time by either party upon thirty (30) calendar days written notice. In the event the Agreement is terminated by either party, Service Provider shall be compensated for services performed to the date of termination based upon the compensation rates and subject to the maximum amounts payable together with such additional services performed after termination which are authorized in writing by the City representative to wind up the work performed to date of termination.

8.2 City may immediately suspend or terminate this Agreement in whole or in part by written notice where, if in the determination of City, there is:

- a. An illegal use of funds by Service Provider;
- b. A failure by Service Provider to comply with any material term of this Agreement;
- c. A substantially incorrect or incomplete report submitted by Service Provider to City.

In no event shall any payment by City or acceptance by Service Provider constitute a waiver by such party of any breach of this Agreement or any default which may then exist on the part of either party. Neither shall such payment impair or prejudice any remedy available to either party with respect to such breach or default. City shall have the right to demand of Service Provider the repayment to City of any funds disbursed to Service Provider under this Agreement which, as determined by the appropriate court or arbitrator, were not expended in accordance with the terms of this Agreement.

All notices under this section shall be sent in accordance with Section 10 of this Agreement.

9. Compliance with Laws. Service Provider will comply with all applicable federal, state, and local laws, rules, and regulations related to the Services under this Agreement. Service Provider represents and warrants to City that Consultant has and will keep in effect during the term of this Agreement all licenses (including, but not limited to, the City of Madera business license), permits, qualifications, and approval of whatever nature which are legally required of Consultant to practice Consultant's profession or perform the service.

9.1 Laws Incorporated by Reference. The full text of the laws listed in this Section, including enforcement and penalty provisions, are incorporated by reference into this Agreement.

9.2 Conflict of Interest. By executing this Agreement, Service Provider certifies that it does not know of any fact which constitutes a violation of Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

9.3. Proprietary Information. In the performance of Services, Service Provider may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Service Provider, such information must be held by Service Provider in confidence and used only in performing the Agreement. Service Provider shall exercise the same standard of care to protect such information as a reasonably prudent Service Provider would use to protect its own proprietary or confidential information.

9.4. Nondiscrimination Requirements. Service Provider shall comply with all applicable state and federal laws prohibiting discrimination in the performance of this Agreement.

9.5. Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Service Provider to remove from, City facilities personnel of any Service Provider or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect

the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

9.6. Public Records Act. Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et seq.). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state, or local law.

10. Notices. All notices and communications from the Service Provider shall be to City's Public Works Operations Manager. Verbal communications shall be confirmed in writing. All written notices shall be provided and addressed as follows:

To the City:

City of Madera
Public Works Operations Director
1030 South Gateway Drive
Madera, CA 93637

To Service Provider:

Synagro-WWR, Inc
Att: General Council
435 Williams Court Suite 100
Baltimore, MD 21220

11. Assignment. Neither the City nor the Service Provider will assign its interest in this Agreement without the written consent of the other.

12. Entire Agreement. This Agreement, including all documents incorporated by reference, comprises the entire integrated understanding between the Parties.

13. Modification. Any changes to this Agreement requested by either City or Service Provider may only be effected if mutually agreed upon in writing by duly authorized representatives of the Parties hereto. This Agreement shall not be modified or amended or any rights of a party to it waived except by such a writing.

14. Governing Law, Jurisdiction, and Venue. The formation, interpretation, validity, and enforcement of this Agreement shall be governed by the laws of the State of California. Venue for any claim, lawsuit, or legal proceeding shall be in the County of Madera.

15. Attorney's Fees. If any litigation is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorney's fees and costs of litigation.

16. Severability. If any provision or term of this Agreement is held by a court of law to be invalid or unenforceable, such provision or term shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remaining provisions of this Agreement.

17. Counterparts. This Agreement may be signed in counterparts each of which shall constitute an original but all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

CITY OF MADERA

BY: _____
Andrew Medellin, Mayor

BY: _____

ATTEST:

Alicia Gonzales, City Clerk

APPROVED AS TO FORM

Hilda Cantú Montoy, City Attorney

Exhibit A

Insurance Requirements for Service Providers

Without limiting Service Provider's indemnification of City, and prior to commencement of Work, Service Provider shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Subconsultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

Minimum Scope and Limits of Insurance

Service Provider shall maintain limits no less than:

- **\$2,000,000 General Liability** (including operations, products and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO form CG 20 10 that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- **\$1,000,000 Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Service Provider arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- **Worker's Compensation** as required by the State of California and **\$1,000,000 Employer's Liability** per accident for bodily injury or disease. Service Provider shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.
- **\$2,000,000 Contractor's Pollution Liability** per claim. All activities contemplated in this agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

Maintenance of Coverage

Service Provider shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Service Provider, its agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

Proof of Insurance

Service Provider shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow Service Provider, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Service Provider hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

Enforcement of Contract Provisions (non estoppel)

Service Provider acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Service Provider of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.

Specifications not Limiting

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Service Provider maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Service Provider.

Notice of Cancellation

Service Provider agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

Self-insured Retentions

Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City's Risk Manager.

Timely Notice of Claims

Service Provider shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Service Provider's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional Insurance

Service Provider shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.