

BOARD OF PUBLIC WORKS AND SAFETY (Form B-01-2012)
Agenda Request Form

Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard. Please make sure that your contact information is accurate in case we need to get in touch with you. The Board of Works meets on the 1st and 3rd Monday of each month at 5:00 p.m. in City Hall located at 70 E. Monroe Street.

Date Submitted:	06/04/2015	Meeting Date:	06/15/2015
Contact Information:			
Requested by:	Rick Littleton – DPW Superintendent		
On Behalf of Organization or Individual:	DPW		
Telephone:	317-736-3640		
Email address:	rlittleton@franklin.in.gov		
Mailing Address:	796 S. State Street		
Describe Request:			
Approval of Agreement and Scope of Work with OMSI for the Beneficial Reuse of Class A Biosolids			
List Supporting Documentation Provided:			
Master Agreement, Scope of Services and Certification of Compliance			
Who will present the request?			
Name:	Rick Littleton	Telephone:	317-736-3640

In order for an individual and/or agency to be considered for new business on the Board of Works agenda, this reservation form and supporting documents must be received in the Mayor’s office no later than 4:00 p.m. on the Wednesday before the meeting.

OMSI MASTER SERVICES AGREEMENT

This Master Services Agreement (“Agreement”) is effective as of _____, 20__, by and between the City of Franklin (“Utility”) and Organic and Mineral Systems Incorporated (“OMSI”), with its principal place of business in Sylvania, Ohio (“Contractor”). Utility and Contractor are each referred to herein as a “Party” and are referred to herein collectively as “Parties.”

WHEREAS, Utility desires to obtain and Contractor desires to provide certain Services (as defined in Section 1.01 below);

NOW THEREFORE, in consideration of the promises and mutual agreements set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1. Services

Section 1.01 Scope of Services; Statements of Work. From time to time, as requested by Utility, during the term of this Agreement, Contractor shall perform for Utility, Market and Distribute Class A Biosolids and related services (the “Services”) according to one or more statements of work (each a “Statement of Work”) agreed to and signed by the Parties. Each Statement of Work, which shall incorporate the terms and conditions of this Agreement, will set forth the scope, approach and deliverables including estimated schedules and costs.

ARTICLE 2. Payment

Section 2.01 Fees. See Statement of Work

Section 2.02 Invoices. Utility shall pay amounts payable to Contractor under this Agreement within thirty (30) days of receipt of invoices submitted by Contractor. Such invoices shall not be submitted more frequently than monthly. Upon request, the Contractor shall provide to Utility the requested documents such as documentation supporting the hours billed. If Utility wrongfully fails to pay an invoice within such forty-five (45) day period, interest shall accrue on the unpaid invoice amount at The statutorily permitted rate. In the event of a good faith dispute regarding any portion of an invoice, Utility may withhold such disputed portion pending final resolution of the disputed amount and Contractor shall continue to perform its services. Upon resolution of the disputed portion, any amounts owed to Contractor shall be paid with interest at the rate set forth above if applicable and Contractor shall reimburse Utility for any overpayments made by Utility with interest at the rate set forth above accruing from the

date such overpayments were remitted to Contractor through the date Contractor reimburses Utility for the overpayments.

Section 2.03 Audits. Upon not less than thirty (30) days prior written notice, and no more than once per calendar year during the term of this Agreement, Utility may request that Contractor provide to Utility or its auditors access to Contractor's payroll and expense records to the extent necessary for Utility to audit Contractor's invoices hereunder. In the event an audit results in a determination that Contractor has overcharged Utility, Contractor shall promptly refund each overpayment with interest as calculated in Section 2.02 hereof. Utility shall bear the costs of any such audits; provided, however, that in the event an audit results in a determination that Contractor has overcharged Utility in an amount equal to or exceeding one percent (1%) of the total charges for the period audited, Contractor shall reimburse Utility for the costs of the audit.

Section 2.04 Tax Exempt Status. It is understood that Utility is a municipal utility that is exempt from certain Indiana sales, use and other taxes. The Contractor shall request of Utility any and all necessary Indiana sales, use and other tax exemption certificates. In no event shall Utility be liable for any taxes from which Utility is exempt.

ARTICLE 3. Cooperation and Publicity

Section 3.01 Time is of the Essence; Dispute Resolution. The Parties understand and acknowledge that time is of the essence with respect to performance of the Services and Contractor shall comply with any deadlines or schedule requirements contained within the applicable Statement of Work. The Parties shall use their best efforts to resolve quickly and informally any disputes that could impede such performance.

Section 3.02 Publicity. All publicity, press releases and other announcements relating to this Agreement or the Services will be reviewed in advance by and subject to the approval of Utility. Without the prior written consent of Utility, Contractor shall not, and shall cause its employees not to, make any statements that are based on knowledge gained as a result of performing Services.

ARTICLE 4. Services Representation and Warranty

Section 4.01 Services Representation and Warranty. In addition to and without waiver of any representations or warranties implied by law or expressed in the Statement of Work, Contractor represents and warrants that Services will be performed diligently in a professional and workmanlike manner and in accordance with the Statement of Work and all applicable laws, rules, regulations, codes, and ordinances. This representation with respect to Services shall be effective for a period of ninety (90) days from the date such Services are completed (the "Representation and Warranty Period").

ARTICLE 5. Indemnification and Insurance

Section 5.01 General Indemnity. Contractor shall defend, indemnify and hold harmless the Utility, its employees, officers, directors and agents from and against all claims, damages, losses and expenses, including attorneys' fees arising from such claims as well as prosecuting this indemnity clause, if:

- (a) such claims, damages, losses or expenses are attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible or intangible property, including the loss of use resulting therefrom; and
- (b) the act or acts giving rise to such claims, damages, losses or expenses are caused or are claimed to have been caused, in part, by any act or omission of the Contractor, any subcontractor hired by the Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

The duty of the Contractor to defend, indemnify and hold harmless the Utility, its agents and employees under this Section shall exist regardless of whether or not the act giving rise to this duty is caused or claimed to have been caused, in part, by a party indemnified hereunder and such duty shall be determined without regard to any apportionment of liability under the laws relating to Comparative Fault; however, this provision does not apply to claims arising out or caused by the sole negligence or willful misconduct of any indemnities. In any and all claims against any party indemnified hereunder by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Workers' Compensation Acts, Disability Benefit Acts, or other Employee Benefit Acts.

Section 5.02 Compliance With Laws. During the performance of Services, Contractor shall and shall cause its subcontractors, agents and employees to fully comply with any and all applicable federal, state and local laws, regulations, orders, codes and ordinances. Contractor shall indemnify, defend and hold harmless Utility, its employees, officers, directors and agents from and against any demands, losses, damages, fines, penalties or expenses (including reasonable attorneys' fees and court costs) incurred as a result of the failure of Contractor or Contractor's agents, employees, or subcontractors to make full and proper compliance with rules, regulations, laws or orders as set forth above. Additionally, and in accordance with this agreement, Contractor has executed the attached Exhibit "A", Certification of Compliance with Applicable Laws, which is incorporated herein and is a part of this agreement.

Section 5.03 Notice of Indemnity Obligation. A Party seeking indemnification shall promptly notify the indemnifying Party in writing of a claim or suit and provide the indemnifying Party reasonable cooperation (at the indemnifying Party's expense) and full authority to defend or settle the claim or suit; provided, however, that the indemnifying Party shall not enter into any settlement that imposes an obligation or liability on the indemnified Party that is not indemnified or that creates a non-monetary obligation without the indemnified Party's prior written consent.

Section 5.04 Insurance. The Contractor shall maintain, at the Contractor's sole cost and expense, such insurance as will provide protection from claims under Workers' Compensation Acts and other employee benefit acts; from claims for damages because of bodily injury, including death, to employees and all others; and from claims for damages to property, any or all of which may arise out of or result from the Contractor's operations under this Agreement, whether such operations be by the Contractor or by any subcontractor or anyone directly or indirectly employed by either of them.

The Contractor shall furnish the Utility with a certificate of insurance, from companies satisfactory to Utility, evidencing coverage of not less than the following limits of liability and listing the Utility as an additional insured on a primary and non-contributory basis on all policies except Workers' Compensation:

Commercial General Liability (including, but not limited to, bodily injury, personal injury, property damages, contractual liability, and products-completed operations):

General Aggregate Limit	\$2,000,000
Products/Completed Operations	\$1,000,000
Personal & Advertising Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000
Fire Damage	\$50,000
Medical Expenses	\$15,000

All such insurance policies shall be endorsed to provide a ten-day written notice of cancellation to the Utility. The Comprehensive General Liability policy shall contain contractual liability coverage for any indemnity obligation undertaken herein.

ARTICLE 6. Employees and Subcontractors

Section 6.01 Unsatisfactory Personnel. In the event Utility in its sole discretion determines that one of Contractor's employees performing Services is unsatisfactory to Utility, Contractor shall immediately cause such employee to cease all activities with

respect to performance of Services and use commercially reasonable efforts to provide replacement personnel.

Section 6.02 No Joint Employees. Neither Party shall be deemed a co-employer or joint employer of the other's employees, and, subject to Article 5, each Party shall remain responsible for any and all claims by its employees. Neither Party's employees shall be deemed leased employees of the other for any purpose.

Section 6.03 Nondiscrimination. Contractor agrees not to discriminate against any employee, applicant for employment to be employed or subcontractor to be engaged in the performance of this Agreement with respect to their hire, tenure, terms or privileges of employment or any other matter directly or indirectly related to employment, because of race, color, veteran status, age, disability, sex, national origin or religion. Contractor will take affirmative action to insure that employees and subcontractors are hired and that employees and subcontractors are treated during their employment or engagement without regard to race, color, veteran status, age, disability, sex, national origin or religion. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or terminations; rates of pay or apprenticeship. Breach of this covenant may be regarded as a material breach of this Agreement.

Section 6.04 Subcontractors. Contractor shall obtain the prior approval from Utility for all proposed subcontractors or consultants that are to perform any portion of the services required by this Agreement. Contractor shall bind each of its subcontractors and consultants to the applicable terms and conditions of this Agreement for the benefit of Utility. Contractor shall be fully responsible for all negligent acts, errors or omissions of its subcontractors and consultants and of persons and organizations directly or indirectly employed by the Contractor, and of persons and organizations for whose acts any consultant may be liable to the same extent that Contractor is responsible for the negligent acts, error or omissions of persons directly employed by Contractor. Nothing in this Agreement, nor any communication, directive, action or failure to act on the part of Utility, shall create any contractual relationship between Utility and any subcontractor or consultant having a contract with Contractor, nor shall it create any obligation on the part of Utility to pay the subcontractor or consultant to Contractor.

ARTICLE 7. Independent Contractor

It is specifically understood and agreed that the Contractor shall at all times be an independent contractor and that the Services to be performed hereunder shall be carried on by the Contractor according to Contractor's own means and methods; provided, however, Contractor shall perform Services consistent with the overall direction provided by Utility. In connection with this Agreement, Contractor has no authority to bind or commit Utility. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the Parties for any purpose.

ARTICLE 8. Term and Termination

Section 8.01 Term. This Agreement will become effective as of the date first written above upon its execution by both Parties and continue in full force until terminated as provided herein.

Section 8.02 Termination for Convenience. Utility may terminate this Agreement at any time for any reason or no reason by giving thirty (30) days prior written notice of such termination; provided, however, that each Party will if requested in writing by the other Party fulfill its obligations under any uncompleted Statements of Work in the event of a termination pursuant to this Section. In the event of such termination for convenience, the Contractor shall be compensated for only those services performed and shall not be entitled to any lost profit or overhead on services not performed.

Section 8.03 Termination for Cause. Either Party may immediately terminate this Agreement or any Statement of Work upon ten-day advance written notice of a material breach by the other Party and the defaulting party's failure to remedy said breach within such ten-day notice period. Termination pursuant to this Section shall be in addition to any other remedies that may be available to the non-breaching Party. In the event of such termination for cause by Utility, Utility shall withhold all further payments to Contractor until such time as Utility can adequately determine the full extent of its costs and damages resulting from the Contractor's default.

ARTICLE 9. Compliance with Rules and Regulations

Section 9.01 Compliance With Laws, Rules and Regulations. During the performance of the Services, the Contractor and the Contractor's subcontractors, agents and employees shall fully comply with any and all applicable laws, federal, state, and local and with any and all applicable rules, regulations, and orders made and promulgated by any public official, board, commission, or other regulatory body whatsoever, either federal, state, county or municipal including but not limited to OSHA and IOSHA, and Contractor shall require any and all other parties to whom or to which any portion of the Services to be performed may be sublet, to make like compliance, and in this connection, the Contractor agrees to save and hold the Utility harmless from any and all fines, penalties, bodily injury or property damage whatsoever, arising out of or occasioned by failure of Contractor or Contractor's agents, employees, or subcontractors to make full and proper compliance with rules, regulations, laws or orders as set forth.

Section 9.02 Utility Safety Rules and Policies. During the performance of the Services, the Contractor, the Contractor's subcontractors, agents and employees shall fully comply with any and all Utility safety rules and policies, specifically, but not limited to the following:

Lockout/Tagout Program
Confined Space Entry Program
Respirator Program

Hot Work Permit
Drug & Alcohol Testing Policy
Eye Safety
Chemical Hazard
General Safety Rules & Practices

Section 9.03 Licenses, Permits, and Permissions. Contractor shall, at no additional cost to Client, obtain and maintain all licenses, permits and permissions necessary to perform the Work.

Section 9.04 Compliance with Laws affecting the Environment. Contractor shall take proper safety and health precautions to protect the work, the workers, the public and the property of others. Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work. Contractor shall require the provisions of this paragraph to be included in any subcontracts issued under this Agreement.

Section 9.05 Hazardous Wastes

Section 9.05(a) General. Utility is relying upon Contractor's expertise and experience to insure that the work is performed in compliance with all applicable laws relating to hazardous materials, hazardous substances, and hazardous waste. Accordingly, and without limitation, Contractor agrees to comply with all applicable federal, state and local laws, statutes, ordinances, regulations, rules, permits, agency directives, and legal requirements relating to the generation, use, characterization, storage, treatment, handling, packaging, labeling, transportation, and/or disposal or other disposition of such hazardous materials, hazardous substances, and hazardous wastes. This includes all related legal requirements applicable to such activities, including, without limitation, warning, record keeping, training, monitoring, and reporting obligations.

Section 9.06 Transportation, Treatment and/or Disposal of Hazardous Wastes. If applicable, Contractor shall provide for the pickup, transportation, and final treatment and/or disposal of hazardous wastes at sites designated by Contractor and approved in writing by Utility, in compliance with all applicable federal, state and local laws, statutes, ordinances, regulations, rules, permits, agency directives and other legal requirements.

ARTICLE 10. Other Terms and Conditions

Section 10.01 Notices. Any notice given pursuant to this Agreement must be in writing and shall be effective when delivered personally or by a reputable delivery service to the address set forth below or such other address as a Party may designate for itself in accordance with this Section:

If to Utility:

If to Contractor:

City of Franklin, IN
70 E. Monroe St.
Franklin, IN 46131

Organic and Mineral Systems, Inc.
Attn: Tim Nicholson
6115 White Eagle West
Sylvania, OH 43560

Section 10.02 Severability. If any term or provision of this Agreement or any Statement of Work is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the remaining provisions shall remain in full force and effect.

Section 10.03 Waiver. The delay or failure by either Party to exercise or enforce any right hereunder shall not constitute or be deemed a waiver of such right or any other right under this Agreement. No waiver by either Party of any breach of this Agreement shall constitute or be deemed a waiver of any subsequent breach.

Section 10.04 Entire Understanding. This Agreement and any Statement of Work executed hereunder constitutes the entire understanding between the Parties and supersedes all prior agreements and communications, whether oral or written, with respect to the subject matter hereof. In the event of a conflict or ambiguity between any term of this Agreement and a Statement of Work, the terms of this Agreement shall prevail. If an ambiguity as to intent arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring either party by virtue of authorship of any of the provisions of this Agreement.

Section 10.05 Amendments. No agreement or understanding purporting to modify this Agreement or any Statement of Work shall be binding on either Party unless signed by an authorized representative of the Party sought to be bound.

Section 10.06 Assignment. This Agreement shall inure to the benefit of and be binding upon the Parties' respective successors and assigns, and neither Party shall assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

Section 10.07 No Third Party Rights. This Agreement shall not be construed to create any legal, equitable or beneficial interest in any third party or to vest in any third party any interest with respect to the enforcement of this Agreement.

Section 10.08 Headings. The titles and headings of the Articles and Sections hereof are for convenience only and shall not be deemed a part hereof or affect the construction or interpretation of any provision hereof.

Section 10.09 Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Indiana, without giving effect to its conflict of law rules. Venue for any proceeding at law or in equity related to this Agreement shall be the State courts of Johnson County, Indiana, and the Parties hereby waive any right to object to this exclusive venue. Each Party further consents to the

personal jurisdiction by said courts over it and hereby expressly waives, in the case of any such action, any defenses thereto based on jurisdiction, venue or forum non convenience.

Section 10.10 Survival. The provisions of this Agreement that by their nature extend by the termination of the Agreement will survive termination or expiration of this Agreement.

Section 10.11 Counterparts. This Agreement may be executed in counterparts and by facsimile, each of which shall be an original and all of which together shall constitute one and the same instrument.

Section 10.12 Conveyance. Conveyance of this form or any modifications thereto does not constitute an offer and neither party shall be bound by the said terms until signed by all parties to the agreement.

Section 10.13 Conflicts. The terms of this agreement shall govern in the event of any conflict between this Agreement and any subsequent Statements of Work or Purchase Orders.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first written above.

UTILITY

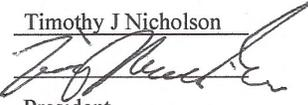
Printed Name: _____

Signature: _____

Title: _____

CONTRACTOR OMSI

Printed Name: Timothy J Nicholson

Signature: 

Title: President

STATEMENT OF WORK BETWEEN THE CITY OF FRANKLIN (CITY) AND OMSI FOR THE BENEFICIAL REUSE OF CLASS A BIOSOLIDS

Scope: OMSI shall market and transport Class A Biosolids generated at the City's Waste Water Treatment Plant (WWTP). The Class A biosolids will be blended with Lucasand on a one ton to one ton basis to produce topsoil at the contractors site in Seymour, IN.

Analytical Testing: City is to prove biosolids are Class A, EQS material.

Customer Contacts and Non-compete: The Utility shall not contact OMSI's customers without the written permission of OMSI. OMSI shall have the exclusive right to market the Class A Biosolids for beneficial reuse for the length of the agreement. Utility agrees not to engage any of OMSI's customers for a period of one (1) year after the termination of this contract. Utility shall not allow its Class A Biosolids to be utilized by an OMSI customer or any other beneficial reuse except through this contract. This provision shall be in effect for length of this contract. OMSI is willing to provide finished product to the city for its citizens. (Terms for providing finished product would need a second statement of work.)

Fees: Pricing for the beneficial reuse, transportation, and marketing services for the Class A, EQS Biosolids is \$25.00 per ton of Lucasand. OMSI will be charging the City for the Lucasand needed to make a marketable product. Lucasand will be blended with the Class A, EQS Biosolids on a one to one basis. However, due to changing markets and customers with different needs, OMSI reserves the right to change the formula for its topsoil at any time, but the pricing will always assume one to one basis. Scale tickets for all incoming biosolids will determine the amount of Lucasand charged. City agrees to provide a minimum of 2000 tons of biosolids. If the city fails to provide 2000 tons, then OMSI can charge the city a \$5.00 per ton charge for every ton under the 2000 ton minimum.

Diesel Fuel Adjustment: Should the posted price of #2 diesel fuel as reported by the Department of Energy's EIA Retail On-Highway Diesel Prices - Midwest weekly value reach or exceed the price of \$3.00 per gallon a diesel fuel adjustment will be added. A fuel surcharge chart will be provided.

Invoicing: OMSI invoice must include all biosolids ticket descriptive numbers and sufficient information to demonstrate delivered weight of biosolids to OMSI.

Delivery Conditions: OMSI will use best efforts to market and transport the biosolids in a timely fashion. OMSI will pick up all biosolids in the first week of any given month as long as weather conditions permit.

Contract Term: Pricing and agreement shall be effective for 5 years from the date of execution of the Master Services Agreement by both Parties.

UTILITY

Printed Name: _____

Signature: _____

Title: _____

CONTRACTOR

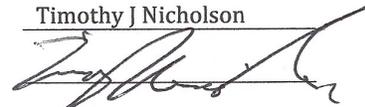
Printed Name:

Signature:

Title:

OMSI

Timothy J Nicholson



President

CERTIFICATION OF COMPLIANCE WITH APPLICABLE LAW

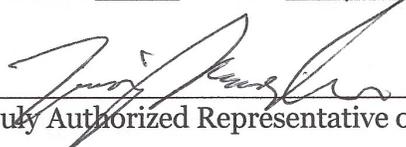
The undersigned, in consideration of contracting with and/or entering into agreements with the City of Franklin, a governmental entity, does hereby make the below certifications and acknowledges that said representations and compliance with applicable law is a requirement of doing business with a governmental entity and is deemed valuable consideration in entering into a contract with the City of Franklin. The undersigned agrees to be in full compliance with all applicable laws and shall immediately notify the City of Franklin in the event it has failed to comply with this certification. In such event, the City of Franklin may immediately terminate any and all contracts with the undersigned. Compliance with all applicable State and Federal laws shall include, but is not limited to, the following:

- a. Execution of Non-Collusion Affidavits to be provided and submitted on a form required by the State Board of Accounts;
- b. Applicable wage scale provisions as required by law;
- c. Applicable anti-discrimination provisions as required by law;
- d. E-verify affidavit as required by law. Specifically, the undersigned declares under penalty of perjury that as a term of doing business with the City of Franklin that they have enrolled in and verify the work eligibility status of newly hired employees through the E-verify program and that by their signature below they do not knowingly apply unauthorized aliens.

Furthermore, the undersigned certifies that it is not involved in the Iranian Energy Industry and does not do business with Vendors involved in the Iranian Energy Industry.

Additionally, the undersigned certifies that they/it are not aware of any relationship between the City of Franklin and the undersigned, its agents, employees or assigns which violates Indiana's anti-nepotism laws.

I HEREBY SWEAR AND AFFIRM UNDER PENALTIES FOR PERJURY THAT THE FOREGOING REPRESENTATIONS ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. ALL OF WHICH IS SWORN TO THIS 21 DAY OF April, 2015.



Duly Authorized Representative of Contracting Party